

**Memorandum of Understanding Regarding Oversight of [New Regco] Among:**

**British Columbia Securities Commission**  
**Alberta Securities Commission**  
**Saskatchewan Financial Services Commission (Securities Division)**  
**Manitoba Securities Commission**  
**Ontario Securities Commission**  
**Autorité des marchés financiers**  
**Newfoundland and Labrador, Securities Division, Department of Government Services and  
Lands**  
**Nova Scotia Securities Commission**  
**New Brunswick Securities Commission**

(each a “Recognizing Regulator”)

The parties agree as follows:

**1. Underlying Principles**

*a. Recognition*

[New Regco] (**New Regco**) is recognized as a self-regulatory organization under applicable legislation by each of the Recognizing Regulators and is a regulation services provider pursuant to National Instrument 23-101 *Trading Rules*.

*b. Oversight Program*

To ensure effective oversight of New Regco’s performance of its self-regulatory activities and regulation services, the parties to this Memorandum of Understanding (**MOU**) have developed an oversight program (the “Oversight Program”) which includes:

- i. reviewing information filed by New Regco;
- ii. reviewing and approving new and amended rules, policies and other similar instruments (**Rules**) and by-laws of New Regco; and
- iii. performing periodic reviews of New Regco’s self-regulatory activities and regulation services.

The purpose of the Oversight Program is to ensure that New Regco is acting in accordance with its public interest mandate, specifically by complying with its terms and conditions of recognition.

## 2. Definitions

“Approved Person” has the meaning attributed to that term in New Regco’s Rules, as amended from time to time.

“Member” has the meaning attributed to that term in New Regco’s By-law No. 1, as amended from time to time.

“Principal Regulator” means the Recognizing Regulator that is designated as such from time to time.<sup>1</sup>

## 3. General Provisions

### a. Oversight Committee

An oversight committee will be established (the **Oversight Committee**) which will act as a forum and venue for the discussion of issues, concerns and proposals related to the oversight of New Regco.

The Oversight Committee will include staff representatives from each of the Recognizing Regulators.

The Oversight Committee will provide to the CSA Chairs an annual written report that will include a summary of all oversight activities during the previous period.

### b. Staff Contact

The Principal Regulator will provide New Regco with key staff contacts in each jurisdiction for the purposes of matters arising under this MOU or relating to oversight in general.

### c. Status Meetings

The Principal Regulator will organize quarterly conference calls and an annual in-person meeting of the Oversight Committee and New Regco staff. The purpose is to discuss matters relating to the oversight of New Regco, issues relating to the regulation of New Regco’s Members and other matters that are of interest to the Recognizing Regulators and New Regco. The Principal Regulator is also responsible for taking minutes of these calls and in-person meetings.

## 4. Reporting

- a. Any comments of the staff of the Recognizing Regulators on any report filed by New Regco will be sent to the Principal Regulator. The Principal Regulator will request that New Regco respond to comments raised by the Recognizing Regulators and forward any response to the Recognizing Regulators.

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<sup>1</sup> The OSC is the principal regulator for RS and the IDA.

## 5. Review of By-laws and Rules

The Recognizing Regulators have developed a Joint Rule Review Protocol (the **Protocol**) for coordinating the review and approval of New Regco by-laws and Rules. The Protocol is attached as Appendix A and may be amended from time to time.

