

## T+2 Legal & Regulatory Working Group (LRWG)

### Agenda

**Thursday February 16, 2017 - 11:00 AM ET (8:00 AM PT)**

1. Approval of the January 17, 2017 meeting minutes Jamie Anderson
2. Matters arising from the January 17, 2017 meeting minutes
  - MFDA - T+2 preparedness questions (carry forward from Sept.2016) Charles Wang
3. Update from T2SC meeting held January 18, 2017 Jamie Anderson
4. Review of Open Issues

(a) SROs	IIROC - (#024; #051; #052)	Answerd Ramcharan
(b) Investment Funds	Prospectuses and contracts (#013)	Charles Wang
(c) NI 81-102	<ul style="list-style-type: none"> <li>• NI 81-102 <i>Investment Funds</i> (#004)</li> <li>• NI 81-104 <i>Commodity Pools</i> (#014)</li> </ul>	Jamie Anderson
(d) Investment funds not covered by NI 81-102	<ul style="list-style-type: none"> <li>• Scholarship Plans (#033)</li> <li>• Pooled Funds (#035)</li> <li>• Investment funds in Quebec not subject to NI 81-102 (#065)</li> <li>• Investment funds that are not reporting issuers (#066)</li> <li>• Labour Sponsored Investment Funds (#067)</li> </ul>	Jamie Anderson; CSA
(e) NI 62-104	<i>Takeover Bids and Issuer Bids</i> (#064)	Jamie Anderson

5. Issues to recommend to T2SC for closure Jamie Anderson
  - LRWG-032 Legislation and rules - various
6. Other Business
7. Next Meeting – Thursday March 16, 2017 @ 11am

### Conference Details

Local Dial-in (416) 933-8665    Toll-free Dial-in: 1-888-402-9166    **Conference ID:** 7312646#

## Minutes Tuesday January 17, 2017 - 11:00 AM ET (8:00 AM PT)

Jamie Anderson welcomed all to the LRWG meeting. A role call was taken and the attendees are listed at the end of the minutes.

### 1. Approval of the November 22, 2016 meeting minutes<sup>1</sup>

Jamie Anderson

The minutes were approved.

### 2. Matters arising from the November 22, 2016 meeting minutes

#### Questions regarding NI 81-102 *Investment Funds*

Jamie advised that there have been several concerns raised in regards to the status of NI 81-102. The concerns are that NI 81-102 still permits T+3 settlement even though the industry is moving to T+2 [s. 9.4(1); s. 9.4(2)]. Furthermore, s.9.4(4)(a) provides a T+4 buy-in timeframe (even if an investment fund is on T+2 settlement).

Optically, keeping “third business day” in NI 81-102 does not provide the investing public with clarity on the settlement period. Practically, investment funds will have the legal right to settle T+3 even when the industry has already decided to move to T+2.

In terms of buy-ins, a question is whether fund companies have liability exposure if buy-ins occur on T+4?

It was also raised that in the U.S., investment funds will automatically be switched to T+2 by the clearing agency. See DTCC notice issued November 29, 2016 (A#: 8297; P&S 7872).<sup>2</sup> In Canada, Fundserv is not automatically switching funds to T+2.

While the CSA has advised that it is of the view that no amendments to NI 81-102 are required, it is not opposed to receiving a proposal otherwise. In light of the concerns raised, the LRWG agreed that the T2SC should be accordingly informed and that the issue logs (LRWG-004 and LRWG-014) be re-opened until the concerns have been fully addressed. One possible solution is that the CCMA submit a letter to the CSA on the industry’s behalf regarding these matters.

Keith noted that the matter would be proposed for re-opening in order to obtain clarity (for the benefit of the industry) around the settlement provisions.

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<sup>1</sup> <http://ccma-acmc.ca/en/wp-content/uploads/LRWG-MeetingPackage-2016-October-27.pdf>

<sup>2</sup> [www.dtcc.com/~media/files/pdf/2016/11/29/a8297.pdf](http://www.dtcc.com/~media/files/pdf/2016/11/29/a8297.pdf). See also, CCMA 6<sup>th</sup> newsletter.

Barb advised that the CCMA comment letters that were submitted to the CSA, IIROC and the SEC did not raise the NI 81-102 matter as at the time of submission of the letters, it was understood that IFIC would be sending a separate letter and proceeding on a separate review stream.

In response to a question regarding hedge funds, Jamie noted that NI 81-102 would apply to all investment funds unless a specific fund was otherwise exempted from NI 81-102. He noted that there were a couple other issue logs applying to funds – pooled funds (#035) and scholarship plans (#033).

