

## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 RS Market Integrity Notice – Notice of Commission Approval – Amendments Respecting Trading During Certain Securities Transactions

March 4, 2005

No. 2005-007

#### NOTICE OF AMENDMENT APPROVAL

#### AMENDMENTS RESPECTING TRADING DURING CERTAIN SECURITIES TRANSACTIONS

##### Summary

On February 25, 2005, the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission (“OSC”) and, in Quebec, the Autorité des marchés financiers (the “Recognizing Regulators”) approved amendments (the “Amendments”) to the Universal Market Integrity Rules (“UMIR”) to:

- combine prohibitions and restrictions relating to market stabilization and market balancing activities into a single rule;
- introduce exemptions from the prohibitions and restrictions relating to market stabilization and market balancing for trading in “highly-liquid” securities and exchange-traded funds; and
- harmonize the UMIR provisions governing restrictions and prohibitions on trading activities by Participants with requirements of the OSC governing the trading activities of dealers and parties connected to the issuer.

On February 15, 2005 the OSC made as a rule under the *Securities Act* (Ontario) OSC Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* (the “OSC Rule”) and adopted Companion Policy 48-501CP to the OSC Rule. The OSC also revoked Ontario Securities Commission Policy 5.1, paragraph 26 and Ontario Securities Commission Policy 62-601. Unless the Minister responsible for the administration of the *Securities Act* (Ontario) (the “Act”) rejects the OSC Rule or returns it for further consideration, the OSC Rule and the companion policy will come into force on May 9, 2005.

**The Amendments will become effective on the date the OSC Rule comes into force.** Until that date, the existing provisions of Rule 7.7 (Restrictions on Trading by a Participant Involved in a Distribution) and Rule 7.8 (Restrictions on Trading During a Securities Exchange Take-over Bid) will continue to apply.

##### Background

Concurrent with the publication of the Request for Comments in Market Integrity Notice 2003-018 on the proposed amendments to UMIR (the “Original Proposal”), the OSC published for comment at (2003) 26 OSCB 6157 proposed OSC Rule 48-501 (the “Original OSC Rule”). Based on the comments received, both RS and the OSC proposed revisions to their original proposals and republished revised proposals for a second comment period. RS issued Market Integrity Notice 2004-024 on September 10, 2004 (the “Revised Proposal”) and the OSC published revised proposals on September 10, 2004 at (2004) 27 OSCB 7766 (“Revised OSC Rule”).

In response to the publication for comment of the Revised Proposal and the Revised OSC Rule, RS and the OSC received 11 submissions from 10 commenters. As a result of the comments received and further consideration by the OSC and RS, certain non-material revisions have been made to the Revised Proposal. Generally, the comments received by RS were applicable to the Revised OSC Rule as well as the Revised Proposal. Appendix “C” has been prepared jointly by staff of RS and the OSC and is a summary of the comments received on the revised proposals together with the responses of RS and the OSC to those comments.

##### Summary of the Amendments

The Amendments govern the activities of dealers, issuers and others in connection with a distribution of securities, securities exchange take-over bid, issuer bid or amalgamation, arrangement, capital reorganization or similar transaction. The

Amendments are intended to prescribe what is an acceptable activity and otherwise restrict trading activities to preclude manipulative conduct by persons with an interest in the outcome of the distribution of securities or other transactions.

The Amendments impose prohibitions or restrictions on a “dealer-restricted person” trading in certain securities during a “restricted period”. A dealer-restricted person is defined as including a Participant that has been retained as:

- an underwriter in a prospectus distribution or restricted private placement;
- an agent, but not as an underwriter, in a restricted private placement that involves the distribution of more than 10% of the issued and outstanding shares and the Participant is entitled to sell more than 25% of the distribution;
- a dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange takeover bid or issuer bid if a security is offered as consideration; or
- a soliciting dealer or adviser in respect of the approval of an amalgamation, arrangement, capital reorganization or similar transaction.

In addition, a number of persons connected to the Participant will be considered to be a dealer-restricted person including:

- a related entity of the Participant (but not including various separate or distinct departments or divisions for which there are adequate policies and procedures to prevent the flow of information);
- a dealer, a partner, director, officer, or employee of the Participant or a related entity of the Participant; and
- a person acting jointly or in concert with the Participant or one of the connected persons.

A restricted security is defined as:

- an offered security, which includes a listed or quoted security:
  - that is the subject of a public distribution,
  - offered in a securities exchange take-over bid or an issuer bid, and
  - issuable pursuant to an amalgamation, arrangement, capital reorganization or similar transaction; or
- a connected security, which includes a listed or quoted security:
  - into which the offered security is immediately convertible, exchangeable or exercisable,
  - that, by the terms of the offered security, may significantly determine the value of the offered security,
  - into which the offered security is exercisable, if the offered security is a special warrant, and
  - that is an equity security of the issuer of the offered security.