## 6. Oversight Reviews

### *a. Coordination of Oversight Reviews*

- i. The Recognizing Regulators will use their best efforts to carry out reviews of New Regco offices at least once every three years. A Recognizing Regulator may choose to participate in the review of a New Regco office depending on the functions carried out in that office, or may choose to rely on another Recognizing Regulator for the review of a New Regco office. In cases where a Recognizing Regulator chooses not to review the New Regco office in its jurisdiction, the other Recognizing Regulators may conduct a review of that New Regco office. Those Recognizing Regulators who participate in a review are considered to be “Reviewing Regulators” for the purpose of oversight reviews.
- ii. The Reviewing Regulators agree to coordinate their reviews of New Regco’s offices by conducting their reviews at the same time and evaluating New Regco using a uniform review program and uniform performance benchmarks.
- iii. The Principal Regulator will develop a review program in consultation with the Reviewing Regulators.
- iv. For each New Regco office, a Reviewing Regulator will be designated as the Responsible Regulator who has overall responsibility for the review of that office. In particular, the Responsible Regulator will ensure that the review is appropriately staffed, will draft the review report for that office taking into account findings and comments of the Reviewing Regulators of that office, and will report on the status and results of the review of that office.
- v. The Principal Regulator will also arrange periodic conference calls of the Reviewing Regulators during the course of a review, the purpose of which is to discuss the findings at different New Regco offices and to ensure consistent recommendations for similar findings.

### *b. Review of Draft Reports and Issuance of Final Reports and Follow-Up Plans*

At the conclusion of a review, staff of the Principal Regulator and the Reviewing Regulators will use their best efforts to follow the procedures set out below, taking into account language translation needs, when applicable:

- i. Each Responsible Regulator will provide to all Reviewing Regulators a draft report on the results of the review of its New Regco office. The Reviewing Regulators will agree in advance on the date on which the draft reports should be completed.
- ii. The Principal Regulator will review the draft reports for consistency of findings and recommendations and provide any needed comments to the Responsible Regulators within 10 business days of receipt of all the draft reports.
- iii. The Responsible Regulators will review the comments and make appropriate revisions to their reports, taking into consideration comments from the relevant Reviewing Regulators, and forward their revised draft reports to the Principal Regulator within 10 business days of receipt of the Principal Regulator's comments.
- iv. Within 10 business days of receipt of all the revised draft reports, the Principal Regulator will forward the draft reports on each office to New Regco for it to confirm factual accuracy.
- v. New Regco will review the draft reports for factual accuracy and respond to all the Reviewing Regulators with comments within 15 business days of receipt of the draft reports.
- vi. The Responsible Regulators will consider New Regco's comments and revise their reports as necessary, and will forward a copy of their final reports to the Principal Regulator within 20 business days of receiving New Regco's comments.
- vii. The Principal Regulator will combine the final reports on each New Regco office into a consolidated report and prepare an executive summary to the consolidated report. The Principal Regulator will forward the consolidated report to the Reviewing Regulators for their review within 10 business days of receipt of all the final reports.
- viii. The Reviewing Regulators will provide to the Principal Regulator any comments on the consolidated report within 10 business days of receipt of the consolidated report.
- ix. The Principal Regulator will review the comments, make any appropriate changes to the consolidated report, and forward the consolidated report to New Regco for a formal response with copies to the Reviewing Regulators, within 10 business days of receipt of the Reviewing Regulators' comments.
- x. New Regco will use its best efforts to respond to the consolidated report within 20 business days of receipt of the report. A copy of its response will be sent to all the Reviewing Regulators.

- xi. The Responsible Regulator will review New Regco's response, develop a follow-up plan for the applicable New Regco office, and forward its follow-up plan to the Principal Regulator, within 20 business days of receipt of New Regco's response.
- xii. The Principal Regulator will provide the final consolidated report, together with New Regco's response and the follow-up plan for each New Regco office, to the CSA Chairs and New Regco once each Reviewing Regulator has obtained the necessary internal approval.

*c. Interim Reviews*

Although the Principal Regulator will co-ordinate periodic reviews as described above, each Recognizing Regulator retains the ability to perform a review of New Regco to deal with significant and/or local issues that require immediate attention and that would be best dealt with through a review of a New Regco office. The Recognizing Regulator desiring to perform an interim review of New Regco will provide prior notice of the interim review to the Oversight Committee.

**7. Effective Date**

This MOU comes into effect on ■, 2008 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan. In Quebec, this MOU comes into effect on the date the AMF executes it.