There was also a question whether there are any NI 81-102 investment funds that are not moving to a T+2 settlement cycle. The LRWG did not have an answer to this question.

There was a concern raised that investor cash flow may not be required on a T+3 basis yet the underlying securities of the investment fund are settling on a T+2 basis. This could cause operational and liquidity issues.

There was a question as to whether the intent for investment funds to move to T+2 has been changed. The LRWG believes there is still intent for investment funds to move to T+2.

Another comment was if the intent is for investment funds to move to T+2, then NI 81-102 should be amended to reflect such an industry standard. Generally, the LRWG did not understand any reluctance to amend NI 81-102 in order to make it clear the industry standard is T+2. It was noted that the few investment funds that settle on a timeline greater than T+3 in the current environment would not be NI 81-102 investment funds (otherwise they would not be in compliance). It was suggested that there may be some foreign funds that currently settle T+3 and may be unable to move to T+2.

It was noted that an overwhelming majority of the approximately 70,000 funds cleared by Fundserv would be moving to T+2.

### **MFDA - T+2 preparedness questions**

This item is a carry forward from the minutes of Wednesday September 21, 2016. Charles Wang had committed to report as to whether the MFDA plans to monitor mutual fund dealer readiness as IIROC plans for its dealer members (such as the possibility of asking T+2 preparedness questions during routine examinations). As Charles is not present, this item will be carried forward to the next meeting in February.

### **3. Update from T2SC meeting held November 23, 2017**

**Jamie Anderson**

Jamie reported that DTC submitted proposed housekeeping amendments and NSCC's comment period for its proposed changes ended December 8, 2016. DTCC's development work is in UAT and industry testing is planned to start February 12, 2017.

In terms of the U.S. Command Centre “Go/No-go” for September 5, 2017, it will be a recommendation as opposed to a decision (SEC will set the date). The expectation is that the recommendation, if required, will be provided months in advance of September 5, 2017 and there would not be a last minute decision that would negatively affect the markets.

In Canada, the CCMA submitted comment letters in response to the various requests for comments issued by the CSA, IIROC and the SEC. It was noted that self-clearing IIROC members are required to take part in industry-wide testing coordinated by CDS.

The readiness attestation/sign-off has been revised and presented to the T2SC. The plan is to finalize at the T2SC meeting on January 18, 2017. The groups that will be asked to complete the project acknowledgement form are clearing agencies, exchanges, ATS’s, vendors, and custodians. CDS will most likely use the same form for CDS Participants and IIROC will rely on these completed forms.

Jamie reported that the issue logs submitted by the LRWG to the T2SC were approved for closure.

#### **4. FINRA Rule amendments**

**Jamie Anderson**

Jamie reported that FINRA has submitted conforming Rule amendments to SEC Rule 15c6-1(a).<sup>3</sup>

The FINRA Rules proposed to be amended are:<sup>4</sup>

- 2341 (Investment Company Securities),
- 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”),
- 11150 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”),
- 11210 (Sent by Each Party),
- 11320 (Dates of Delivery),
- 11620 (Computation of Interest),
- 11810 (Buy-In Procedures and Requirements), and
- 11860 (COD Orders).

#### **5. Review of Open Issues**

##### **(a) Clearing Agencies**

##### **CDS (#001)**

**Fran Daly**

Fran was unable to attend.

Jamie reported he had received a written update from CDS. CDS is continuing work on the procedure amendments (there are no participant rule amendments). Some of the CDS items the

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<sup>3</sup> <https://www.sec.gov/rules/proposed/2016/34-78962.pdf>.

<sup>4</sup> [https://www.finra.org/sites/default/files/rule\\_filing\\_file/SR-FINRA-2016-047.pdf](https://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2016-047.pdf).

LRWG identified previously were covered off through other CDS amendments and process changes and a few other new amendments have been identified (these will be added to the issue log).

**CDCC (#003)**

**Martin Jannelle**

Martin reported that the proposed amendments for T+2, classified as housekeeping/administrative, were submitted to CDCC's regulators on January 15, 2017. The nature of the changes were for the most part changing a "3" to a "2" regarding settlement days.

**(b) Exchanges**

**Canadian Securities Exchange (#010; #030)**

**Jamie Anderson**

Jamie reported that the proposed amendments were passed by the Regulatory Advisory Committee of the CSE Board in November 23, 2016. The amendments will be submitted to the CSE regulatory authorities as housekeeping amendments in early 2017. Like the CDCC changes, the nature of the changes are basically changing a "3" to a "2".

