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Headnote

Order requiring Market Regulation Services Inc. to waive certain requirements: s. 27(1)(a), *Securities Act*

Order

Market Regulation Services Inc.

Section 27(1)(a) of the *Securities Act*, R.S.B.C. 1996, c. 418

The Executive Director is making an order under section 27(1)(a) of the Act.

Background

1. National Instrument 21-101 *Marketplace Operations* (NI 21-101), National Instrument 23-101 *Trading Rules* (NI 23-101), and related companion policies (together, the ATS Rules) allow new marketplaces to operate and foster marketplace competition.
2. Under NI 21-101, an alternative trading system (ATS) is not a regulator but must be regulated by a regulation services provider (RSP). Under NI 23-101, a RSP must set requirements governing an ATS and its subscribers, including requirements that
 - the ATS and its subscribers will comply with NI 23-101 and other RSP requirements, and
 - the RSP will monitor and enforce NI 23-101 and the other RSP requirements against the ATS and its subscribers.
3. Market Regulation Services Inc. (RS) is a RSP under the ATS Rules. RS is recognized by the British Columbia Securities Commission, the Alberta Securities Commission, the Manitoba Securities Commission, the Ontario Securities Commission, and l' Autorité des marchés financiers.
4. In section 3.6 of its standard RSP agreement with ATSS, RS requires ATS subscribers to sign
 - a confirmation and representation form in substantially the form of Schedule "B" to the RSP agreement, and
 - a subscriber acknowledgement in substantially the form of Schedule "C" to the RSP Agreement.
5. In the confirmation and representation form, ATS subscribers agree that RS has jurisdiction over them, as the RSP, because it regulates the ATS under the ATS Rules and other RS requirements.

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6. In the subscriber acknowledgement, ATS subscribers agree that their trading activities will comply with the ATS Rules and other RS requirements. They also acknowledge that RS will monitor their trading activities and enforce the ATS Rules and other RS requirements.
7. Under the ATS Rules (NI 23-101, Part 8), RS has the jurisdiction and the responsibility to monitor and enforce its rules and requirements against ATS subscribers without the RS confirmation form and the subscriber acknowledgement.
8. The Ontario Securities Commission made an order (OSC order) on July 8, 2005 requiring RS to waive its requirements that ATS subscribers sign the RS confirmation and representation form and the acknowledgement on conditions identical to those set out in this order.

The Executive Director is satisfied that it is in the public interest to make the same order as the OSC order under section 27(1)(a) of the *Securities Act*.

Order

Because it is in the public interest, the Executive Director orders, under section 27(1)(a) of the Act, that RS must waive its requirement that an ATS subscriber execute the confirmation and representation form and the acknowledgement described in section 3.6 of the standard RSP Agreement, if

- (a) the subscriber signs and delivers a release of RS in this form:

RS, its directors, officers, employees, agents and any other person acting under its authority is not liable to the Subscriber or any of its Regulated Persons (as defined in the Universal Market Integrity Rules (UMIRs)) for any loss, damage, cost, expense, or other liability or claim arising from any act or omission, in good faith, connected with RS's performance of services as a RSP (as defined in NI 21-101); or

- (b) the ATS executes an indemnity consistent with section 11.10 of the UMIRs and takes steps, satisfactory to RS (acting reasonably), to ensure it can satisfy the indemnity.

January 12, 2006

Brenda M. Leong
Executive Director, British Columbia Securities Commission