## APPENDIX A

### JOINT RULE REVIEW PROTOCOL FOR NEW REGCO

#### 1. Scope and Purpose

- a. “Rules” includes any new rule or amendment to a rule, policy or other similar instrument.
- b. Any new or amended by-law will follow the process for rule review and approval set out in this Protocol.
- c. The Recognizing Regulators have entered into this Protocol to establish uniform procedures for their review and approval of Rules proposed by New Regco.

#### 2. Classification of Rules

##### a. *Classification of Rules by New Regco*

New Regco will classify each proposed Rule as a “Housekeeping” Rule or a “Public Comment” Rule and will provide notice of classification in the materials filed with each Recognizing Regulator.

##### b. *Criteria for Classification of Rules*

- i. A “Housekeeping” Rule is a proposed Rule that has no material impact on investors, issuers, members, registrants or the capital markets in any province or territory of Canada and that:
  1. corrects spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing;
  2. makes stylistic or formatting changes to headings or paragraph numbers;
  3. makes other necessary changes of an editorial nature (such as standardization of terminology);
  4. establishes or changes a due, fee or other charge imposed by New Regco pursuant to a Rule or fee model that has been previously approved by the Recognizing Regulators;
  5. changes the routine internal processes, practice, or administration of New Regco; or
  6. is reasonably necessary to conform New Regco’s Rules to applicable securities legislation, statutory or legal requirements; and

- ii. A “Public Comment” Rule is any proposed Rule that is not a Housekeeping Rule.

*c. Disagreements Regarding Classification*

- i. If staff of a Recognizing Regulator believe that a proposed Rule is incorrectly classified as a Housekeeping Rule, they will, within 10 days of the date of filing by New Regco, inform staff of the Principal Regulator of their intention to disagree with the classification, with an analysis of their reasons for disagreeing with the classification. Within 5 days of receiving a notice of disagreement from staff of one of the Recognizing Regulators, staff of the Principal Regulator will arrange a conference call among staff of the Recognizing Regulators to discuss the disagreement with the classification. If the disagreement still exists after the conference call, staff of the Principal Regulator will promptly notify New Regco.
- ii. If a notice of disagreement is sent to New Regco under paragraph 2(c)(I), New Regco will reclassify the proposed Rule as a Public Comment Rule.

**3. Required Materials**

- a. New Regco will file the information required under this section concurrently in both English and French, accompanied with a translation certificate, with the applicable Recognizing Regulators.
- b. New Regco will file the following information with each Housekeeping Rule:
  - i. a cover letter that indicates the classification of the Rule and the rationale for the classification;
  - ii. the text of the proposed Rule, and, where applicable, a blacklined version of the Rule indicating changes to an existing rule; and
  - iii. a notice for publication that contains the following:
    - 1. a brief description of the Rule,
    - 2. the reasons for the Housekeeping classification
    - 3. the date that the Rule was approved by the New Regco Board and the Board Resolution, and
    - 4. the anticipated effective date of the Rule.
- c. New Regco will file the following information with each Public Comment Rule:

- i. a cover letter that indicates the classification of the Rule, how New Regco has taken the public interest into account when developing the Rule and why the Rule is in the public interest;
- ii. the text of the proposed Rule, and, where applicable, a blacklined version of the Rule indicating changes to an existing rule; and
- iii. a notice of publication including:
  1. a concise statement, together with supporting analysis, of the nature, purpose and effect of the proposed Rule;
  2. the possible effects of the proposed Rule on market structure, Members, non-Members, competition and the costs of compliance;
  3. a description of the Rule and the Rule-making process, including a description of the context in which the proposed Rule was developed, the date that the Rule was approved by the New Regco Board and the Board Resolution, the process followed, the issues considered, the consultation process undertaken and alternative approaches considered and the reasons for rejecting those alternatives;
  4. where the proposed Rule requires technological systems changes to be made by New Regco, Members or other market participants, a description of the implications of the proposed Rule and, where possible, a discussion of material implementation issues and plans;
  5. where relevant, a reference to other jurisdictions including an indication as to whether another regulator in Canada, the United States or another jurisdiction has a comparable rule or has made or is contemplating making a comparable rule and, if applicable, a comparison of the proposed Rule to the rule of the other jurisdiction;
  6. the anticipated date on which New Regco proposes that the proposed Rule be effective;
  7. a statement that the New Regco Board has determined that the proposed Rule is not contrary to the public interest; and
  8. a request for public comment together with details on how to submit comments with the comment period deadline, and a statement that New Regco would make available to the public all comments received during the comment period.

