

**13.1.3 TSX Inc. Notice - Approval of Amendments to the Rules of the Toronto Stock Exchange: Direct Access Trading – Eligible Client Definition**

**TSX INC. NOTICE**

**APPROVAL OF AMENDMENTS  
TO THE RULES OF THE TORONTO STOCK EXCHANGE:  
DIRECT ACCESS TRADING – ELIGIBLE CLIENT DEFINITION**

Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals between the Ontario Securities Commission (OSC) and TSX Inc. (TSX), TSX has adopted and the OSC has approved certain amendments (Amendments) to broaden the prescribed classes of eligible clients set out in Policy 2-501(1) of the Rules of Toronto Stock Exchange (Rule Book) and make other related housekeeping changes. The Amendments will become effective on December 14, 2007.

Background to the Amendments

A Request for Comments was initially published in the OSC Bulletin (OSCB) on January 13, 2006. It included the Amendments with three other substantive proposed changes to the eligible client definition:

- (i) to expand the eligible client definition to include “regulated entities” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report (JRFQ);
- (ii) to expand the existing class of investment counsellors and portfolio managers to include other Canadian registrants other than POs (TSX Policy 2-501(1)(b)); and
- (iii) to expand the existing class of foreign dealers who are affiliated with POs to include any foreign dealer whose home jurisdiction is a Basel Accord Country (TSX Policy 2-501(1)(c)).

TSX has withdrawn proposed changes (i) to (iii) above. OSC staff considers the three proposals referenced above to be a significant departure from the existing sponsored direct access rules. To avoid delaying the approval process for the Amendments, TSX has agreed to withdraw the proposed changes (i) to (iii) at this time.

Amendments

The Amendments make one significant substantive change to broaden the categories of eligible client to include clients that are non-individuals with total securities under administration or management exceeding \$10 million, where the client is resident in a Basel Accord country.

The Amendments include housekeeping changes such as the deletion of references to the eVWAP facility and POSIT Call Market. TSX no longer operates these facilities.

The Amendments are provided in Appendix A and are outlined below.

*Policy 2-501(1)(i)*

A new category of eligible client is added to include clients that are non-individuals with total securities under administration or management exceeding \$10 million, where the client is resident in a Basel Accord country (as defined in the JRFQ).

*Policy 2-501(1)(j)*

Former Policy 2-501(1)(i) is now Policy 2-501(1)(j).

*Policy 2-502(2)(a)*

Reference to the eVWAP facility and POSIT Call Market are deleted.

*Policy 2-502(5)*

This subsection (about eVWAP requirements) is deleted in its entirety.

*Policy 2-502(6)*

This subsection (about POSIT Call Market requirements) is deleted in its entirety.

Discussion of Amendments

The intent of the Amendments is to modernize the definition of an eligible client to better service the needs of market participants. We also believe that the Amendments will increase order flow and therefore add liquidity to Toronto Stock Exchange.

The Amendments are drafted to be consistent with the definition of institutional customer in the IDA Policy 4. We believe that consistent definitions among self-regulatory organizations and marketplaces provide clarity to market participants. IDA Policy 4 includes a "non-individual with total securities under administration or management exceeding \$10 million" as an institutional customer.

This definition recognizes that smaller accounts of non-individuals may indeed represent sophisticated order flow and trading strategies. When using a high threshold financial means test to determine whether a client is sophisticated, the aggregate value of securities held in a company's portfolio is assumed to determine the sophistication of the client. We believe that in this evolving global market, assessing sophistication based solely on assets held is a faulty measurement because technology now allows smaller pools of capital to trade with sophisticated strategies. The sophistication of a client may better be determined by assessing the velocity in which securities are traded through its portfolio.

The Amendments provide a new TSX Policy 2-501(1)(i) which uses the language from IDA Policy 4, but narrows this eligible client category to include only those entities that are resident in a Basel Accord country. This should provide protection to Canadian markets if regulatory investigations with respect to these clients are undertaken.

Comments Received

TSX received three comment letters in response to the initial Request for Comments. The comment letters from TD Newcrest and BMO Nesbitt Burns were wholly supportive of the initial proposed amendments.

The third comment letter was submitted by Market Regulation Services Inc. (RS). RS agreed that an institutional customer for the purposes of IDA Policy 4 should be eligible to have sponsored direct access. RS advocated that the test for an institutional customer should be based on residency in a Basel Accord country rather than on its domicile status in order to more closely correspond with the tax status of the customer. We have made this drafting change in the Amendments.

RS also advised that it would be ideal to incorporate IDA Policy 4 by reference into the Rule Book, to ensure that all classes of institutional customers described in IDA Policy 4 qualify as eligible clients. We do not believe that it is necessary or particularly advantageous to incorporate by reference IDA Policy 4 into the Rule Book. TSX will continue to monitor any changes made to IDA Policy 4 in the future and adopt these changes where relevant. The Amendments therefore do not reflect this RS suggestion.

**Appendix A**

**Rules of the Toronto Stock Exchange**

**Amendments to Part 2, Division 5 –**

**Designation of Eligible Clients**

The Rules of the Toronto Stock Exchange are amended as follows:

1. Policy 2-501(1)(i) is deleted and replaced by the following:
  - (i) a client that is a non-individual with total securities under administration or management exceeding \$10 million, where the client is resident in a jurisdiction that falls within the definition of “Basle Accord Countries” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report; and
2. Former Policy 2-501(1)(i) is now Policy 2-501(1)(j) and reads as follows:
  - (j) a client that enters an order through an Order-Execution Account.
3. Policy 2-502(2)(a) is amended by deleting “,eVWAP Facility, or the POSIT Call Market;”.
4. Policy 2-502(5) is deleted.
5. Policy 2-502(6) is deleted.