

13.1.2 Application for Recognition of RS Inc.



INVESTMENT DEALERS ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES



Toronto Stock Exchange

VIA FAX (416-593-8240), E-MAIL & DELIVERED

September 28, 2001

Alberta Securities Commission
4th Floor, Stock Exchange Tower
300 5th Avenue S.W.
Calgary, Alberta
T2P 3C4

Attention: Stephen P. Sibold, Q.C., Chair

British Columbia Securities Commission
12th Floor, Pacific Centre
P.O. Box 10142
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2

Attention: Douglas M. Hyndman, Chair

Commission des valeurs mobilières
du Québec
800, Square Victoria, 22^e Étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Attention: Carmen Crépin, Présidente

Ontario Securities Commission
20 Queen Street West
Box 55, 19th Floor
Toronto, Ontario

Attention: David Brown, Chair

The Manitoba Securities Commission
1130 Broadway
Winnipeg, Manitoba
R3C 3S8

Attention: Donald Murray, Chair

Dear Sirs/Mesdames:

Re: Application for Recognition of Market Regulation Services Inc. ("RS Inc.")

Introduction

This letter sets out the joint application of The Toronto Stock Exchange Inc. ("TSE") and the Investment Dealers Association of Canada ("IDA") on behalf of RS Inc. to the Ontario Securities Commission, the Alberta Securities Commission, the British Columbia Securities Commission, the Commission des valeurs du mobilières du Québec and The Manitoba Securities Commission, which are collectively the members of the Canadian Securities Administrators ("CSA") with jurisdiction, to recognize RS Inc. as a self-regulatory organization ("SRO") in accordance with the applicable securities legislation. RS Inc. intends to become a regulation service provider ("RSP") pursuant to the criteria published in National Instrument 23-101. It is understood that the TSE and Canadian Venture Exchange Inc. ("CDNX") will make application to the applicable securities regulatory authorities with respect to transferring their regulatory functions to RS Inc.

Securities Regulators

RS Inc. will provide all necessary notices and information to each jurisdiction recognizing RS Inc. as an SRO except as may be otherwise indicated in an applicable recognition order or directions provided by such jurisdictions.

Corporate Governance

The TSE and the IDA intend to enter into an agreement ("Agreement") regarding the corporate governance of RS Inc., a corporation incorporated under the Canada Business Corporations Act ("CBCA") on September 21, 2001. RS Inc.'s articles of incorporation are attached as Appendix A. RS Inc. will be a jointly-owned SRO and will act as an RSP in accordance with National Instruments 21-101 and 23-101. RS Inc. will provide independent market regulation services to the TSE, CDNX and any other marketplace, as defined for the purposes of National Instrument 21-101, wishing to retain RS Inc. as an RSP (a "marketplace"). Without limiting the foregoing, any recognized exchange or quotation and trade reporting system ("QTRS"), as well as any registered alternative trading system ("ATS"), may contract with RS Inc. to obtain market regulation services.

The proposed corporate governance model of RS Inc. reflects the current structure of the securities markets. RS Inc.'s draft corporate by-laws are attached as Appendix B. If that structure were to change significantly over time, the corporate governance model of RS Inc. would be reviewed to ensure it continues to reflect the market structure.

Ownership

Pursuant to the Agreement, the IDA will own 50% of RS Inc.'s shares on behalf of its members and the TSE will own the remaining 50%. The TSE intends to broaden its current shareholder base, which consists primarily of its former members, by making its shares available to the public.

RS Inc. Board of Directors

The constating documents of RS Inc. shall provide that its Board will have a maximum size of 25 Directors and a minimum size of 3 Directors. RS Inc.'s By-laws will provide that the initial Board will be composed of 11 directors: being 5 Independent Directors, 5 non-Independent Directors and the President of RS Inc., who shall be deemed to be neither Independent nor non-Independent. The definition of "Independent Director" is set out in Appendix C attached hereto. Each Director will be elected for a term of one year and shall be entitled to re-election. The Board will elect by simple majority a Chair from among the Directors, excluding the President. RS Inc. will provide the relevant securities regulators with notice of all appointments to the Board.

The TSE and the IDA will each appoint 2 non-Independent Directors. At start-up, the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, will be an individual who is associated with or experienced with the Canadian public venture capital market and shall be appointed jointly by the TSE and the IDA. In making such appointment the TSE and the IDA will utilize all advisory resources available, including the TSE/CDNX Advisory Board. Should CDNX become regulated by RS Inc. and reach or exceed 10% of the Canadian equity securities market (where market share ("Market Share") will be calculated on the trading activity of the previous calendar year, based on 25% of trading value, 25% of trading volume and 50% of number of trades), CDNX shall be entitled to nominate the fifth non-Independent Director in the place of the TSE and IDA for the next succeeding term. If, at the end of each term thereafter, CDNX's position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market then CDNX will not be entitled to representation in the subsequent term and the TSE and IDA shall again jointly nominate the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, and who will be an individual who is associated with or experienced with the Canadian public venture capital market.

There will be at all times one member of the Board who will be a representative of ATSS. This representative will be considered to be an Independent Director until such time as the ATS that such individual is associated or affiliated with becomes either a marketplace regulated by RS Inc. or an Access Person¹. Thereafter, the representative of ATSS will be considered to be a non-Independent Director.

As each new exchange (excluding CDNX), ATS and QTRS becomes regulated by RS Inc., it will be permitted to appoint a representative to the RS Inc. Board for a term of one year when its Market Share reaches or exceeds 10% of the Canadian equity securities market. If, at the end of each term, the marketplace's position in the previous calendar year does not reach or exceed 10% of the market share of the Canadian equity securities market, as calculated above, then the marketplace will not be entitled to representation in the subsequent term.

If a non-Independent Director is added to (or removed from) the Board, an Independent Director will also be added (or removed) so that there are always an equal number of non-Independent Directors and Independent Directors on the Board.

Quorum for the RS Inc. Board will be a simple majority of the existing Directors, present either in person or by telephone, with

at least one representative from each shareholder and at least 50% of the Independent Directors present.

Independent Directors

The TSE Corporate Governance Guidelines recommend the appointment of "independent" or "unrelated" directors to ensure the independence of the Board from the corporation's management, its significant shareholders and any other person with an interest, business or other relationship that could reasonably be perceived to interfere with a director's ability to act in the best interests of the corporation.

There are three main groups that may be perceived to be conflicted in the governance of RS Inc.:

1. RS Inc.'s significant shareholders;
2. the marketplaces regulated by RS Inc.; and
3. Access Persons;

and their directors, officers, employees and related parties.

Accordingly, RS Inc.'s Independent Directors will be individuals who are not connected with its shareholders, the marketplaces regulated by RS Inc. or Access Persons. RS Inc.'s By-laws will require at least 50% of its Directors to be Independent, and the President shall be deemed to be neither Independent nor non-Independent.

Individuals who act as independent members on the various committees of the shareholders, marketplaces and Access Persons shall be eligible to qualify as Independent Directors.

Governance Committee

The RS Inc. Board will delegate the selection of Independent Directors to a Governance Committee of the Board. Appendix D attached hereto sets out the Terms of Reference of the Governance Committee. The Committee will be composed of all the Independent Directors. If the Chair of the Board is an Independent Director, he or she shall be a full, voting member of the Committee. If the Chair of the Board is a non-Independent Director, he or she will be an ex officio member of the Governance Committee and shall not be entitled to vote and whose presence shall not be a factor in the determination of the quorum for the Governance Committee. In addition to selecting Independent Directors, the Governance Committee will be responsible for recommending Board size and its composition, as well as evaluating the performance of all Directors.

Selection of Independent Directors

Appendix E attached hereto sets out the Guidelines of the Governance Committee. Annually, or from time to time as required, the Governance Committee will select candidates to fill vacancies for Independent Directors. The Governance Committee will recommend to the RS Inc. Board those candidates for Independent Directors that it considers qualified and desirable, in accordance with the Guidelines and considering the overall composition of the Board and its representation of the constituents of the Canadian markets. Based on the recommendations of the Governance Committee, the RS Inc. Board will nominate the candidates for Independent Directors. The shareholders will vote to confirm or reject the candidates so nominated as set out below.

Through its properly constituted, independent Governance Committee, RS Inc. will ensure a fair selection process for

¹ "Access Persons" means all Participants (as such term is defined in the Universal Market Integrity Rules) and all other persons who have been granted trading access to a marketplace. For the purposes of this application "Participant" shall have the same definition as it has in the Universal Market Integrity Rules.

Independent Directors. The Governance Committee will review its Guidelines periodically (not less than annually) and file any amendments approved by the Board with the relevant securities regulators.

Shareholder Vote to Confirm Directors

Under the CBCA, RS Inc.'s shareholders must confirm all the Directors who have been nominated by the Board. This statutory right involves a vote by simple majority. If an Independent Director candidate is rejected by the shareholders of RS Inc., the Governance Committee will notify the relevant securities regulators.

Initial Independent Directors

The TSE and the IDA shall jointly nominate the initial Independent Directors in accordance with the Guidelines and their names shall be provided to the relevant securities regulators prior to their election by the shareholders.

Finance & Audit Committee

RS Inc. also proposes to create a Finance & Audit Committee as a committee of the Board. Appendix F attached hereto sets out the Terms of Reference for the Finance & Audit Committee. The RS Inc. Board will be responsible for selecting the Finance & Audit Committee members. The Finance & Audit Committee will consist of at least 5 Directors, the majority of whom shall be Independent Directors, with at least one representative from each shareholder. The Chair of the Board shall be a full, voting member of the Finance & Audit Committee. Quorum will be a majority of Directors comprising the Committee present in person or by telephone, including a majority of Independent Directors on the Committee and at least one non-Independent Director.

No Dual Employment of RS Inc. Employees

RS Inc. employees, including the President, shall not be dually employed by any marketplace or Access Person that is regulated by RS Inc. nor by any shareholder of RS Inc.

Fees

Upon the creation of RS Inc. a fee model ("Fee Model") will be introduced to recover the cost of regulation from marketplaces that have retained RS Inc. as an RSP. The Fee Model will attempt to achieve several objectives, including:

1. being able to recover the total cost of regulation in both active and slow markets;
2. not discriminating in favour of any type of trading business or marketplace;
3. being derived from activity that contributes to the cost of RS Inc.'s regulation services; and
4. being amenable to third party audit and verification by the applicable securities regulatory authorities.

It is generally assumed that the introduction of ATSS and other marketplaces will increase the complexity of market regulation and therefore the overall cost of regulation (even if the aggregate of trading activity remains constant). It is not possible to predict by how much the cost of regulation will increase and it may not be possible to calculate with any certainty the incremental cost after ATSS and other marketplaces commence operation. For

this reason it is suggested that the fees levied for market regulation of ATSS be calculated on the same basis as the fees for the regulation of the existing marketplaces. Charging regulation fees on the same basis for trading on exchanges, QTRSs and ATSS is fair since most, if not all, of that regulation will not be affected by the marketplace on which the trading is done.

Upon close scrutiny of the activities comprising market regulation, it is apparent that trades are the primary drivers of costs, not volume or value. For example, the number of trades processed drives the cost of most market surveillance systems while investigations and enforcement actions are focused on particular trades. Large value or volume trades often attract more regulatory scrutiny as they are more likely to have an impact on the market and, therefore, make regulation of the market a more complex task and can be said to be partial drivers of the cost of market regulation.

Proposed Fee Model

It is proposed that the regulation fee be calculated and charged on the following basis:

1. The cost of regulation will be tracked and allocated on a market-by-market basis. For this purpose, a "market" is distinct from a "marketplace". A "market" consists of an exchange and any ATS trading in that exchange's listed securities, or a QTRS and any ATS trading in that QTRS's quoted securities. The proposed Fee Model will take into account the relative costs of regulating each market. For example, on a trade-for-trade basis, it is more costly to regulate the CDNX market than the TSE market due to a number of factors, including the number of securities listed on each exchange and their liquidity. Therefore, a separate cost calculation must be performed with respect to the regulation of each market subject to RS Inc.'s jurisdiction in order to ensure that the actual regulation costs for each such market are recovered and that the Access Persons in one market are not subsidizing the cost of regulation in another market merely because the market regulator is the same. It is the intention of RS Inc. to require each marketplace to pay the fees attributable to the trading activity of an Access Person that is not a Participant.

Foreign securities, not traded on a Canadian exchange or QTRS will, for the purposes of determining fees, be considered to be a distinct market.

2. At the option of the marketplace, a variable fee will be charged either to the marketplace itself, based on proportionate share of total trading activity, or directly to the Participants in each marketplace (the variable fee attributable to the trading activity of Access Persons who are not Participants will be payable by the marketplace in accordance with paragraph 1 above). The variable fee charged to the marketplace or Participants will be apportioned based on an overall measure of trading activity comprised of trades, volume and value, with trades weighted 50% and volume and value each weighted 25%. This weighting recognizes that trades are the primary driver of costs but high volume and value trades also create additional challenges to the regulation service provider that should be reflected in the cost of regulation and therefore in the Fee Model. We note that the regulation fee of TSE RS is currently calculated and billed solely on the basis of trading volume. Trading volume, while

it is a readily obtainable measure of trading activity for any marketplace or Access Person, is not the only cost driver for market regulation.