#### **4. Review Criteria**

Without limiting the discretion of the Recognizing Regulators, the Recognizing Regulators agree that the following are factors that should be considered by the Recognizing Regulators in reviewing New Regco Rule proposals:

- a. whether New Regco followed its established internal governance practices in approving the proposed Rule;
- b. whether New Regco followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of a proposed Rule;
- c. whether New Regco has considered consequential amendments; and
- d. whether the proposed Rule conflicts with applicable laws or the terms and conditions of a Recognizing Regulator's recognition order.

#### **5. Rule Review and Approval Process – Housekeeping Rules**

- a. New Regco will file each proposed Housekeeping Rule and the materials described in subsection 3(b) of this Protocol with each Recognizing Regulator.
- b. Upon receipt of New Regco's notice of publication, staff of the Principal Regulator will immediately send confirmation of receipt of the proposed Housekeeping Rule to New Regco, with copies to the other Recognizing Regulators.
- c. If none of the Recognizing Regulators objects to the classification of the proposed Rule as a Housekeeping Rule within the time limit set out in paragraph 2(c)(I), the proposed Rule will be deemed to be approved and will be effective on the date designated by New Regco in its filing.

#### **6. Rule Review and Approval Process – Public Comment Rules**

- a. New Regco will file each proposed Public Comment Rule and the materials described in subsection 3(c) of this Protocol with each Recognizing Regulator.
- b. Upon receipt of New Regco's notice of publication, staff of the Principal Regulator will immediately send confirmation of receipt of the proposed Public Comment Rule to New Regco, with copies to the other Recognizing Regulators.
- c. As soon as practicable and in any event within 14 days of receipt of New Regco's notice of publication, the Principal Regulator will, and the other Recognizing Regulators may, publish for a 30-day comment period (commencing on the date the proposed Public Comment Rule appears in the bulletin or on the website of the Principal Regulator) in its bulletin or on its website the text of the proposed Public Comment Rule and the notice of publication filed by New Regco. The Principal Regulator and the other Recognizing Regulators that publish the Rule will coordinate the publication date.

- d. During the 30-day comment period, staff of each of the Recognizing Regulators will provide significant comments to staff of the Principal Regulator in writing, with copies to the other Recognizing Regulators. If staff of the Principal Regulator do not receive any such comments within the 30-day period, the other Recognizing Regulators will be deemed to not have any comments.
- e. Promptly following the 30-day comment period, New Regco will confirm with staff of the Principal Regulator whether any public comments were received and, if so, New Regco will forward the public comments to each of the Recognizing Regulators.
- f. If comments from staff of the Recognizing Regulators and the public comments do not raise any significant issues, staff of the Recognizing Regulators will proceed immediately to the approval of the proposed Rule following the steps outlined in subparagraphs (j)-(n) below.
- g. If comments from staff of the Recognizing Regulators or the public comments received raise significant issues, staff of the Principal Regulator will send New Regco written notice, within 7 days of the end of the 30-day comment period, that the Public Comment Rule will be subject to a full review as set out in subparagraph 6(h) below.
- h. For a full review of a Public Comment Rule, the Recognizing Regulators will use best efforts to adhere to the following process:
  - i. Staff of the Principal Regulator will prepare and deliver to staff of the other Recognizing Regulators, within 7 days of receiving from New Regco confirmation that no public comments were received or a summary of public comments and New Regco's response to the public comments, a draft comment letter that incorporates the comments raised by staff of the Recognizing Regulators;
  - ii. within 7 days of receipt, staff of each of the Recognizing Regulators will provide comments on the draft comment letter prepared by staff of the Principal Regulator, with copies to the other Recognizing Regulators; if staff of the Principal Regulator does not receive any comments within the 7-day period, the other Recognizing Regulators will be deemed not to have any comments;
  - iii. Staff of the Principal Regulator will consolidate all comments received, and may identify different views from staff of the Recognizing Regulators; in the event that comments received conflict, staff of the Recognizing Regulators will try to reach an agreement to deal with the conflict; if the conflict cannot be resolved, the Principal Regulator will use its best efforts to arrange, within 14 days of becoming aware of the conflict, for the Chair or another senior executive of each of the Recognizing Regulators to discuss the issues and attempt to establish a consensus;

