



Market Regulation Services Inc.

Services de réglementation du
marché inc.

Felix Mazer
Counsel
Market Policy and General Counsel's Office

Direct Tel: 416.646.7280
Direct Fax: 416.646.7265
E-mail: felix.mazer@rs.ca

145 King St. West
Suite 900
Toronto ON
Canada M5H 1J8

T 416.646.7200
F 416.646.7270

Suite 2600
P.O. Box 11580
650 West Georgia St.
Vancouver, BC
Canada V6B 4N8

T 604.602.6962
F 604.682.8514

www.rs.ca

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BY E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission

c/o

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Attention: John Stevenson, Secretary

- and -

Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Attention: Anne-Marie Beaudoin, Secrétaire de l'Autorité

Dear Sirs and Mesdames:

Re: CSA Request for Comment – Proposed NP 12-203 Cease Trade Orders for Continuous Disclosure Defaults

Staff of Market Regulation Services Inc. (“RS”) has reviewed the proposed National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults* (the “Policy”) as published in the OSC Bulletin on March 28, 2008 at (2008) 31 OSCB 3573, and is pleased to provide its comments on several aspects of the Policy as they relate to the current trading environment in Canada.

Background

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and in Quebec, by the Autorité des marchés financiers, (the “Recognizing Regulators”) and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 (the “Marketplace Operation Instrument”) and National Instrument 23-101 (the “CSA Trading Rules”).

As a regulation services provider, RS administers and enforces trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved the Universal Market Integrity Rules (“UMIR”) as the integrity trading rules that apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange (“TSX”), TSX Venture Exchange (“TSXV”), Canadian Trading and Quotation System (“CNQ”) and egX Canada Inc. (“egX”), each as an “exchange” for the purposes of the Marketplace Operation Instrument (“Exchange”); and for Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited (“Chi-X”), Liquidnet Canada Inc. (“Liquidnet”), Perimeter Markets Inc. (the operator of “BlockBook” and “Omega ATS”) and TriAct Canada Marketplace LP (the operator of “MATCH Now”), each as an alternative trading system (“ATS”). CNQ presently operates an “alternative market” known as “Pure Trading” that is entitled to trade securities that are listed on other Exchanges and that presently trades securities listed on the TSX. egX is recognized in British Columbia as an Exchange and RS has agreed to act as the regulation services provider for egX upon egX commencing trading operations.

Trading Halts, Delays and Suspensions Under UMIR

As set out in Part 3 of the Policy, serious continuous disclosure defaults by a listed issuer (referred to as “specified defaults” in the Policy) will, under the Policy, ordinarily result in the issuer’s principal regulator (“PR”) issuing a cease trade order (“CTO”) or a management cease trade order (“MCTO”). Generally, if the issuer’s PR issues a CTO or an MCTO, the non-principal regulators in the jurisdictions in which the issuer is a

reporting issuer will issue a similar CTO or MCTO, as the case may be, to ensure that the CTO or MCTO is effective in their jurisdictions.

Rule 9.1 of UMIR, among other things, provides that no order for the purchase or sale of security may be executed by a Participant or Access Person on a marketplace or over-the-counter, at any time while an order of a securities regulatory authority to cease trading in a security remains in effect. Of note, Rule 9.1 does not recognize the concept of a MCTO and RS would not impose a regulatory halt in connection with the issuance of a MCTO.

In accordance with Rule 6.2 of UMIR, any order entered on a marketplace by a Participant or Access Person on behalf of an insider of an issuer must contain a marker that identifies the order as being entered on behalf of an insider. As a result of this marker requirement, RS has the ability to monitor orders entered and trades executed by insiders. However, RS does not have the capacity to further distill trading by insiders that may or may not be “management” of the issuer or otherwise specifically subject to an MCTO.

Regulatory Halts on a Marketplace

Part 6 of the Policy makes reference to Canadian stock exchanges suspending trading of securities that are the subject of a CTO. RS is concerned that the current text of Part 6 may in fact provide a misleading description of the effect of the issuance of a CTO with respect to the ability to trade in a security that is listed or quoted on a marketplace.

As noted at the outset of this letter, RS presently acts as the regulation services provider for each marketplace in Canada that may trade a “listed security”, a “quoted security” or a “foreign exchange-traded security”. As such, UMIR applies to each dealer or other person who has trading access to such marketplaces. RS acknowledges that the provisions of UMIR do not apply to trades handled by a dealer that is not a:

- a member of an exchange;
- a user of a quotation and trade reporting system (“QTRS”); or
- a subscriber to an ATS.

However, such a dealer is not able to execute trades on a marketplace in Canada. To this end, RS recommends that the reference to “market participant” in Part 6 of the Policy be clarified to more clearly indicate that certain “market participants” may be subject to restrictions imposed by self-regulatory organizations including any exchange of which they are a member or a QTRS of which they are a user.

Under Rule 9.1 of UMIR, if a securities commission issues a CTO with respect to an issuer the securities of which are traded on a marketplace, RS imposes a regulatory halt on trading of the security on all marketplaces for which RS serves as the regulation services provider. Such action is taken whether or not that commission that issued the CTO is the PR of the issuer. Once a regulatory halt has been imposed, no person

subject to UMIR may trade that security on a marketplace, over-the-counter or on a foreign organized regulated market. It is important to note that the imposition of a halt on the issuance of a CTO is not one of the enumerated exceptions in subsection (4) of Rule 9.1 that would permit trading on a foreign organized regulated market when trading is halted for a regulatory reason on a marketplace in Canada.

Notwithstanding that the PR or another securities commission rescinds its CTO, the regulatory halt imposed by RS on all marketplaces for which RS serves as the regulation services provider will continue until all CTOs have been rescinded.

Part 6 of the Policy essentially provides a “yellow light” warning when conducting a trade off-marketplace or on a foreign organized regulated market in a security that is subject to a CTO. In fact, UMIR precludes such trading in many circumstances. RS is concerned that the cautionary nature of this Part of the Policy may be interpreted as providing an “over-ride” of the prohibitions imposed by UMIR on Participants and Access Person.

If you have any questions regarding this letter, please do not hesitate to contact me at (416) 646-7280.

Yours truly,

“Felix Mazer”

Felix Mazer,
Policy Counsel

cc. Maureen Jensen, Market Regulation Services Inc.
Rosemary Chan, Market Regulation Services Inc.