To calculate the variable fee to be charged by RS Inc., the share of trading activity for each Access Person in a market, weighted as set out above, will be divided by the total weighted trading activity of all Access Persons in the market. The percentage share for each Access Person thus obtained will be applied to the cost of regulation for the relevant period. This cost is the total cost to the marketplace or Access Person less the amount recovered from such marketplace or Access Person that is a Participant through the fixed fee.

3. In addition to the variable fee set out above, a small fixed fee would be charged directly to each Access Person that is a Participant to recognize that there is increasing complexity, and therefore cost, as each such Participant is added to a market. This fee would have to be nominal to ensure that it is not perceived as a barrier to participation in the securities markets. As an example, Participants who trade on the TSE are currently subject to a TSE Regulation Services' fee of \$5,000 per Participant. RS Inc. considers this fee to be reasonable and, for its first year of operation, intends to charge a similar fee. The amount collected from the fixed fee will be deducted from the total cost of market regulation that is shared among the marketplaces and Participants in item 1 above.

The proposed Fee Model set out above reflects current plans and is based on economic analysis performed by staff of RS Inc. RS Inc.'s objective in devising this model was to ensure that it is fair to all marketplaces and Access Persons in that it does not discriminate in favour of any type of trading business over another and is supportable as a reflection of the cost of regulation. This model will be reviewed and, if necessary, revised over time and in light of subsequent information to ensure that RS Inc.'s regulation fee remains fair and appropriate and continues to meet the objectives set out at the beginning of this section.

Access

Eligibility Status

A marketplace is eligible to subscribe to be regulated by RS Inc. so long as it is an ATS, an exchange or a QTRS recognized or registered in accordance with securities legislation of an applicable Canadian securities regulatory authority. An eligible ATS must also be a member in good standing of an SRO that is recognized by an applicable Canadian securities regulatory authority.

Contractual Conditions

To receive regulation services from RS Inc. an eligible marketplace must enter into a services agreement with RS Inc., which agreement shall include the following terms:

1. The marketplace shall delegate to the jurisdiction of RS Inc. the administration and enforcement of the Universal Market Integrity Rules ("UMIR"). Marketplaces will require their Access Persons to comply with UMIR as a condition of participation.
2. The rules, by-laws and contracts governing the access

granted by the marketplace to its Access Persons shall provide that the Access Person, together with its present and former directors, officers and employees and various other related or affiliated entities, are subject to the jurisdiction of RS Inc. with respect to the administration and enforcement of UMIR.

3. The marketplace must have systems in place that meet RS Inc. requirements in respect of surveillance and reporting including:
 - (i) real time trade and order feeds providing non-public data in STAMP format, or in such other format (including FIX format) as may be required by RS Inc. from time to time; and
 - (ii) the ability to give effect to any direction issued by RS Inc. with respect to the administration of UMIR, including provision for trading halts, delays and suspensions.
4. The marketplace will agree to provide all required data feeds to RS Inc. at the expense of the marketplace (including any charges incurred with respect to the connection of the marketplace to RS Inc. and any charges with respect to the maintenance of that connection).
5. Standard or usual contractual terms including: circumstances for cancellation of the services agreement, transitional procedures, covenants, dispute resolution, notice, amendments, etc.
6. A term requiring receipt of approval of the agreement from the relevant securities regulators.
7. Provisions required by the applicable provisions of Part 7 of National Instrument 23-101 or other requirements established by the applicable securities regulatory authorities.

Financial Viability

RS Inc. will be a not-for-profit organization. The financial model for RS Inc. is founded upon its ability to collect fees to recover the total costs incurred in the regulation of the marketplaces. At start-up, RS Inc. will be funded through a long-term loan facility provided by the TSE and IDA. It is anticipated that the amount of this loan will not be substantial in relation to the overall budget of RS Inc. This debt will be repaid over a multi-year period and will constitute part of the operating expenses to be recovered from marketplaces or Participants. Initial capital requirements, including start-up expenses of RS Inc., will be covered by the long-term loan.

The assets of RS Inc. at start-up will consist of furniture and fixtures, leasehold improvements to office premises and desktop computers and printers. Initially, all other technology required to operate RS Inc. will be leased from the TSE. Any assets transferred to RS Inc. will be on the basis of fair value.

Regulation fees to be collected in any year will be calculated based on the annual operating budget of RS Inc. and will be charged monthly in advance based on the level of trading activity of marketplaces and Access Persons in the previous month as set out above. It is assumed that over the long term RS Inc. will continue to operate on a cost-recovery basis, in keeping with its status as a not-for-profit entity.

The full complement of staff of RS Inc. is expected to be about 90 persons, across Canada, at the time of the transfer of CDNX staff to RS Inc. RS Inc. anticipates outsourcing specific business functions, however, RS Inc. does not expect to be directly responsible for compensating any third party's staff.

Capacity to Perform Regulation Functions

Recognition Order

The independence, mandate and obligations of management of RS Inc. will be prescribed as terms and conditions of its recognition order. RS Inc. will be a recognized SRO that is overseen by the relevant securities regulators. This recognition is a pre-condition of its operation as a RSP. It would be contrary to the interests of RS Inc. to pursue any activity that would threaten its recognition or its relationship with the relevant securities regulators. The relevant securities regulators' oversight authority over RS Inc. takes several forms, including approval of rules and periodic oversight examinations, and enables the relevant securities regulators to ensure RS Inc. responds to the public interest in carrying out its mandate as an SRO and RSP.

The proposed terms and conditions of the recognition order would, among other things require:

1. prior approval, by the relevant securities regulators, of significant changes to the structure of RS Inc., its articles, by-laws and any shareholders' agreements;
2. the functions of RS Inc. to be carried out on a not-for-profit basis and independently of the interests or its shareholders, as well as the marketplaces and Access Persons regulated by RS Inc.;
3. that RS Inc. have the necessary technological and other support necessary for RS Inc. to efficiently and effectively regulate marketplaces and Access Persons;
4. that RS Inc. have the necessary procedures to deal with confidential information relating to any exchange, ATS, QTRS or Access Persons; and
5. regular performance reviews of RS Inc.'s operations at least annually.

Regulation Services

RS Inc. will seek to foster investor confidence in the Canadian securities market and to safeguard investor protection through maintenance of fair and orderly marketplaces. As a neutral, cost-effective and responsive SRO, RS Inc. will not discriminate in favour of any type of trading business over another.

RS Inc. will provide the following services to the markets that it regulates:

1. determination and administration of UMIR, including policy development in respect of UMIR;
2. real-time monitoring of trading operations and of market-related activities of marketplaces and Access Persons to ensure compliance with UMIR;
3. market surveillance of marketplaces, including imposing and lifting trading halts and making rulings on unreasonable trades;

4. trade desk reviews of Participants;
5. co-ordinated halting of inter-listed and foreign-listed securities;
6. investigation and enforcement of violations of UMIR by marketplaces and Access Persons; and
7. settlements and hearings with respect to UMIR and otherwise where authority has been delegated to RS Inc.

RS Inc. may also provide the following additional regulation services, if contracted to do so by a marketplace and subject to regulatory approval and applicable law:

1. monitoring and administering trading rules that are specific to a marketplace including interpretation of trading rules that are specific to a marketplace ("Market Quality Rules");
2. monitoring issuer compliance with timely disclosure policies and other listed company surveillance;
3. investigative research of individuals associated with issuers for listing requirements and Participants for member regulation requirements;
4. investigation and enforcement of violations of Market Quality Rules by marketplaces and Access Persons; and
5. listed company regulation.

The additional regulation services will be negotiated and contracted for separately between RS Inc. and a marketplace. Costs associated with these additional regulation services will be allocated exclusively to, and collected from, the contracting marketplace. The Finance & Audit Committee will periodically review such allocations to ensure that such additional regulation services are not being subsidized by or subsidizing regulation services provided to all markets.

Regulated Securities

If a marketplace chooses to retain RS Inc. as an RSP, it will be the primary SRO regulating trading activity on that marketplace. Moreover, it is assumed that RS Inc. will regulate the trading of any security eligible for trading on such marketplace. As currently contemplated by the applicable securities regulatory authorities, the following securities will be eligible to trade on a marketplace:

1. a security listed on the TSE, CDNX, the Bourse de Montréal or any other recognized stock exchange;
2. a security quoted on a recognized QTRS; and
3. a security listed on a stock exchange or organized market in a foreign jurisdiction for which the securities regulatory authority is a member of the International Organization of Securities Commissions.

Jurisdiction of RS Inc.

As a recognized SRO operating as a RSP, RS Inc. shall have regulatory jurisdiction over the trading activities of exchanges, ATSS and QTRSs who have contracted with RS Inc., and their Access Persons. The regulatory jurisdiction is carried out through rule development and administration, market

surveillance, investigation and enforcement activities in relation to securities traded on a marketplace. As described in more detail above under the heading "Access", marketplaces and Access Persons will agree to submit to RS Inc. jurisdiction in respect of the enforcement of UMIR.

Capacity and Integrity of Systems

Current and Future Capacity Estimates

All trading systems will be owned by a marketplace with access provided to RS Inc. staff for regulatory purposes such as halting stocks, releasing stock freezes, etc.

RS Inc.'s market surveillance operations use a variety of systems ("Surveillance Systems") with varying criticality. Critical Surveillance Systems consist of a suite of applications that monitor real-time and historical trading for possible rule violations as well as anomalous price and volume movements ("Critical Surveillance Systems"). Critical Surveillance Systems are deemed mission critical because they monitor market activity in near real-time and generate potential violations that require further investigation. Critical Surveillance Systems are designed to receive multiple feeds, from different marketplaces, and to consolidate the feeds so that a single marketplace view can be monitored. Consequently, the capacity of the Critical Surveillance Systems (in terms of throughput, response time and storage) must be in the neighbourhood of the aggregate targets and estimates for the marketplaces that are being monitored.

Additional surveillance systems are used for decision support purposes ("Additional Surveillance Systems"). Much of the information provided by the Additional Surveillance Systems is available from a number of sources. Since processing for the Additional Surveillance Systems is not real-time and since the information is not directly dependent upon trading volumes, Additional Surveillance Systems are not deemed mission critical.

Capacity Planning and Management

RS Inc. will regularly forecast its expected business volumes and evaluate new target volumes and if necessary implement Surveillance System changes.

Stress and performance tests for each Critical Surveillance System will be scheduled and conducted at least once each calendar year. In addition, a stress test will be conducted prior to each major change to a Critical Surveillance System. Stress tests are conducted using equipment and conditions as identical as possible to the actual production environment. All preparation including test plans, test data, actual events, results and conclusions are documented.

Development and Testing Methodologies

RS Inc. uses development and testing cycles that do not interfere with its operating Surveillance Systems. RS Inc. regularly reviews and updates its development and testing methodologies.

System Vulnerability

The level of exposure to threats and system vulnerability for RS Inc. Surveillance Systems will vary based on whether the system is critical or not. Sensitive regulatory data will be kept secure and confidential.

Contingency Planning, Disaster Recovery & Business Continuity Plans

RS Inc. has contingency and disaster recovery plans which vary by the type and criticality of the application.

With respect to the Critical Surveillance Systems, full redundancy exists on the server side with two live servers

running in parallel. One server is located in Markham and the other is located on the premises in Toronto. The computer facilities (e.g. computer sites, network, operations staff, etc.) have redundancy built-in so that no single point of failure exists. Furthermore, all Surveillance Systems run autonomously driven by separate trading feeds from the TSE trading engine and will also operate autonomously from the trading systems of any other marketplace. In the event of a failure to the primary surveillance server, surveillance staff can switch between servers from their desktop within seconds and continue to run their market monitoring applications.

In addition to the above, the Surveillance Systems have been designed to accept and integrate separate trade feeds from other markets. Consequently, if multiple markets are providing trade feeds to the surveillance server and one of the marketplaces suffers an outage, the Surveillance Systems will continue to function without interruption, monitoring the trade feed from the remaining operational markets.

Audits

RS Inc. proposes that RS Inc. Surveillance Systems and systems management processes be subject to an audit by an independent third party according to a mutually agreed upon schedule between RS Inc. and the relevant securities regulators.

Securities Commission Notification

RS Inc. proposes that all material systems failures and outages be reported to the relevant securities regulators within a reasonable period of time following each incident. In addition, the relevant securities regulators will be notified in advance of all material changes to surveillance systems. RS Inc. management will designate an individual to be responsible for communicating all systems issues with the relevant securities regulators.