- iv. within 3 days of the other Recognizing Regulators' response (or deemed response), staff of the Principal Regulator will send the comment letter to New Regco, with a copy to each of the other Recognizing Regulators;
  - v. within 14 days of receipt, New Regco will respond in writing to the comment letter sent by staff of the Principal Regulator, with a copy to staff of each of the other Recognizing Regulators; and
  - vi. each of the other Recognizing Regulators will provide material comments to the Principal Regulator in writing within 10 days of New Regco's response, and the Principal Regulator will provide its comments to the other Recognizing Regulators within the same period; if the Principal Regulator does not receive any comments within the 10-day period, the other Recognizing Regulators will be deemed not to have any comments.
- i. New Regco and the Recognizing Regulators will discuss and attempt to resolve the concerns raised by any of the Recognizing Regulators within 30 days of receiving comments from staff of the other Recognizing Regulators regarding New Regco's response referred to in subparagraph 6(h)(V), but if the concerns are not resolved to the satisfaction of all Recognizing Regulators, review of the proposed Rule will be escalated to be discussed among the Chairs or other senior executives of the Recognizing Regulators as described below:
    - i. the Principal Regulator will use its best efforts to schedule a meeting of the chairs or other senior executives of the Recognizing Regulators within 14 days of the end of the 30-day period noted in paragraph 6(i) above; and
    - ii. the chairs or other senior executives of the Recognizing Regulators will discuss the issues and attempt to establish a consensus among the Recognizing Regulators. If, after the consultations, the Chairs or other senior executives of the Recognizing Regulators are unable to agree on the appropriate outcome for the proposed Rule, New Regco will not be able to adopt the Rule.
  - j. Staff of the Principal Regulator will prepare documentation for approval of the proposed Rule by the Principal Regulator within 14 days of resolving comments under paragraph 6(i).
  - k. After a proposed rule is approved by the Principal Regulator, staff of the Principal Regulator will promptly circulate to the other Recognizing Regulators the documentation.
  - l. Staff of the other Recognizing Regulators will seek the necessary approval within 30 days of receipt of the documentation from the Principal Regulator, or such later time as is mutually agreed by staff of the Recognizing Regulators.
  - m. Staff of each Recognizing Regulator will inform staff of the Principal Regulator in writing of the decision concerning the proposed Rule immediately following the decision.

- n. Staff of the Principal Regulator will communicate in writing the approval of a proposed Rule to New Regco promptly upon receipt of notification from all of the other Recognizing Regulators of their decision.

## **7. Immediate Implementation**

- a. If New Regco reasonably believes that there is an urgent need to implement a proposed Rule because of a substantial risk of material harm to investors, Members, marketplace participants or the Canadian Investor Protection Fund, New Regco may make the proposed Rule effective immediately upon approval by New Regco's Board, provided that:
  - i. New Regco provides each Recognizing Regulator with written notice of its intention to rely upon this procedure at least 10 days before the proposed Rule is considered for approval by New Regco's Board; and
  - ii. New Regco's written notice includes:
    - 1. the date on which New Regco intends the proposed Rule to be effective, and
    - 2. an analysis in support of the need for immediate implementation of the proposed Rule.
- b. If a Recognizing Regulator does not agree that immediate implementation is necessary, that Recognizing Regulator will, within 5 days after New Regco provides notice to the Principal Regulator, advise the Principal Regulator in writing that it disagrees and provide the reasons for its disagreement, with copies to the other Recognizing Regulators. Staff of the Principal Regulator will promptly notify New Regco of the disagreement.
- c. New Regco and the Recognizing Regulators will discuss and attempt to resolve the concerns raised by the Recognizing Regulators on a timely basis, but if the concerns are not resolved to the satisfaction of all Recognizing Regulators, the proposed Rule cannot be immediately implemented.
- d. If no notice is received by New Regco by the end of the tenth day following the day on which New Regco provided the notification to the Principal Regulator, the Recognizing Regulators will be deemed to have approved the immediate implementation of the proposed Rule.
- e. Proposed Rules approved (or deemed to have been approved) for immediate implementation will be effective on the later of:
  - i. the date on which each Recognizing Regulator has approved (or is deemed to have approved) the immediate implementation; and