**Aequitas NEO Exchange (#011; #050)**

**Cindy Petlock**

Cindy reported that the Aequitas amendments are also housekeeping. The plan is to obtain internal approval and submit to the regulators in Q1-2017.

**TSX (#009; #029), TSX-V (#015; #031), TSX Alpha (#016)**

**Mark Jarrett**

Mark was unable to attend.

Jamie reported he had received a written update from the TMX. The T+2 amendments to the TSX Rule Book, TSX Company Manual, and TSX-V Rule Book have been approved by the TMX Board and will be submitted to the regulators.

Amendments to the TSX-V Corporate Finance Manual are being drafted.

There are no amendments required for the TSX Alpha Trading Policies.

**Bourse de Montréal Inc. (#012)**

**Martin Jannelle**

Martin reported that the MX amendments (also housekeeping) would be submitted to its board in early March.

**(c) SROs**

**IIROC - member rules (#024); UMIR (#052)**

**Answerd Ramcharan**

Answerd was unable to attend the meeting.

Jamie noted that IIROC had published its amendments for comment. There was only one comment letter received – that letter was from the CCMA and supported the proposed amendments. It was intended that IIROC would publish an implementation notice in December 2016

**(d) Investment Funds**

**Prospectuses and contracts (#013)**

**Charles Wang**

Charles was unable to attend the meeting.

Jamie reported he had received a written update from Charles who advised Fundserv is preparing the checklist. Keith noted that based on the MFWG meeting minutes, it is not clear whether it is Fundserv or IFIC that is preparing the checklist.

Jamie noted that it should be reported to the LRWG to whom and when the checklist is targeted to be sent.

**Scholarship Plans (#033), Pooled Funds (#035)**

**CSA**

Jamie reported that some analysis has been conducted on these funds and sent to CSA members (BCSC, OSC, AMF), Fundserv, MFDA, and IFIC to obtain some assistance and guidance.

Nick reported that the review of the analysis is almost completed and will be passed along shortly.

**(e) Legislation & Rules**

**NI 62-104 Takeover Bids and Issuer Bids (Item 7 in #032)**

**Jamie Anderson**

Jamie reported that item was referred to the OWG for consideration. The OWG has reported that this matter will be addressed through CDS documentation dealing with Corporate Action activities. As such, the OWG did not have any further work to do on this item.

Jamie also noted that an inquiry was made to the US-ISC to see how the U.S. is interpreting their tender offer provisions.

**6. Issues completed to report to T2SC for approval**

**Jamie Anderson**

The following was agreed:

- Issue Log LRWG-004 (NI 81-102 *Investment Funds*) would be tabled with the T2SC for re-opening.
- Issue Log LRWG-014 (NI 81-104 *Commodity Pools*) would be tabled with the T2SC for re-opening.

- Issue Log LRWG-015 (TSX V – Rule Book) would be tabled with the T2SC for re-opening as there are amendments for T+2 (it was previously closed).
- Issue Log LRWG-016 (TSX Alpha – Trading Policies) would be tabled with the T2SC for closure consideration as no amendments are required.
- Issue Log LRWG-049 (Nasdaq CXC Limited – Trading Rules and Listing Policies) would be tabled with the T2SC for closure consideration. The issue log was opened originally as a placeholder in the event Nasdaq CXC became a recognized exchange prior to the move to T+2. At this point, the issue log can be closed (it can re-opened in future if necessary).

## 7. Other Business

There was no other business raised.

## 8. Next Meeting – ~~Tuesday February 24~~ \*Thursday Feb 16, 2016 @ 11am

Jamie thanked everyone for their attendance and input. The meeting was then adjourned.

\* meeting date changed

## List of Attendees

Aequitas NEO Exchange	Cindy Petlock
Bourse de Montréal / CDCC	Martin Jannelle
Bloomberg	Ed Moran
Canaccord	John Coyle
CCMA	Barb Amsden
CCMA	Jamie Anderson (Chair)
CCMA	Keith Evans
CGI	Dave Locke
CGI	Margaret Stephens
CIBC	Terry Moore
CIBC Mellon	Dina Martinovic
CIBC Mellon	Carol Revoredo
Desjardins	Laura Iadisernia
Fidelity	Michael Gold

Fidelity

Joanne Taylor

L&T Infotech

Mike Lamacchia

Northern Trust

Scott Kelly

Ontario Securities Commission

Nick Hawkins

RBC

Pina Teti

TD

Rob Candido