Purpose of Rules

RS Inc. shall, subject to the terms and conditions of the recognition order and the jurisdiction and oversight of the relevant securities regulators, establish rules, regulations or policies:

1. to ensure compliance with securities legislation;
2. to prevent fraudulent and manipulative acts and practices;
3. to promote just and equitable principles of trading;
4. to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities; and
5. to provide for appropriate discipline.

Rules and Rule-Making

RS Inc. proposes to administer and enforce UMIR in the marketplaces for which RS Inc. acts as the RSP.

On April 20, 2001, Regulation Services and CDNX jointly published UMIR for comment and proposed that UMIR be adopted as an alternative to the CSA Trading Rules set out in draft National Instrument 21-101. It is the intention of RS Inc. to adopt UMIR as its "market integrity" trading rules, subject to RS Inc.'s review and approval of any changes to UMIR from the

version published on April 20, 2001.

After the initial adoption of UMIR, any proposal for the amendment of UMIR would be submitted by RS Inc. to the applicable securities regulatory authorities for approval in accordance with the procedures established under a rule protocol between RS Inc., as an SRO, and the applicable securities regulatory authorities.

Financial Statements

RS Inc. proposes to file with the relevant securities regulators unaudited quarterly financial statements within 60 days of each quarter-end and audited annual financial statements within 90 days of year-end.

Discipline Rules

The Regulation Services department of the TSE currently derives its powers of discipline under Part 7 of the Rules of the TSE. The entire TSE Rules, including Part 7, were subject to a public comment period and were brought into force as recently as April 2000. RS Inc. would propose that UMIR be expanded to incorporate disciplinary and enforcement rules substantially the same as Part 7 of the current TSE Rules, amended to reflect any necessary changes with respect to the provision of services by RS Inc. in multiple jurisdictions. Each marketplace that contracts with RS Inc., their Access Persons (including former Access Persons) and their (current and former) directors, officers, employees and various related parties will be subject to RS Inc.'s disciplinary rules for breaches of UMIR. Each marketplace may retain its own discipline processes for breaches of Market Quality Rules or may delegate such discipline to RS Inc., subject to the jurisdiction of the applicable securities regulatory authority.

RS Inc. will derive its disciplinary powers:

1. from its recognition order as an SRO over marketplaces that it regulates;
2. by contract with the marketplaces it regulates (as noted above, RS Inc. will enter into services agreements with the marketplaces it regulates and such marketplaces will be required to enter into agreements (or where applicable amend their existing agreements) with Access Persons whereby such persons agree to be subject to RS Inc.'s jurisdiction and UMIR); and
3. for marketplaces that are creatures of statute, in accordance with the terms of the statute (for example, the TSE may delegate its disciplinary powers under Part II.1, section 13.0.8(4) of The Toronto Stock Exchange Act, R.S.O. 1990, c. T-15, as amended).

Subject to regulatory approval and applicable law, upon contracting with RS Inc. each marketplace shall transfer all existing disciplinary actions to RS Inc. with respect to matters then within RS Inc.'s jurisdiction, and with respect to Market Quality Rules for which such marketplace has delegated discipline to RS Inc. In addition, subject to regulatory approval and applicable law, RS Inc. will have jurisdiction to investigate and enforce against all trading activities under a marketplace's historic trading rules, as well as under UMIR and with respect to any Market Specific Rules with respect to which such marketplace has delegated authority to RS Inc. Therefore, RS Inc.'s jurisdiction will extend to trading activities under a predecessor of a marketplace.

As UMIR are presently drafted, the discipline procedures of the TSE and CDNX, as presently approved by their respective regulators, would be retained and would be applicable to their respective Participants. In the case of the TSE, the provisions are set out as Part 7 of the TSE Rules. Similarly, the comparable provisions for CDNX are contained in CDNX Rules E.1.00, E.2.00[A] and E.2.00[B]. With the acquisition of CDNX by the TSE, it is now proposed that these disciplinary procedures be harmonized and included directly in UMIR. This harmonization would also have the effect of eliminating the requirement for a Policy to be adopted to set out the practice and procedure with respect to actions against an Access Person that is not a member of an exchange. The actual provisions will be contained in the revised proposal on the content of UMIR. As presently envisaged, the harmonized UMIR will make the discipline provisions equally applicable to all persons who are subject to the jurisdiction of RS Inc.

Due Process

RS Inc.'s disciplinary rules and procedures will be fair and reasonable and will provide for due process. Any reviewable decision by RS Inc., including any disciplinary or enforcement decision, will be reviewable by the applicable Canadian securities regulatory authority having appropriate jurisdiction.

Information Sharing

RS Inc. is able and willing to co-operate, subject to applicable law, in sharing information, with the relevant securities regulators and their staff, and with other Canadian federal, provincial and territorial recognized SROs and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions.

The TSE and the TSE Regulation Services department are subject to various information sharing arrangements. RS Inc. is currently reviewing these arrangements and will either continue such arrangements under the terms of an existing agreement or will enter into new or supplementary agreements.

Conclusion

We look forward to receiving your comments at your earliest convenience. If you have any questions or would like to discuss any aspects of the application, please contact Tom Atkinson at 416-947-4310.

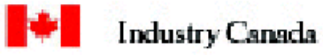
Sincerely,

Tom Atkinson
Vice-President, Regulation Services
The Toronto Stock Exchange Inc.

Ian Russell
Senior Vice-President
Capital Markets
Investment Dealers Association of Canada

cc. Ms. Randee Pavalow
Director, Capital Markets

APPENDIX A



Industrie Canada

Certificate
of Incorporation

Certificat
De constitution

Canada Business
Corporations Act

Loi canadienne sur
Les sociétés par actions

Market Regulation Services Inc.

Services de Réglementation du Marché Inc.

394933-8

Name of corporation -
Dénomination de la société

Corporation number -
Numéro de la société

I hereby certify that the above-named corporation, the articles of incorporation of which are attached, was incorporated under the *Canada Business Corporations Act*.

je certifie que la société susmentionnée, dont les statuts constitutifs sont joints, a été constituée en société en vertu de la *Loi canadienne sur les sociétés par actions*.

Director - Directeur

September 21, 2001 / le 21 septembre 2001

Date of Incorporation - Date de constitution

Canada Business Corporations Act

Loi canadienne sur les sociétés par actions

ARTICLES OF INCORPORATION (SECTION 6)
STATUTS CONSTITUTIFS
(ARTICLE 6)

ELECTRONIC TRANSACTION
REPORT
RAPPORT DE LA TRANSACTION
ÉLECTRONIQUE

Processing Type - Mode de Traitement:
E-Commerce/Commerce-É

1. **Name of Corporation - Dénomination de la société**
Market Regulation Services Inc.
Services de Réglementation du Marché Inc.
2. **The place in Canada where the registered office is to be situated - Lieu au Canada où doit être situé le siège social**
Location/Place: CITY OF TORONTO
Province: ON
3. **The classes and any maximum number of shares that the corporation is authorized to issue - Catégories et tout nombre maximal d'actions que la société est autorisée à émettre**
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'A'
4. **Restrictions, if any, on share transfers - Restrictions sur le transfert des actions, s'il y a lieu**
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'B'
5. **Number (or minimum and maximum number) of directors - Nombre (ou nombre minimal et maximal) d'administrateurs**
Minimum: 3 Maximum: 25
6. **Restrictions, if any, on business the corporation may carry on - Limites imposées à l'activité commerciale de la société, s'il y a lieu**
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'C'
7. **Other provisions, if any - Autres dispositions, s'il y a lieu**
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'D'
8. **Incorporators - Fondateurs**

Names(s) - Nom(s)
TOM ATKINSON

Address (including postal code) - Adresse (inclure le code postal)
THE EXCHANGE TOWER, 2 FIRST CANADIAN PLACE, TORONTO, ONTARIO, CANADA, M5X 1J2

Signature
TOM ATKINSON

ANNEX/ANNEXE A

An unlimited number of Common shares. The Common shares shall have attached thereto the rights, privileges, restrictions and conditions set forth below:

Section 1.1 Notices and Voting

The holders of the Common shares shall be entitled to receive notice of and to attend and vote at all meetings of holders of Common shares of the Corporation (except where the holders of a specified class are entitled to vote separately as a class as provided in the Canada Business Corporations Act), and each Common Share shall confer the right to one vote in person or by proxy at all meetings of shareholders of the Corporation.

Section 1.2 Dividends

The Corporation shall not declare dividends or make any other distributions to the holders of the Common shares.

Section 1.3 Liquidation, Dissolution and Winding-up

In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of the Common shares shall only be entitled, on a pro rata basis for each Common share, to direct the Corporation to transfer the remaining property of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other amounts in respect of a return of capital or distribution of assets of the Corporation for the purpose of winding-up its affairs to such non-profit organization(s) as such holders may specify, provided that such specified organization(s) shall have objects similar to those of the Corporation and shall be exempt from tax.

ANNEX/ANNEXE B

Subject to the share transfer restrictions set forth in a shareholders' agreement signed by all shareholders of the corporation, no share shall be transferred without the consent of the holders of shares to which are attached more than 50% of the voting rights attaching to all shares for the time being outstanding entitled to vote at such time expressed by a resolution passed by such shareholders at a meeting duly called and constituted for that purpose or by an instrument or instruments in writing signed by all of such shareholders.

ANNEX/ANNEXE C

In no event shall the purpose of the organization and operation of the corporation include profit.

ANNEX/ANNEXE D

- (a) The number of shareholders of the Corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be, shareholders of the Corporation, is limited to not more than 50, 2 or more persons who are the joint registered owners of 1 or more shares being counted as 1 shareholder;
- (b) Any invitation to the public to subscribe for any securities of the Corporation is prohibited;
- (c) The Corporation shall not declare dividends or make any other distributions to its shareholders;
- (d) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the Corporation shall, upon the direction of its shareholders, transfer the remaining property of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other amounts in respect of a return of capital or distribution of assets of the Corporation for the purpose of winding-up its affairs to such non-profit organization(s) as the shareholders may specify, provided that such specified organization(s) shall have objects similar to those of the Corporation and shall be exempt from tax. If the Corporation has not received such shareholder direction prior to the day which is six months after the date of the directors' resolution in respect of such liquidation, dissolution or winding-up of the Corporation (or, if involuntary, prior to the day which is six months from the date of the winding-up order or similar order) then the amounts referred to above shall be transferred to one or more of the non-profit organizations registered under the Income Tax Act (Canada), as the same may be amended, restated or re-enacted from time to time, which are members or otherwise part of the United Way of Greater Toronto or any successor to such organization; and
- (e) Subject to the restrictions set forth in a shareholders' agreement signed by all shareholders of the corporation, the directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of shareholders.

APPENDIX B

BY-LAW NO. 1

A By-law relating generally to the transaction of the business and affairs of Market Regulation Services Inc.

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BE IT ENACTED as a By-law of the Corporation as follows:

**ARTICLE 1
INTERPRETATION**

Section 1.1 Interpretation.

Unless otherwise defined or interpreted, every term used in this By-law that is:

- (a) defined or interpreted in the Act has the meaning ascribed to in that Act;
- (b) defined or interpreted in section 1 of the Securities Act has the meaning ascribed to in that section; and
- (c) defined or interpreted in the Universal Market Integrity Rules has the meaning ascribed to in that section.

Section 1.2 Definitions.

- (1) In this By-law, unless the subject matter or context otherwise requires:

“**Access Person**” means all Participants and all other persons who have been granted trading access to marketplace.

“**Act**” means the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, as amended from time to time.

“**Affiliate**” has the meaning specified in the Securities Act.

“**Annual Operating Plan**” has the meaning specified in Section 2.6.

“**Applicable Securities Legislation**” means the securities legislation, including the regulations, rules, instruments, policies, rulings and orders applicable in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

“**appoint**” includes “**elect**” and vice versa.

“**Articles**” means the certificate and articles of incorporation of the Corporation dated September 21, 2001 as such Articles may from time to time be amended, replaced or superseded.

“**ATS**” has the meaning assigned to that term in National Instrument 21-101.

“**Board**” means, at any time, the board of directors of the Corporation constituted in accordance with the provisions of the By-laws and “**Director**” means any member who has been elected or appointed to the Board in accordance with the provisions of the By-laws.

“**By-law**” means this by-law and all other by-laws of the Corporation, as amended, supplemented and in effect from time to time.

“**Canadian Securities Administrators**” means the applicable securities commissions (or any successor regulatory authorities thereto) in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

“**CDNX**” means the Canadian Venture Exchange Inc.

“**cheque**” includes a bank draft.

“**Commissions**” means the securities commissions (or any successor regulatory authorities thereto) in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

“**Corporation**” means Market Regulation Services Inc.

“**day**” means a clear day and a period of days shall be deemed to commence the day following the event that began the period and shall be deemed to terminate at midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate at midnight of the day next following that is not a Sunday or holiday.

“**Effective Date**” means the effective date of the Articles.