- ii. the date designated by New Regco in its written notice to the Principal Regulator.
- f. A Rule that is implemented immediately will be published (if it is a Public Comment Rule), reviewed, and approved in accordance with this Protocol.
- g. Where the Recognizing Regulators subsequently disapprove a Rule that was implemented immediately, New Regco will promptly repeal the Rule.

## **8. Effective Date of Rules**

- a. Public Comment Rules (other than Rules implemented under Section 7 (Immediate Implementation) of this Protocol) will be effective on the later of:
  - i. the date of publication of notice of approval, and
  - ii. the date designated by New Regco under paragraph 3(c)(III)(6) of this Protocol.
- b. Housekeeping Rules will be effective on the date designated by New Regco under paragraph 3(b)(III)(3) of this Protocol.

## **9. Revisions and Republication**

- a. If, subsequent to its publication for comment, New Regco revises a Public Comment Rule in a manner that results in a material change in the proposed Rule's substance and/or effect, the Principal Regulator will, in consultation with New Regco and staff of the other Recognizing Regulators determine whether or not the revised Rule should be published for an additional 30-day comment period.
- b. If a Public Comment Rule is republished under subsection (a), the request for comments will include a blacklined version marked to the original published version, the date of Board approval (if different from the original published version), New Regco's summary of comments submitted and responses in respect of the previous request for comments, together with an explanation of the revisions to the proposed Rule and the supporting rationale for the revisions.

## **10. Publication of Notice of Approval**

- a. The Principal Regulator will prepare a notice of approval of each Public Comment Rule and publish the notice, together with the summary of the proposed Rule prepared by New Regco and New Regco's summary of comments submitted and responses, if applicable, and will coordinate with staff of the other Recognizing Regulators.
- b. For any Housekeeping Rule, the Principal Regulator will publish the text of the proposed Rule and the notice for publication referred to in subparagraph 3(a)(III).

- c. Recognizing Regulators other than the Principal Regulator may publish any notice of approval.

## **11. Review of Protocol**

New Regco and staff of the Recognizing Regulators will, once every three years, conduct a joint review of the operation of this Protocol in order to identify issues that have arisen since the last review relating to compliance with this Protocol, the continuing appropriateness of the timelines and other requirements set out in this Protocol, and necessary or desirable amendments to this Protocol to address identified issues.

## **12. Waiving or Varying Protocol**

- a. New Regco may file a written request with the Principal Regulator, with copies to the other Recognizing Regulators to waive or vary any part of this Protocol.
- b. Within 7 days of receipt of New Regco's request, a Recognizing Regulator who objects to the granting of the waiver will notify the Principal Regulator of its objection, together with its reason(s) for the objection. If the Principal Regulator does not receive any notices of objection, the other Recognizing Regulators are deemed to not object to the waiver.
- c. The Principal Regulator will provide to New Regco on the eighth day of receipt of New Regco's request either:
  - i. written notice that a Recognizing Regulator objects to granting the waiver; or
  - ii. written notice that the waiver has been granted by the Principal Regulator on behalf of all the Recognizing Regulators.
- d. A waiver or variation may be specific or general and may be made for a time or for all time as mutually agreed by staff of the Recognizing Regulators.