“**IDA**” means The Investment Dealers Association of Canada.

“**Independent Director**” means a director of RS Inc. who is not an associate, director, officer or employee of:

- (a) a marketplace;
- (b) an Access Person;
- (c) a shareholder of RS Inc.; or
- (d) an affiliated entity of any person described in clauses (a), (b) or (c),

provided that a person shall not be precluded from qualifying as an Independent Director if such person serves as a director of a marketplace, Access Person or shareholder of RS Inc. but does not hold, directly or indirectly, any ownership or beneficial interest in, or act as an employee or officer of, the marketplace, Access Person or shareholder.

“**insider**” means a person who is an insider of an issuer for the purpose of applicable securities legislation.

“**listed security**” means a security listed or quoted on a marketplace.

“**marketplace**” has the meaning assigned to that term in National Instrument 21-101.

“**non-Independent Director**” means any Director of the Corporation who is not an Independent Director.

“**Shareholders’ Meeting**” includes an annual Shareholders’ Meeting and a special Shareholders’ Meeting.

“**ordinary resolution**” means a resolution passed by a majority of the votes cast by the Shareholders who voted in respect of that resolution or signed by all of the Shareholders entitled to vote on that resolution.

“**Participant**” has the meaning assigned to that term in the Universal Market Integrity Rules.

“**person**” includes any corporation, incorporated association, incorporated syndicate or other incorporated organization.

“**recorded address**” means in the case of a Shareholder, the Shareholder’s address as recorded in the securities register; and in the case of joint Shareholders the address appearing in the securities register in respect of such joint holding or the first address so appearing if there are more than one; in the case of an officer, auditor or member of a committee of the Board, his or her latest address as recorded in the records of the Corporation; and, in the case of a Director, his or her latest address as recorded in the records of the Corporation or in the most recent notice filed under the Act, whichever is the more current.

“**regulation services provider**” has the meaning specified in National Instrument 21-101 – Marketplace Operation issued by the Canadian Securities Administrators

“**resident Canadian**” means an individual who is:

- (a) a Canadian citizen ordinarily resident in Canada;
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a class of persons prescribed by the regulations under the Act, or
- (c) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily

residents in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship.

“**Rules and Regulations**” means the articles, By-laws, rules, regulations, policy statements, forms, guidelines, decisions, rulings, orders, instructions, directions, notices and similar instruments of or adopted by the Corporation (including by any committee or officer of the Corporation or other person so authorized) and including the Universal Market Integrity Rules, as amended, supplemented and in effect from time to time.

“**Securities Act**” means the *Securities Act*, R.S.O. 1990, c. S.5 as amended from time to time.

“**Share**” means any share in the capital of the Corporation, as described in the Articles.

“**Shareholder**” means any Person who holds Shares in the Corporation at a particular time.

“**Shareholders’ Agreement**” means the agreement dated as of ● among the Shareholders of the Corporation, as amended from time to time.

“**signing officer**” means, in relation to any instrument, any person authorized to sign the same on behalf of the Corporation by or pursuant to section 2.4.

“**special Shareholders’ Meeting**” includes a meeting of any class or classes of Shareholders and a special meeting of all Shareholders entitled to vote at an annual Shareholders’ Meeting.

“**special resolution**” means a resolution passed by a

majority of not less than two thirds of the votes cast by the Shareholders who voted in respect of that resolution or signed by all of the Shareholders entitled to vote on that resolution.

“TSE” means The Toronto Stock Exchange Inc.

“Universal Market Integrity Rules” means the Corporation’s Universal Market Integrity Rules, as amended from time to time.

- (2) The division of this By-law into separate articles, sections, subsections and clauses, the provision of a table of contents and index thereto, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this By-law.
- (3) The use of the words “hereof”, “herein”, “hereby”, “hereunder” and similar expressions indicate the whole of the By-law and not only the particular section in which the expression is used.
- (4) Grammatical variations of any defined term have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders.
- (5) Reference to any statute shall include any enactment that may be substituted therefore as amended from time to time, and any reference herein to any section or subsection of a statute shall be deemed to be a reference to the section or subsection as at the time in question amended or supplemented or to the successor if the same has been repealed.
- (6) All times mentioned in this By-law shall be local time in Toronto on the date concerned, unless the subject matter or context otherwise requires.

ARTICLE 2 BUSINESS OF THE CORPORATION

Section 2.1 Registered Office.

The registered office of the Corporation shall be in the municipality or geographic township within Ontario initially specified in the Articles and thereafter as the Shareholders may from time to time determine by special resolution and at such location therein as the Board may from time to time determine by resolution.

Section 2.2 Corporate Seal.

Until changed by the Board, the corporate seal of the Corporation shall be in the form impressed hereon.

Section 2.3 Financial Year.

Until changed by the Board, the financial year of the Corporation shall end on the last day of December in each year.

Section 2.4 Execution of Instruments.

Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any two of the following: chair of the Board, president, vice-president, secretary, treasurer, assistant secretary or assistant treasurer, or the holder of any other office created by By-law or by resolution of the Board. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument requiring the same, but it is not necessary to bind the Corporation.

Section 2.5 Banking Arrangements.

The banking business of the Corporation including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize.

Section 2.6 Annual Operating Plan.

- (1) The Board shall cause a draft Annual Operating Plan to be prepared for each Financial Year by management of the Corporation for consideration by the Board and the Shareholders no later than prior to the beginning of such Financial Year. The draft annual operating plan shall be prepared in accordance accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants and shall contain a detailed monthly financial budget. Such budget shall consist of a *pro forma* balance sheet, income statement and statement of changes in financial position of the Corporation for such Financial Year, shall include comparison statements from the previous Financial Year, shall be accompanied by a statement of the nature and amount of all capital expenditures to be incurred during such Financial Year, and shall be supported by the explanations, notes and information upon which the projections underlying the Annual Operating Plan have been based.
- (2) The draft Annual Operating Plan, as reviewed and approved by the Board and the Shareholders with such amendments and modifications as they determine appropriate, shall become the Annual Operating Plan for such Financial Year. In the event that the Board or the Shareholders are unable to settle and approve an Annual Operating Plan in whole or in part prior to the commencement of a Financial Year, the expenditure programme contained in the existing Annual Operating Plan shall continue to apply to the extent of such disagreement until a complete Annual Operating Plan is approved by the Board and the Shareholders.

Section 2.7 Voting Rights In Other Bodies Corporate.

The signing officers of the Corporation may execute and deliver proxies and arrange for the issuance of voting

certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments, certificates or other evidence shall be in favour of such person or persons as may be determined by the officers executing such proxies or arranging for the issuance of voting certificates or such other evidence of the right to exercise such voting rights. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

Section 2.8 Divisions.

The Board may cause the business and operations of the Corporation or any part thereof to be divided or segregated into one or more divisions upon such basis, including without limitation, character or type of businesses or operations, geographical territories, product lines or goods or services as the Board may consider appropriate in each case. From time to time the Board or, if authorized by the Board, the president may authorize, upon such basis as may be considered appropriate in each case:

- (a) **Sub-Division and Consolidation.** The further division of the business and operations of any such division into sub-units and the consolidation of the business and operations of any such divisions and sub-units;
- (b) **Name.** The designation of any such division or sub-unit by, and the carrying on of the business and operations of any such division or sub-unit under, a name other than the name of the Corporation; provided that the Corporation shall set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the Corporation; and
- (c) **Officers.** The appointment of officers for any such division or sub-unit, the determination of their powers and duties, and the removal of any such officer so appointed without prejudice to such officer's rights under any employment contract or in law, provided that any such officers shall not, as such, be officers of the Corporation, unless expressly designated as such.

ARTICLE 3 BORROWING AND SECURITIES

Section 3.1 Borrowing Power.

- (1) Without limiting the borrowing powers of the Corporation as set forth in the Act, but subject to the Articles and the Shareholders' Agreement, the Board may from time to time on behalf of the Corporation, without authorization of the Shareholders:
 - (a) Borrow money upon the credit of the Corporation;
 - (b) Issue, reissue, sell or pledge bonds, debentures, notes or other similar obligations of the Corporation, whether secured or unsecured;
 - (c) To the extent permitted by the Act, give a guarantee on behalf of the Corporation to

secure performance of any present or future indebtedness, liability or obligation of any person; and

- (d) Charge, mortgage, hypothecate, pledge, or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes or other evidences of indebtedness or guarantee or any other present or future indebtedness, liability or obligation of the Corporation.

- (2) Nothing in this section limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

Section 3.2 Delegation.

Subject to the Act and the Articles, the Board may from time to time delegate to a committee of the Board, one or more Directors or officers of the Corporation or any other person as may be designated by the Board all or any of the powers conferred on the Board by Section 3.1 or by the Act to such extent and in such manner as the Board shall determine at the time of each such delegation.

ARTICLE 4 DIRECTORS

Section 4.1 Action by the Board.

The Board shall supervise the management of the business and affairs of the Corporation. Subject to the By-laws, the powers of the Board may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all the Directors entitled to vote on that resolution at a meeting of the Board. Where there is a vacancy in the Board, the remaining Directors may, exercise all the powers of the Board so long as a quorum remains in office.

Section 4.2 Number of Directors.

Until changed in accordance with the Act and the Recognition Order, the Board shall consist of such number of Directors within the minimum and maximum number of Directors provided for in the Articles as is determined by special resolution or, if such special resolution empowers the Board to determine the number, by a resolution of the Board, provided, however, that in the latter case the Directors may not, between meetings of Shareholders, increase the number of Directors on the Board to a total number greater than one and one-third times the number of Directors required to have been elected at the last annual Shareholders' Meeting.

Section 4.3 Director Representation

Subject to any decision to the contrary by the Commissions made in accordance with applicable legislation, the Board shall be constituted as follows.

- (1) At all times, the Board shall consist of an uneven number of Directors, which shall include an equal number of Independent Directors and non-Independent Directors, and the president of the Corporation, who shall be deemed to be neither an Independent Director

nor a non-Independent Director. If the number of non-Independent Directors is increased or decreased, the number of Independent Directors shall also be increased or decreased so that at all times, the Board shall consist of an equal number of Independent and non-Independent Directors.

- (2) In the event that a vacancy arises for any reason which causes the foregoing requirement not to be fulfilled, the Board may continue to act but steps shall be taken by the parties hereto to fill the vacancy as soon as reasonably possible.
- (3) A Governance Committee shall be established in accordance with the By-laws which shall have the responsibility to select and review qualified candidates for Independent Directors for election to the Board.
- (4) At all times, the non-Independent Directors shall consist of an equal number of Directors appointed by each Shareholder and at least one Director who is associated with or experienced with the Canadian public venture capital market, who shall be appointed jointly by the Shareholders. In making such appointment the TSE and the IDA will utilize all advisory resources available, including the TSE/CDNX Advisory Board. Should CDNX become regulated by RS Inc. and reach or exceed 10% of the Canadian equity securities market (where market share ("Market Share") will be calculated on the trading activity of the previous calendar year, based on 25% of trading value, 25% of trading volume and 50% of number of trades), CDNX shall be entitled to nominate the fifth non-Independent Director in the place of the TSE and IDA for the next succeeding term. If, at the end of each term thereafter, CDNX's position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market then CDNX will not be entitled to representation in the subsequent term and the TSE and IDA shall again jointly nominate the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, and who will be an individual who is associated with or experienced with the Canadian public venture capital market
- (5) Any marketplace (excluding CDNX), that is not a Shareholder of the Corporation, will be permitted to appoint a Director to the Board for a term of one year when its Market Share reaches or exceeds 10% of the Market Share. If, at the end of the term, the marketplace's position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market, then the marketplace will not be entitled to appoint a Director in the subsequent term.
- (6) Initially, the Independent Directors will be appointed by the Shareholders, jointly in accordance with the Terms of Reference,

and their names will be provided to the Commissions, prior to their election as Directors at the initial Shareholders' Meeting.

Section 4.4 Quorum.

Subject to Section 4.1, the quorum for the transaction of business at any meeting of the Board shall consist of a majority of the Directors or such other number of Directors, in compliance with the Act, as the Board may from time to time determine, with at least one non-Independent Director present representing each Shareholder and at least 50% of the Independent Directors present.

Section 4.5 Qualification.

- (1) No Person shall be qualified for election as a Director (i) if he or she is less than eighteen years of age; (ii) if he or she is of unsound mind and has been so found by a court in Canada or elsewhere; (iii) if he or she is not an individual, or; (iv) if he or she has the status of bankrupt. A Director need not be a Shareholder.
- (2) A majority of the Directors shall be resident Canadians.

Section 4.6 Election and Term.

- (1) Subject to the Act, the election of Directors shall take place at the first meeting and thereafter at each annual Shareholders' Meeting and all the Directors then in office shall retire but, if qualified, shall be eligible for re-election. The number of Directors to be elected at any such meeting shall, if a minimum and maximum number of Directors is authorized by the Articles, be the number of Directors determined in accordance with Section 5.2 or shall, if a fixed number of Directors is authorized, be such fixed number. The election shall be by ordinary resolution. If an election of Directors is not held at the proper time, the incumbent Directors shall continue in office until their successors are elected.
- (2) The Shareholders shall elect all Directors appointed under Subsection 5.3.
- (3) If the Shareholders reject a candidate for Independent Director, the Corporation shall notify the Canadian Securities Administrators.
- (4) Each Director elected as a Director by the Shareholders shall remain as a Director for a term of one year. Each Director shall be entitled to re-election as a Director but shall not be entitled to serve as a Director for cumulative terms which would exceed eight years in total.

Section 4.7 Vacation of Office and Release of Claims.

- (1) A Director ceases to hold office when he or she dies; he or she is removed from office by the Shareholders; he or she ceases to be qualified for election as a Director; or his or her written resignation is received by the Corporation, or, if a time is specified in such resignation, at the time so specified, whichever is later.
- (2) When a Director ceases to hold office the Corporation shall release a resigning or departing Director of all claims against him or her with respect to any matter or thing up to and including the resignation or removal in his or her capacity as Directors of the Corporation, except for any claims which might arise out of the gross negligence or fraud of the resigning or departing Director.

Section 4.8 ATS Representative

At all times, one Director shall be an ATS representative. The initial ATS representative shall be jointly appointed to the Board by the TSE and the IDA in accordance with the criteria set out in the Terms of Reference and thereafter the ATS representative shall be appointed annually by the TSE and the IDA jointly in accordance with the criteria set out in the Terms of Reference until such time as there is an ATS marketplace in Canada that is regulated by the Corporation. At such time as there is an ATS marketplace or marketplaces in Canada that are regulated by the Corporation, effective as at the end of the term of the then-existing ATS representative on the Board,

each ATS marketplace that is regulated by the Corporation shall be entitled to nominate an individual to act as the ATS representative on the Board. The Governance Committee shall appoint the ATS representative to the Board from among the ATS nominees. In the event that, at the conclusion of any term of the ATS representative, there is no longer an ATS marketplace that is regulated by the Corporation, the TSE and the IDA shall appoint the ATS representative in accordance with the provisions of this Section.

Section 4.9 Vacancies.

Any vacancy in the Board shall be filled as follows:

- (a) If the Director to be appointed is an Independent Director the Governance Committee, considering the Terms of Reference shall recommend to the Board qualified candidates. If the Board considers the recommended candidates are qualified and desirable the Board will nominate the candidates before a meeting of the Shareholders, who will confirm or reject the candidates. If a candidate recommended by the Governance Committee is not nominated by the Board or is rejected by the Shareholders the Governance committee will recommend further candidates.
- (b) If the Director to be appointed is a non-Independent Director then:
 - (i) where the vacating Director is a representative of a Shareholder, that Shareholder shall be entitled to appoint the new Director;
 - (ii) where the vacating Director is a representative of the Canadian public venture capital market the Shareholders shall jointly appoint the new director; and
 - (iii) where the vacating Director is a representative of another marketplace the new Director shall be appointed in accordance with the provisions of Section 5.7;

and such Director shall be confirmed before a meeting of the Shareholders.

Section 4.10 Canadian Majority at Meetings.

The Board shall not transact business at a meeting of Directors, other than filling a vacancy in the Board, unless a majority of the Directors present are resident Canadians except where:

- (a) A resident Canadian Director who is unable to be present approves in writing or by

telephone or other communications facilities the business transacted at the meeting; and

- (b) A majority of resident Canadians would have been present had that Director been present at the meeting.

Section 4.11 Canadian Majority at Meetings.

The Board shall not transact business at a meeting of Directors, other than filling a vacancy in the Board, unless a majority of the Directors present are resident Canadians except where:

- (a) A resident Canadian Director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and
- (b) A majority of resident Canadians would have been present had that Director been present at the meeting.

Section 4.12 Meeting by Telephone.

If all the Directors of the Corporation present at or participating in a meeting consent, a meeting of the Board or of a committee of the Board may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a Director participating in such a meeting by such means is deemed for the purposes of the Act to be present at that meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Board and of committees of the Board.

Section 4.13 Place of Meetings.

Meetings of the Board may be held at any place within or outside Canada and, in any financial year of the Corporation, a majority of the meetings of the Board need not be held in Canada.

Section 4.14 Calling of Meetings.

Meetings of the Board shall be held from time to time at such time and at such place as the Board, the chair of the Board, the president, or any two Directors may determine.

Section 4.15 Notice of Meeting.

Notice of the time and place of each meeting of the Board shall be given in the manner provided in Section 10.1 to each Director not less than forty-eight hours before the time when the meeting is to be held provided that a meeting may be convened upon less than forty-eight hours' notice where it is necessary to hold a meeting to address an urgent regulatory matter. A notice of a meeting of Directors need not specify the purpose of or the business to be transacted at the meeting except where the Act requires such purpose or business to be specified. A Director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the Board and, subject to the Act, attendance of a Director at a meeting of the Board is a waiver of notice of the meeting.

Section 4.16 First Meeting of New Board.

Provided a quorum of Directors is present, each newly elected Board may without notice hold its first meeting immediately following the Shareholders' Meeting at which such Board is elected.

Section 4.17 Adjourned Meeting.

Notice of an adjourned meeting of the Board is not required if the time and place of the adjourned meeting is

announced at the original meeting.

Section 4.18 Regular Meetings.

The Board may appoint a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings shall be sent to each Director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

Section 4.19 Chair of Meetings of the Board.

The chair of any meeting of the Board shall be the first mentioned of such of the following officers as have been appointed and who is a Director and is present at the meeting: chair of the Board, vice-chair of the Board or the president. If no such officer is present, the Directors present shall choose one of their number to be chair.

Section 4.20 Votes to Govern.

At all meetings of the Board every question shall be decided by a majority of the votes cast on the question and in case of an equality of votes the chair of the meeting shall be entitled to a second or casting vote.

Section 4.21 Conflict of Interest.

- (1) A Director or officer of the Corporation who is a party to, or who is a Director or officer of or has a material interest in, any person who is a party to, a material contract, transaction, regulatory matter or regulatory investigation or proposed material contract, transaction, regulatory matter or regulatory investigation with the Corporation, shall disclose the nature and extent of his or her interest at the time and in the manner provided by the Act. Any such contract, transaction, regulatory matter or regulatory investigation or proposed contract, transaction, regulatory matter or regulatory investigation shall be referred to the Board or Shareholders for approval even if such contract, transaction, regulatory matter or regulatory investigation is one that in the ordinary course of the Corporation's business would not require approval by the Board or Shareholders. Subject to Subsection 4.20(3), such a Director shall not vote on any resolution to approve the same unless the material contract, transaction, regulatory matter or regulatory investigation is:
 - (a) An arrangement by way of security for money lent to or obligations undertaken by him or her for the benefit of the Corporation or an affiliate;
 - (b) One relating primarily to his or her remuneration as a Director, officer, employee or agent of the Corporation or an affiliate;
 - (c) One for indemnity or insurance as specified under the Act; or
 - (d) One with an affiliate.
- (2) Notwithstanding the foregoing prohibition on voting by such a Director, he or she may be present at and counted to determine the presence of a quorum at the relevant meeting of Directors as provided in the Act.
- (3) Notwithstanding the prohibition in Subsection 4.20(1), Directors, who must disclose their status, relationship and interest in all such matters, shall not be prohibited from voting on any resolution relating to a regulatory matter unless such resolution is directed specifically at

or otherwise directly related to a company by which they are employed or of which they are a Director.

Section 4.22 Remuneration and Expenses.

The Directors shall be paid such remuneration for their services as the Board may from time to time determine. The Directors shall also be entitled to be reimbursed for travelling and other expenses properly incurred by them in attending meetings of the Board or any committee thereof. Nothing herein contained shall preclude any Director from serving the Corporation in any other capacity and receiving remuneration therefor.

Section 4.23 Applicable Legislation

For greater certainty, the provisions of this Article 4 are subject to any applicable legislation relating to the Board.

Section 4.24 Review of Corporate Governance

The corporate governance structure will be reviewed regularly to ensure that it changes to reflect the evolution of the equity markets. The recognition order and other documents governing RS Inc. will to be amended to reflect the market changes, as agreed upon by RS Inc., the TSE and the IDA.

ARTICLE 5 COMMITTEES

Section 5.1 Committees of the Board.

The Board may appoint from their number one or more committees of the Board, however designated, and delegate to any such committee any of the powers of the Board except those which pertain to items which, under the Act, a committee of the Board has no authority to exercise. A majority of the members of any such committee shall be resident Canadians. Notwithstanding the foregoing, there shall be a Governance Committee as referred to in Section 4.2.

Section 5.2 Transaction of Business.

Subject to the provisions of Section 4.10, the powers of a committee of the Board may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at such place or places designated in Section 4.12.

Section 5.3 Advisory Bodies.

The Board may from time to time appoint such advisory bodies as it may deem advisable. The members of such advisory bodies need not be Directors of the Corporation.

Section 5.4 Procedure.

Unless otherwise determined by the Board, each committee and advisory body shall have power to fix its quorum at not less than a majority of its members, to elect its chair, and to regulate its procedure.

Section 5.5 Limits on Authority.

Notwithstanding any other provision hereof, no president and no committee of Directors has authority to:

- (a) Submit to the Shareholders any question or matter requiring the approval of the Shareholders;
- (b) Fill a vacancy among the Directors or in the office of auditor or appoint or remove any of the chair, the vice-chair, the president or the chief financial officer, however designated, of the Corporation;
- (c) Subject to the Act, issue securities except in the manner and on the terms authorized by the Directors;
- (d) Purchase, redeem or otherwise acquire Shares issued by the Corporation;
- (e) Pay a commission referred to in section 41 of the Act;
- (f) Approve a management information circular referred to in Part III of the Act;
- (g) Approve a take-over bid circular, Directors' circular, or issuer bid circular referred to in Part XX of the Securities Act;
- (h) Approve any financial statements referred to in the Act or the Securities Act;
- (i) Approve an amalgamation under section 184 of the Act or an amendment to the Articles under Subsections 173(3) of the Act; or
- (j) Adopt, amend or repeal By-laws.

ARTICLE 6 OFFICERS

Section 6.1 Appointment.

Subject to the Act and Recognition Order, the Board

may from time to time appoint a president, one or more vice-presidents (to which title may be added words indicating seniority or function), a secretary, a treasurer and such other officers as the Board may determine, including one or more assistants to any of the officers so appointed. The Board may specify the duties of and, in accordance with this By-law and subject to the provisions of the Act, delegate to such officers powers to manage the business and affairs of the Corporation. Subject to Sections 6.2 and 6.3, an officer may but need not be a Director and one person may hold more than one office.

Section 6.2 Chair and Vice-Chair of the Board.

The Board shall from time to time also appoint a chair of the Board and may appoint one or more vice-chairs of the Board who shall be Directors and may not be president. If appointed, the Board may assign to them any of the powers and duties that are by any provisions of this By-law assigned to the president, and they shall, subject to the provisions of the Act, have such other powers and duties as the Board may specify. During the absence or disability of the chair of the Board, his or her duties shall be performed and his or her powers exercised by one of the vice-chairs chosen by the Board. [do we want to set out duties on committees or put those in the terms of reference only? (already in terms of reference).]

Section 6.3 President and Chief Executive Officer.

The initial president of the Corporation, who shall also be appointed as the initial chief executive officer of the Corporation, shall be an individual selected by the TSE and IDA on a joint basis. Compensation of the initial president and chief executive officer shall be as agreed upon by the TSE and the IDA. Thereafter the Board shall have the authority, from time to time, to appoint a president, who shall also be appointed as the chief executive officer, and determine the compensation to be paid to such person. The person appointed to the office of president and chief executive officer shall be a resident Canadian.

Section 6.4 Vice-President.

A vice-president shall have such powers and duties as the Board or the president may specify.

Section 6.5 Secretary.

The secretary shall attend and be the secretary of all meetings of the Board (or arrange for another individual to so act), Shareholders and committees of the Board and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings thereat; he or she shall give or cause to be given, as and when instructed, all notices to Shareholders, Directors, officers, auditors and members of committees of the Board; he or she shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, papers, records, documents, and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose; and he or she shall have such other powers and duties as the Board or the president may specify.

Section 6.6 Treasurer.

The treasurer shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; he or she shall render to the Board whenever required an account of all his or her transactions as treasurer and of the financial position of the Corporation; and he or she shall have such other powers and duties as the Board or the president may specify.

Section 6.7 Powers and Duties of Other Officers.

The powers and duties of all other officers shall be

such as the terms of their engagement call for or as the Board or the president may specify. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board or the president otherwise directs.

Section 6.8 Variation of Powers and Duties.

The Board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer.

Section 6.9 Term of Office.

The Board, in its discretion, may remove any officer of the Corporation, without prejudice to such officer's rights under any employment contract. Otherwise each officer appointed by the Board shall hold office until his or her successor is appointed, or until his or her earlier resignation.

Section 6.10 Terms of Employment and Remuneration.

The terms of employment and the remuneration of an officer appointed by the Board shall be settled by it from time to time or by a committee of the Board appointed for that purpose.

Section 6.11 Conflict of Interest.

An officer shall disclose his or her interest in any material contract or proposed material contract with the Corporation in accordance with Section 4.20 and the Act.

Section 6.12 Agents and Attorneys.

The Corporation, by or under the authority of the Board shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers of management, administration or otherwise (including the power to sub-delegate) as may be thought fit, subject to the provisions of the Act.

Section 6.13 Fidelity Bonds.

The Board may require such officers, employees and agents of the Corporation as the Board deems advisable to furnish bonds for the faithful discharge of their powers and duties, in such form and with such surety as the Board may from time to time determine.

ARTICLE 7 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

Section 7.1 Limitation of Liability.

Every Director and officer of the Corporation in exercising his or her powers and discharging his or her duties shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no Director or officer shall be liable for the acts, neglects or defaults of any other Director, officer or employee, or for joining in any act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto; provided that nothing herein shall relieve any Director or officer

from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

Section 7.2 Indemnity.

(1) Subject to the limitations contained in the Act, the Corporation shall indemnify a Director or officer, a former Director or officer, or a person who acts or acted at the Corporation's request as a Director or officer of a body corporate of which the Corporation is or was a Shareholder or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a Director or officer of the Corporation or such body corporate, if:

- (a) He or she acted honestly and in good faith with a view to the best interests of the Corporation; and
- (b) In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

(2) The Corporation shall also indemnify such person in such other circumstances as the Act permits or requires. Nothing in this By-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this By-law.

Section 7.3 Special Limitation of Liability Provisions.

(1) For purposes of this section 7.3 and section 7.4 only:

“**committee member**” shall mean a member of a committee, standing committee or ad hoc committee duly appointed by the Board;

“**employee**” shall for greater certainty not include independent contractors;

“**independent contractor**” shall mean an independent contractor, self-employed person or contractor retained by the Corporation or its subsidiaries to provide goods, services or advice, including but not limited to consultants, tradesmen and trade contractors;

“**Indemnitee**” shall mean every current or former Protected Party and his heirs, executors, and administrators, legal representatives and estate and effects;

“**Protected Party**” shall mean every Director, officer, employee, committee member or advisory body member of the Corporation and any of its subsidiaries;

“**subsidiaries**” shall include any subsidiary within the meaning of the Act and any other Person designated by the Board in which the Corporation has a significant equity interest, directly or indirectly;

(2) No Protected Party shall be liable

- (a) for the acts, defaults or omissions of any other Protected Party;

- (b) by reason of him or her having joined in any receipt for money not received by him personally;
- (c) for any loss on account of defect of title to any property acquired by the Corporation;
- (d) on account of the insufficiency of any security in or upon which any moneys of the Corporation may be invested, provided that such investment is within the guidelines established by the Board;
- (e) for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the moneys, securities or other property of the Corporation may be deposited;
- (f) for any loss incurred through any bank, broker or other agent;
- (g) for any loss occasioned by any error of judgment or oversight on his or her part; or
- (h) for any loss, damage or misfortune whatever which shall happen in the execution of his duties or in relation thereto, including in the execution of duties, whether in an official capacity or not, for or on behalf of or in relation to the Corporation or any of its subsidiaries or any body corporate or entity which he or she serves or provides services to at the request of or on behalf of the Corporation or any of its subsidiaries, unless the same is occasioned by his or her own wilful neglect or default.

(3) The Corporation shall not be liable to a marketplace or Participant for any loss, damage, cost, expense, or other liability or claim arising from any negligent, reckless or wilful act or omission of a Protected Party or of an independent contractor.

(4) In the event that any legal proceeding is brought or threatened against the Corporation, a Protected Party or an independent contractor to impose liability on the Corporation, a Protected Party or an independent contractor, which arises directly or indirectly from the use by a Participant of a marketplace, the Participant shall reimburse the Corporation as determined by the Corporation for:

- (a) all costs, charges, expenses and legal and professional fees incurred by the Corporation in connection with the proceeding, including costs incurred to indemnify a Protected Party;
- (b) any recovery adjudged against the Corporation or a Protected Party in the event that the Corporation or a Protected Party in the event that the Corporation or a Protected Party is found to be liable; and
- (c) any payment made by the Corporation with the consent of the Participant in settlement of such proceeding.

The Corporation shall not be liable to a Participant or marketplace for any loss, damage, costs, expense, or other liability arising from any act or omission of any clearing agency, including without limitation the Canadian Depository for Securities Limited and the Canadian Derivatives Clearing Corporation.

Section 7.4 Special Indemnification Provisions.

(1) To the extent permitted by law, every Indemnitee shall from time to time, and at all times, be indemnified and

saved harmless out of the funds of the Corporation from and against:

- (a) all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment and including legal and professional fees and out of pocket expenses of attending trials, hearings and meetings) whatsoever that such Indemnitee sustains or incurs in or about any action, suit or proceeding, whether civil, criminal or administrative, and including any investigation, inquiry or hearing, or any appeal therefrom, that is threatened, brought, commenced or prosecuted against him or her, or in respect of which he or she is compelled or requested by the Corporation to participate, for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his or her office as they relate to the Corporation or any of its subsidiaries, including those duties executed, whether in an official capacity or not, for or on behalf of or on behalf of or in relation to any body corporate or entity which he or she serves or served at the request of or on behalf of the Corporation or any of its subsidiaries; and

- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs of the Corporation and its subsidiaries or any body corporate or entity which he or she serves or served, whether in an official capacity or not, at the request of or on behalf of the Corporation or any of its subsidiaries;

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

(2) Any indemnification under section 7.4(1) (unless ordered by a court) shall be made by the Corporation unless a determination is reasonably and promptly made by the Board by a majority vote of a quorum of disinterested Directors, or (if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs) by independent legal counsel in a written opinion, that, based upon the facts known to the Board or counsel at the time such determination is made, such Indemnitee is not entitled to indemnification by reason of his own wilful neglect or default.

(3) For greater certainty, it is confirmed that, to the extent permitted by law, the Corporation shall indemnify all costs and expenses incurred in connection with any action, suit or proceeding contemplated in section 7.4(1), regardless of whether the Indemnitee has been successful or substantially successful on the merits, and without limiting the generality of the foregoing, such Indemnitee shall be indemnified against all expenses in connection with the dismissal of such action or issue without prejudice or in connection with the settlement of such action or issue without admission of liability.

(4) To the extent permitted by law, and subject to section 7.4(5), all costs, charges and expenses indemnified (including legal and professional fees and including out of pocket expenses for attendance at trials, hearing and meetings) shall be paid by the Corporation in advance

of the final disposition of the matter, provided that the Indemnitee shall undertake to repay such amount in the event that it is ultimately determined, either pursuant to section 7.4(2) or by a court of competent jurisdiction, that such Indemnitee is not entitled to indemnification.

- (5) Any costs, charges or expenses (including legal and professional fees and out of pocket expenses of attending trials, hearings and meetings) incurred or to be incurred in any action, suit or proceeding, whether civil, criminal or administrative, including any investigation, inquiry or hearing, or any appeal therefrom, shall be paid by the Corporation promptly, and in any event, within ninety days after receiving the written request of the Indemnitee, unless a determination is reasonably and promptly made by the Board under section 7.4(2) that such Indemnitee is not entitled to indemnification or to an advancement of expenses.
- (6) Any person entitled to indemnification pursuant to section 7.4 or otherwise shall give notice to the Corporation, where practical, of any action, suit or proceeding which may give rise to a demand for indemnification.
- (7) Any person entitled to and demanding indemnification, pursuant to section 7.4 or otherwise, shall cooperate with the Corporation throughout the course of any action, suit or proceeding, whether civil, criminal or administrative, including any investigation, inquiry or hearing, to the fullest extent possible, including but not limited to, providing the Corporation with the consent and authority, to be exercised at the sole option of the Corporation, to take carriage of such person's defense.
- (8) The foregoing rights of indemnification and advancement of expenses shall not affect any other rights to indemnification or be exclusive of any other rights to which any person may be entitled by law or otherwise.

Section 7.5 Insurance.

Subject to the Act, the Corporation may purchase and maintain insurance for the benefit of any person referred to in Section 7.2 and/or Section 7.3 against such liabilities and in such amounts as the Board may from time to time determine and as are permitted by the Act.

ARTICLE 8 SHARES

Section 8.1 Allotment of Shares.

Subject to the Securities Act, the Act, the Articles and the Shareholders' Agreement, the Board may from time to time allot or grant options to purchase the whole or any part of the authorized and unissued Shares of the Corporation at such times and to such persons and for such consideration as the Board shall determine, provided that no Share shall be issued until it is fully paid as provided by the Act.

Section 8.2 Registration of a Share Transfer.

Subject to the provisions of the Securities Act and the Act, no transfer of a Share shall be registered in a securities register except upon presentation of the certificate representing such Share with an endorsement which complies with the Act made thereon or delivered therewith duly executed by an appropriate person as provided by the Act, together with such reasonable assurance that the endorsement is genuine and effective as the Board may from time to time prescribe, upon

payment of all applicable taxes and any reasonable fees prescribed by the Board, and upon compliance with such restrictions on transfer as are authorized by the Articles.

The registration of any transfer of Shares is subject to the satisfaction of any restrictions on transfer contained in the Articles, subject to the provisions of the Shareholders' Agreement and to compliance with any applicable legislation, including the Securities Act.

Section 8.3 Transfer Agents.

The Board may from time to time appoint, for each class of securities and warrants issued by the Corporation, (a) a trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons or agents to keep branch registers and (b) a registrar, trustee or agent to maintain a record of issued security certificates and warrants, and, subject to the Act, one person may be appointed for the purposes of both clauses (a) and (b) above in respect of all securities and warrants of the Corporation or any class or classes, thereof. The Board may at any time terminate such appointment.

Section 8.4 Non-Recognition of Trusts.

Subject to the provisions of the Act, the Corporation may treat the registered holder of a Share as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the Share, and otherwise to exercise all the rights and powers of a holder of the Share.

Section 8.5 Share Certificates.

Every Shareholder is entitled, upon request, to a Share certificate that complies with the Act in respect of the Shares held by the Shareholder or to a non-transferable written acknowledgement of the Shareholder's right to obtain a Share certificate from the Corporation in respect of the Shares of the Corporation held by the Shareholder. A Share certificate shall be signed manually by at least one Director or officer of the Corporation and by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the Corporation, if applicable. Additional signatures required on a Share certificate may be printed or otherwise mechanically reproduced thereon. If a Share certificate contains a printed or mechanically reproduced signature of a person, the Corporation may issue the Share certificate notwithstanding that the person has ceased to be a Director or an officer of the Corporation, and the Share certificate is as valid as if the person were a Director or an officer at the date of its issue.

Section 8.6 Replacement of Share Certificates.

The Board or any officer or agent designated by the Board may in its or his or her discretion direct the issue of a new Share or other such certificate in lieu of and upon cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such reasonable fees and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the Board may from time to time prescribe, whether generally or in any particular case.

Section 8.7 Joint Shareholders.

If two or more persons are registered as joint holders of any Share, the Corporation shall not be bound to issue more than one certificate in respect thereof, and delivery of such certificate to one of such persons shall be sufficient delivery to all of them. Any one of such persons may give effectual receipts for the certificate issued in respect thereof or for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such Share.

Section 8.8 Deceased Shareholders.

In the event of the death of a holder, or of one of the joint holders, of any Share, the Corporation shall not be required to make any entry in the securities register in respect thereof or to make any dividend or other payments in respect thereof, except upon production of all such documents as may be required by law and upon compliance with the reasonable requirements of the Corporation and its transfer agents.

Section 8.9 Applicable Legislation.

For greater certainty, the provisions of this Article 8 are subject to any applicable legislation relating to the Shares of the Corporation, including without limitation the provisions of the Securities Act.

ARTICLE 9 MEETINGS OF SHAREHOLDERS

Section 9.1 Annual Meetings.

The annual Shareholders' Meeting shall be held at such time in each year and, subject to section 9.3, at such place as the Board, the chair of the Board or the president may from time to time determine, for the purpose of considering the financial statements and reports required by the Act to be placed before the annual meeting, electing Directors, appointing an auditor (unless the Corporation is exempted under the Act from appointing an auditor), and for the transaction of such other business as may properly be brought before the meeting.

Section 9.2 Special Meetings.

The Board, the chair of the Board, the vice-chair of the Board or the president shall have power to call a special Shareholders' Meeting at any time.

Section 9.3 Place of Meetings.

Subject to the Articles, meetings of Shareholders shall be held at the registered office of the Corporation or elsewhere in the municipality in which the registered office is situated or, if the Board shall so determine, at some other place in Canada or, if all the Shareholders entitled to vote at the meeting so agree, at some place outside Canada.

Section 9.4 Notice of Meetings.

Notice of the time and place of each Shareholders' Meeting shall be given in the manner provided in Section 10.1 not less than ten nor more than fifty days before the date of the meeting to each Director, to the auditor, and to each Shareholder who at the close of business on the record date for notice is entered in the securities register as the holder of one or more Shares carrying the right to vote at the meeting. Notice of a Shareholders' Meeting called for any purpose other than the consideration of minutes of an earlier meeting, consideration of the financial statements and auditor's report, election of Directors and reappointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the Shareholder to form a reasoned judgment thereon and shall state the text of any special resolution or By-law to be submitted to the meeting. A Shareholder and any other person entitled to attend a Shareholders' Meeting may in any manner waive notice of or otherwise consent to a Shareholders' Meeting, and, subject to the Act, attendance of any such Shareholder or any such other person is a waiver of notice of the meeting.

Section 9.5 List of Shareholders Entitled to Notice.

For every Shareholders' Meeting, the Corporation shall prepare a list of Shareholders entitled to receive notice of the meeting, arranged in alphabetical order and showing the number of Shares held by each Shareholder entitled to vote at the meeting in accordance with the Act. If a record date for the meeting is fixed pursuant to Section 9.6, the Shareholders listed shall be those registered at the close of business on such record date. If no record date is fixed, the Shareholders listed shall be those registered at the close of business on the day immediately preceding the day on which notice of the meeting is given or, where no such notice is given, on the day on which the meeting is held. The list shall be available for examination by any Shareholder during usual business hours at the registered office of the Corporation or at the place where the central securities register is maintained and at the meeting for which the list was prepared. Where a separate list of Shareholders has not been prepared, the names of persons appearing in the securities register at the requisite time as the holder of one or more Shares carrying the right to vote at such meeting shall be deemed to be a list of Shareholders.

Section 9.6 Record Date for Notice.

The Board may fix in advance a date, preceding the date of any Shareholders' Meeting by not more than fifty days and not less than twenty-one days, as a record date for the determination of the Shareholders entitled to notice of the meeting, and notice of any such record date shall, unless waived in accordance with the Act, be given not less than seven days before such record date, by newspaper advertisement in the manner provided in the Act. If no record date is so fixed, the record date for the determination of the Shareholders entitled to receive notice of the meeting shall be at the close of business on the day immediately preceding the day on which the notice is given or, if no notice is given, the day on which the meeting is held.

Section 9.7 Meetings without Notice.

A Shareholders' Meeting may be held without notice at any time and place permitted by the Act (a) if all the Shareholders entitled to vote thereat are present in person or represented by proxy or if those not present or represented by proxy waive notice of or otherwise consent to such meeting being held, and (b) if the auditors and the Directors are present or waive notice of or otherwise consent to such meeting being held; so long as such Shareholders, auditors or Directors present are not attending for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. At such a meeting any business may be transacted which the Corporation at a Shareholders' Meeting may transact. If the meeting is held at a place outside Canada, Shareholders not present or represented by proxy, but who have waived notice of or otherwise consented to such meeting, shall also be deemed to have consented to the meeting being held at such place.

Section 9.8 Chair, Secretary and Scrutineers.

The chair of any Shareholders' Meeting shall be the first mentioned of such of the following officers as have been appointed and who is present at the meeting: chair of the Board, vice-chair of the Board, or the president. If no such officer is present within fifteen minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chair. If the secretary of the Corporation is absent, the chair shall appoint some person, who need not be a Shareholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Shareholders, may be appointed by a resolution or by the chair with the consent of the meeting.

Section 9.9 Persons Entitled to be Present.

The only persons entitled to be present at a Shareholders' Meeting shall be those entitled to vote thereat, the Directors and auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Articles or By-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

Section 9.10 Quorum.

Subject to the Act and to Section 9.20, a quorum for the transaction of business at any Shareholders' Meeting shall be two persons present in person, each being a Shareholder entitled to vote thereat or a duly appointed proxyholder or representative for an absent Shareholder so entitled, and together holding or representing by proxy all of the outstanding Shares of the Corporation entitled to vote at the meeting. If a quorum is present at the opening of any Shareholders' Meeting, the Shareholders present or represented by proxy may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of any Shareholders' Meeting, the Shareholders present or represented by proxy may adjourn the meeting to a fixed time and place but may not transact any other business.

Section 9.11 Right to Vote.

Subject to the provisions of the Act, the Securities Act and the Shareholders' Agreement, at any Shareholders' Meeting for which the Corporation has prepared the list referred to in Section 9.5, every person who is named in such list shall be entitled to vote the Shares shown thereon opposite the person's name at the meeting to which such list relates except to the extent that, where the Corporation has fixed a record date in respect of such meeting pursuant to Section 9.6, such person has transferred any Shares after such record date and the transferee, having produced properly endorsed certificates evidencing such Shares or having otherwise established that the transferee owns such Shares, has demanded not later than ten days before the meeting that the transferee's name be included in such list. In any such case the transferee shall be entitled to vote the transferred Shares at the meeting. At any Shareholders' Meeting for which the Corporation has not prepared the list referred to in Section 9.5, every person shall be entitled to vote at the meeting who at the time is entered in the securities register as the holder of one or more Shares carrying the right to vote at such meeting.

Section 9.12 Proxyholders and Representatives.

- (1) Every Shareholder entitled to vote at a Shareholders' Meeting may appoint a proxyholder, or one or more alternate proxyholders, who need not be Shareholders, to attend and act as the Shareholder's representative at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing executed by the Shareholder or the Shareholder's attorney or, if the Shareholder is a body corporate, by an officer or attorney thereof duly authorized, and shall conform with the requirements of the Act.
- (2) Alternatively, every such Shareholder which is a body corporate or association may authorize by resolution of its Directors or governing body an individual to represent it at a Shareholders' Meeting and such individual may exercise on the Shareholder's behalf all the powers it could exercise if it were an individual Shareholder. The authority of such an individual shall be established by depositing with the Corporation a certified copy of such resolution, or in such other manner as may be satisfactory to the secretary of the Corporation or the chair of the meeting. Any such proxyholder or representative need not be a Shareholder.

Section 9.13 Time for Deposit of Proxies.

The Board may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned Shareholders' Meeting before which time proxies to be used at that meeting must be deposited with

the Corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting. A proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Corporation or an agent thereof specified in such notice or, if no such time is specified in such notice, unless it has been received by the secretary of the Corporation or by the chair of the meeting or any adjournment thereof prior to the time of voting.

Section 9.14 Joint Shareholders.

If two or more persons hold Shares jointly, any one of them present in person or duly represented by proxy at a Shareholders' Meeting may, in the absence of the other or others, vote the Shares; but if two or more of those persons are present in person or represented by proxy and vote, they shall vote as one on the Shares jointly held by them.

Section 9.15 Votes to Govern.

At any Shareholders' Meeting every question shall, unless otherwise required by the Articles, the Shareholders' Agreement or By-laws or by law, be determined by a majority of the votes cast on the question. In case of an equality of votes either upon a show of hands or upon a poll, the chair of the meeting shall be entitled to a second or casting vote.

Section 9.16 Show of Hands.

Subject to the provisions of the Act, any question at a Shareholders' Meeting shall be decided by a show of hands, unless a ballot thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the chair of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the Shareholders upon the said question.

Section 9.17 Ballots.

On any question proposed for consideration at a Shareholders' Meeting, and whether or not a show of hands has been taken thereon, the chair or any person who is present and entitled to vote, whether as Shareholder, proxyholder or representative, on such questions at the meeting may demand a ballot. A ballot so required or demanded shall be taken in such manner as the chair shall direct. A requirement or demand for a ballot may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken each person present shall be entitled, in respect of the Shares which such person is entitled to vote at the meeting upon the question, to that number of votes provided by the Act, the Shareholders' Agreement or the Articles, subject to the provisions of the Securities Act and the result of the ballot so taken shall be the decision of the Shareholders upon the said question.

Section 9.18 Adjournment.

The chair at a Shareholders' Meeting may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and place to place. If a Shareholders' Meeting is adjourned for less than thirty days, it shall not be necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. Subject to the Act, if a Shareholders' Meeting is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting

shall be given as for an original meeting.

Section 9.19 Resolution in Writing.

A resolution in writing signed by all the Shareholders entitled to vote on that resolution at a Shareholders' Meeting is as valid as if it had been passed at a meeting of the Shareholders unless a written statement or written representation with respect to the subject matter of the resolution is submitted by a Director or the auditor, respectively, in accordance with the Act.

Section 9.20 Only One Shareholder.

Where the Corporation has only one Shareholder or only one holder of any class or series of Shares, the Shareholder present in person or duly represented by proxy constitutes a meeting.

ARTICLE 10 NOTICES

Section 10.1 Method of Giving Notices.

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered, or served) pursuant to the Act, the regulations thereunder, the Articles, the Shareholders' Agreement, the By-laws or otherwise to a Shareholder, Director, officer, auditor or member of a committee of the Board shall be sufficiently given if delivered personally to the person to whom it is to be given; or if delivered to the person's recorded address; or if mailed to the person at the person's recorded address by prepaid ordinary or air mail; or if sent to the person at the person's recorded address by any means of prepaid transmitted or recorded communication. A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box and deemed to have been received on the fifth day after mailing; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any Shareholder, Director, officer, auditor or member of a committee of the Board in accordance with any information believed by the secretary to be reliable. The foregoing shall not be construed so as to limit the manner or effect of giving notice by any other means of communication otherwise permitted by law.

Section 10.2 Notice to Joint Holders.

If two or more persons are registered as joint holders of any Share, any notice shall be addressed to all of such joint holders but notice addressed to one of such persons shall be sufficient notice to all of them.

Section 10.3 Undelivered Notices.

If any notice given to a Shareholder pursuant to Section 10.1 is returned on three consecutive occasions because he cannot be found, the Corporation shall not be required to give any further notices to such Shareholder until the Shareholder informs the Corporation in writing of the Shareholder's new address.

Section 10.4 Omissions and Errors.

The accidental omission to give any notice to any Shareholder, Director, officer, auditor or member of a committee of the Board or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

Section 10.5 Persons Entitled by Death or Operation of Law.

Every person who, by operation of law, transfer (subject to the Articles, the Act, the Applicable Securities Legislation and the Shareholders' Agreement), death of a Shareholder or any other means whatsoever, shall become entitled to any Share, shall be bound by every notice in respect of such Share which shall have been duly given to the Shareholder from whom the Shareholder derives title to such Share prior to the Shareholder's name and address being entered on the securities register (whether such notice was given before or after the happening of the event upon which the Shareholder became so entitled) and prior to the Shareholder furnishing to the Corporation the proof of authority or evidence of the Shareholder's entitlement prescribed by the Act.

Section 10.6 Waiver of Notice.

Any Shareholder, proxyholder, representative, other person entitled to attend a Shareholders' Meeting, Director, officer, auditor or member of a committee of the Board may at any time waive any notice, or waive or abridge the time for any notice, required to be given to such person under any provision of the Act, the regulations thereunder, the Articles, the By-laws or otherwise and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a Shareholders' Meeting or of the Board or of a committee of the Board which may be given in any manner.

ARTICLE 11 RULES AND REGULATIONS

Section 11.1 Rules and Regulations

The Board (or any committee, officer or other person authorized by the Board) may from time to time enact, amend, repeal and re-enact such Rules and Regulations not inconsistent with the Applicable Securities Legislation as it, they, he or she in its, their, his or her discretion may consider advisable for the regulation of marketplaces, Participants, issuers and other persons.

The Board (or any committee, officer or other person authorized by the Board) may also issue, establish, adopt, amend, repeal and re-issue, re-establish and re-adopt interpretations, procedures and practices to supplement such Rules and Regulations.

Such Rules and Regulations may represent the imposition of requirements in addition to or higher than those imposed under the Applicable Securities Legislation or by the Canadian Securities Administrators, shall be binding on marketplaces, Participants, issuers and other persons, as applicable, and may be adopted to, among other things, enhance the credibility and reputation of the Corporation as a well as a self-regulatory organization.

Such Rules and Regulations shall be effective without Shareholder, marketplace, or Participant approval or approval by any other person, except as expressly otherwise provided therein, but may be subject to prior or subsequent review and approval or non-disapproval by the Canadian Securities Administrators.

Without limiting the generality of the foregoing, the Rules and Regulations may deal with all matters related to market regulation, including without limitation:

- (a) the trading rules, trading operations, and standards of practice and business conduct

applicable to Participants (and their current and former partners, Shareholders, associates, insiders, Directors, officers, employees, agents and representatives) in respect of their overall equity trading operations and market activities, both through the facilities of marketplaces and generally;

- (b) requirements applicable to or in respect of the trading of listed securities and quoted securities, including without limitation, trading halts, disclosure practices and requirements and take-over and issuer bids;
- (c) compliance reviews, examinations and investigations, and enforcement and disciplinary matters;
- (d) trading ethics, trading rules, trading currencies, clearing and settlement and market surveillance matters;
- (e) the provision of information, cooperation and/or assistance;
- (f) the payment of fees, costs, forfeitures, penalties, fines and/or other amounts; and
- (g) hearing practices, where applicable;
- (h) transitional matters in respect of acts, omissions, circumstances or events prior to the Effective Date.

ARTICLE 12
VARIOUS

Section 12.1 Exchange of Information, Agreements.

The Corporation may provide to domestic or foreign exchanges or self-regulatory organizations or domestic or foreign securities enforcement or securities regulatory authorities information and other forms of assistance for market surveillance, investigative, enforcement and other regulatory purposes.

The Corporation may enter into agreements with domestic or foreign exchanges or self-regulatory organizations or domestic or foreign securities enforcement or securities regulatory authorities providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes.

Section 12.2 Marketplace Agreements, Participant Agreements, etc.

- (1) In the discretion of the Corporation, marketplaces shall be required to enter into regulatory services agreements with the Corporation. In order to obtain access to the facilities of the marketplaces, Participants shall be required to enter into an agreement with the marketplaces and shall agree to submit to the jurisdiction of the Corporation in respect of its Rules and Regulations and in respect of all regulatory matters including but not limited to market surveillance, investigations and enforcement. Participants shall not by virtue thereof have any ownership or voting interest in the marketplaces or the Corporation, and shall be Participants solely by virtue of their contractual arrangements with the marketplaces. Participants shall not be liable for any act, default, obligation or liability of the marketplaces or the Corporation.
- (2) In addition, in the discretion of the Corporation issuers and other persons may be required to enter into agreements with marketplaces or the Corporation.

Section 12.3 Subject to Applicable Laws.

The provisions of this By-law are subject to any applicable legislation, including without limitation the Applicable Securities Legislation.

ARTICLE 13
EFFECTIVE DATE

Section 13.1 Effective Date.

This By-law shall come into force upon the Effective Date.

DEEMED CONFIRMED this day of ,
2001. _____

President

Secretary

APPENDIX C

Definition of an Independent Director of RS Inc.

The following is the proposed definition of an "Independent Director" of RS Inc.:

"Independent Director" means a director of RS Inc. who is not an associate, director, officer or employee of:

- (a) a marketplace;
- (b) an Access Person;
- (c) a shareholder of RS Inc.; or
- (d) an affiliated entity of any person described in clauses (a), (b) or (c).

Related Definitions:

A number of terms used in the definition of "Independent Director" are defined in statutes, regulations, national instruments, orders and rules, the interpretation of which will be adopted by reference. In particular:

The order of recognition of RS Inc. defines "Access Persons" to be:

"Access Persons" means all Participants (as such term is defined in the Universal Market Integrity Rules) and all other persons who have been granted trading access to a marketplace.

The Securities Act (Ontario) defines "associate" to be:

"associate", where used to indicate a relationship with any person or company means:

- (a) any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
- (b) any partner of that person or company,
- (c) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
- (d) any relative of that person who resides in the same home as that person,
- (e) any person who resides in the same home as that person and to whom that person is married, or any person of the opposite sex or the same sex who resides in the same home as that person and with whom that person is living in a conjugal relationship outside marriage, or
- (f) any relative of an person mentioned in clause (e) who has the same home as that person.

National Instrument 21-101 – Marketplace Operation defines "marketplace" and "subscriber" as follows:

"marketplace" means:

- (a) an exchange;
- (b) a quotation and trade reporting system; and
- (c) a person or company not included in paragraph (a) or (b) that
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
 - (ii) brings together the orders for securities of

- (iii) multiple buyers and sellers, and uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
- (d) a dealers that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker..

“**subscriber**” means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS.

National Instrument 21-101 – Marketplace Operation interprets “affiliated entity” as follows:

- (1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.
- (2) In this Instrument, a person or company is considered to be a controlled entity of a person or company if
 - (a) in the case of a person or company,
 - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
 - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
 - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
 - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if
 - (a) it is a controlled entity of,
 - (i) that other,
 - (ii) that other and one or more persons or companies each of which is a controlled entity of that other, or
 - (iii) two or more persons or companies, each of which is a controlled entity of that other; or
 - (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

The Universal Market Integrity Rules proposes to define the terms “Participant” and “related entity” as follows:

“**Participant**” means:

- (a) a dealer registered in accordance with securities legislation of any jurisdiction and who is:
Inc.,

Inc.,

- (i) a member of an Exchange,
- (ii) a user of a recognized quotation and trade reporting system, or
- (iii) a subscriber of an ATS; or
- (b) a person who has been granted trading access to a marketplace and who performs the functions ordinarily associated with a market maker, specialist or restricted permit holder on the Bourse de Montréal Inc.

“**related entity**” means, in respect of a particular person:

- (a) an affiliated entity of the particular person which carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation; and
- (b) a person who has been designated by a Market Regulator [in accordance with Rule 10.8(3) of the Universal Market Integrity Rules] as a person who acts in conjunction with the particular

APPENDIX D

RS INC. GOVERNANCE COMMITTEE

TERMS OF REFERENCE

- 1) All terms are defined in Bylaw No. 1.
- 2) The Governance Committee shall be composed of all Independent Directors and the Chair of the Board. If the Chair of the Board is an Independent Director, the Chair shall be a full voting member of the Committee. If the Chair of the Board is a non-Independent Director, the Chair will be an *ex officio* member of the Committee who shall not be entitled to vote and whose presence shall not be a factor in determining quorum for the Committee.
- 3) The Committee shall elect by majority from among the voting members of the Committee a Chair who shall act for a term of not less than one year.
- 4) A duly constituted quorum shall be a majority of the voting members of the Committee.
- 5) The Committee shall have the responsibility:
 - i) to develop guidelines for the Committee to follow in respect of the size of the Board, its appropriate composition and eligible individuals for election to the Board (the "Guidelines"); **[See Appendix C - Draft Guidelines – Governance Committee.]**
 - ii) in accordance with By-law No. 1 and the Guidelines, to recommend to the Board the size of the Board and its appropriate composition and to evaluate the performance of all Directors;
 - iii) in accordance with the Guidelines, to select and review qualified candidates for election to the Board as Independent Directors and, by a vote of the majority of Committee members, recommend a candidate to the Board;
 - iv) to review the Guidelines periodically and, in any event, not less than annually, and to revise the Guidelines as necessary and, upon approval of the amendments by the Board, file the revised Guidelines with the appropriate securities regulatory authorities.

APPENDIX E

RS INC. GOVERNANCE COMMITTEE GUIDELINES

1. All terms are defined in Bylaw No. 1.
2. The President of RS Inc. shall be a member of the Board and shall be considered to be neither an Independent nor a non-Independent Director.
3. Selection of non-Independent Directors:
 - i) At all times, the Board must consist of 2 non-Independent Directors appointed by the TSE; 2 non-Independent Directors appointed by the IDA; and 1 non-Independent Director representing the public venture capital markets appointed by the TSE and the IDA jointly, provided that, should CDN X become regulated by RS Inc. and reach or exceed 10% of the Canadian equity securities market (where market share will be calculated on the trading activity of the previous calendar year, based on 25% of trading value, 25% of trading volume and 50% of number of trades), CDN X shall be entitled to nominate the fifth non-Independent Director in the place of the TSE and IDA for the next succeeding term. If, at the end of each term thereafter, CDN X's position in the previous calendar year does not reach or exceed 10% of the market share of the Canadian equity securities market, as calculated above, then CDN X will not be entitled to representation in the subsequent term and the TSE and IDA shall again jointly nominate the fifth non-Independent Director .
 - ii) Subsequent to Board nomination, the TSE and IDA will vote to confirm their respective candidates.
 - iii) Each new exchange (excluding CDN X), ATS, and QTRS will be permitted to appoint a representative to the Board for a term of one year when its market share reaches or exceeds 10% of the Canadian equity securities market. Market share will be assessed on the trading activity of the previous calendar year, and will be based on 25% of trading value, 25% of trading volume and 50% of number of trades. If, at the end of each term, the marketplace's position in the previous calendar year does not reach or exceed 10% of the market share of the Canadian equity securities market, then the marketplace will not be entitled to representation in the subsequent term. The TSE and IDA shall vote to confirm a duly appointed representative of any marketplace that reaches or exceeds 10% of the Canadian equity securities market.
 - iv) In accordance with section 4, the Committee may recommend that an ATS representative be nominated as a non-Independent Director.
4. Selection of Independent Directors and ATS Representative:

APPENDIX F

**RS INC.
FINANCE & AUDIT COMMITTEE
TERMS OF REFERENCE**

- i) At all times, the number of Independent Directors shall be equal to the number of non-Independent Directors. If a non-Independent Director is added to (or removed from) the Board, an Independent Director will also have to be added (or removed) to balance the Board.
 - ii) In accordance with these Guidelines, the Committee shall select individuals who are qualified to act as Independent Directors, and ensure that the Independent Directors represent a variety of constituencies, including representatives of institutional investors, issuers and regional representatives. The Committee will consider any affiliations the candidate has had with any exchange, QTRS or ATS in determining whether the candidate is qualified to act as an Independent Director.
 - iii) At all times, the Board must consist of at least one representative of ATSS and such representative may include an individual associated or affiliated with a prospective applicant to be registered as an ATS or a person considered by the Committee to be knowledgeable with the operations of ATSS. In determining whether to recommend a candidate to the Board as the representative of ATSS, the Committee may consider whether a particular ATS has appointed a representative to the Board in accordance with clause 3 iii).
 - iv) Until such time as National Instrument 21-101 is implemented, a person who is associated or affiliated with an ATS or QTRS may be an Independent Director.
 - v) An individual who is associated with an ATS that is a Participant shall not be considered eligible to be an Independent Director, but will be considered to be eligible to be selected by the TSE or IDA as a non-Independent Director.
 - vi) The Committee shall recommend qualified candidates to the Board for nomination as Independent Directors and, if applicable, as the representative of ATSS.
 - vii) Subsequent to Board nomination, the shareholders will vote to confirm or reject the candidates for Independent Directors and, if applicable, the representative of ATSS.
 - viii) If the shareholders reject a candidate for Independent Director or, if applicable, the representative of ATSS, the Committee shall notify the relevant securities regulators. The Committee shall then select another suitable candidate.
- 1) All terms are defined in Bylaw No. 1.
 - 2) The Finance & Audit Committee shall be composed of at least five Directors, the majority of whom shall be Independent Directors, with at least one representative from each shareholder.
 - 3) The Committee shall elect by majority from among the members of the Committee a Chair who shall act for a term of not less than one year.
 - 4) The Chair of the Board shall be a full voting member of the Committee.
 - 5) A duly constituted quorum shall be a majority of the voting members on the Committee, including a majority of Independent Directors and at least one representative of a shareholder.
 - 6) The Committee's Finance Responsibilities shall be as follows:
 - i) To approve the assumptions and guidelines for the development of RS Inc.'s strategic business plans including the annual Operating and Capital Budgets;
 - ii) To review the strategic business plan along with the annual Operating and Capital Budgets for submission to the Board for approval;
 - iii) To review the fee schedule for RS Inc. on an annual basis as well as any recommended changes during the year for submission to the Board for approval;
 - iv) To review the quarterly financial forecasts and financial statements including management reports and analysis of key performance indicators for submission to the Board;
 - v) To establish guidelines and policies for the investing of surplus funds and receive reports from management on the results of such investments against established benchmarks; and
 - vi) To carry out such other responsibilities that may be assigned by the Board.
 - 7) The Committee's Audit Responsibilities shall be as follows:
 - i) To review the annual audit plan and the scope of the audit including approving the fee estimate;
 - ii) To review and approve the audited annual financial statements including the auditor's report thereon for submission to the Board for approval;

- iii) To review the scope and findings of the independent audit; including an assessment of accounting principles in use and the impact of any new reporting or accounting requirements;
- iv) To review what steps management has taken to eliminate potentially serious weaknesses in internal control and management's response to the independent auditor's recommendations;
- v) To meet with the independent auditors on an annual basis both with and without management present to discuss any matter which the independent auditor wishes to bring to the committee for its consideration;
- vi) To annually review the independence of the auditors and to either reconfirm the selection of the incumbent auditor or select a new auditor for the year – including accepting the fee for the audit; and
- vii) To assess the adequacy of RS Inc.'s risk management policies and procedures including an assessment of the adequacy of insurance coverage and reviewing reports on the plans and activities undertaken by the risk management group.