During the restricted period (which, in the case of a public distribution, generally commences two days prior to the determination of pricing and ends on the completion of the selling process and, in the case of a take-over bid, issuer bid, amalgamation, arrangement, capital reorganization or similar transaction, commences on the date of the dissemination of the circular or similar document and ends on the termination of the bid or transaction or the approval of the transaction), a dealer-restricted person is not permitted to bid for or purchase a restricted security or attempt to “induce or cause any person to purchase a restricted security”. A number of exemptions apply including the ability to bid for or purchase a restricted security:

- in the case of an offered security, at a price which does not exceed the lesser of:
  - the price at which the offered security will be issued if that price has been determined, and
  - the last independent sale price at the time of the entry of the order to purchase;
- in the case of a connected security, at a price which does not exceed the lesser of:

- the last independent sale price at the commencement of the restricted period, and
- the last independent sale price at the time of the entry of the order to purchase;
- that is a “highly-liquid security” (being a security that trades an average of at least 100 times per day with an average trading value of \$1,000,000 per trading day over a 60-day period or a security subject to Regulation M (“Reg. M.”) of the United States Securities and Exchange Commission (“SEC”) and is considered an “actively-traded security” for the purposes of Reg. M) or an “Exchange-traded Fund” (being a mutual fund the securities of which are listed or quoted and in continuous distribution for the purposes of securities legislation); and
- that is an unsolicited client order or a client order that was solicited prior to the commencement of the restricted period.

Exemptions are also provided for trades that are:

- basket trades (at least 10 securities with restricted securities comprising not more than 20% of the value of the transaction);
- Program Trades (undertaken in conjunction with a trade in a derivative in accordance with marketplace rules);
- rebalancing of portfolios based on index changes;
- arbitrage activities for inter-listed securities;
- activities pursuant to market maker obligations in accordance with marketplace rules; and
- activities undertaken by derivatives market makers.

Where permitted by applicable securities legislation, a dealer-restricted person may “attempt to induce or cause a person to purchase a restricted security” by:

- soliciting tenders to a take-over bid or issuer bid; and
- publishing or disseminating information, opinions or recommendations on any other restricted security if similar information opinions or recommendations are included on other issuers or if the security of the issuer is a “highly-liquid security”.

Subject to certain limited exemptions, a dealer-restricted person may not bid for or purchase a restricted security during the applicable restricted period on behalf of an “issuer-restricted person” (which includes the issuer, a selling securityholder, an affiliated entity, an associated entity, an insider, an account over which any of these persons exercises direction or control, and any person acting jointly or in concert with any of these other persons).

### **Summary of Changes from the Revised Proposal**

Based on comments received in response to the Request for Comments contained in Market Integrity Notice 2004-024 and based on comments received from the Recognizing Regulators, RS made a number of changes to the Revised Proposal. The text of the Amendments is set out in Appendix “A” and the revisions made to the Revised Proposal are highlighted in Appendix “B”. The following is a summary of the significant changes made to the Revised Proposal on the adoption of the Amendments:

### **Definitions**

- ***“restricted period” – commencement of period for amalgamations, arrangements or capital reorganizations***

In the Revised Proposal, the restricted period in connection with a take-over bid, issuer bid, amalgamation, capital reorganization or similar transaction began on the date of the take-over bid circular, issuer bid circular, similar document or information circular (materials) for the transaction. Comment was received that the date of dissemination of the materials would be preferable to the date of the materials. The Amendments harmonize with Reg. M so that the restrictions start on the date of the commencement of the dissemination of the materials.

- ***“restricted period” – selling process has ended***

In the Revised Proposal, the restricted period for prospectus distributions and private placements ended on the date that the selling process ended (which for a prospectus distribution meant that the receipt for the prospectus had been issued, the Participant had allocated all of its portion of the securities, and delivered to each subscriber a copy of the prospectus) and all stabilization arrangements relating to the offered security were terminated. Commenters wrote requesting more consistency with Reg. M and greater clarity.

As a result of comments received, several changes have been made. Rule 1.2(6) has been amended with respect to when the selling process shall be considered to end. The requirement that a copy of the prospectus be delivered to each subscriber has been deleted. In summary, there are three requirements for the end of the selling process: a receipt has been issued for the final prospectus, the Participant has allocated all of its portion of the securities to be distributed and all selling efforts have ceased.

Policy 1.2 has been amended to clarify that securities allocated to a Participant in a distribution that are transferred to the Participant’s inventory account at the end of the distribution would be considered to be distributed and therefore that subsequent sales of these securities will not be subject to the restrictions as long as the subsequent sales are not otherwise considered distributions under securities legislation. Clarification has also been added to Policy 1.2 to provide where there is a syndicate, the syndicate must be broken for the restricted period to have ended.

- ***“dealer-restricted person” – agents***

Comments were received regarding the scope of the definition of “dealer-restricted person” as it relates to agents, and in particular, submissions were made that including agent was unnecessary since Participants acting as agents, who would not be considered to be underwriters pursuant to securities legislation, would not generally have the same incentive to manipulate. The OSC and RS believe that where a distribution takes place by way of a private placement, there is still sufficient incentive for a dealer to engage in manipulation where the offering is of sufficient size and the dealer’s allocation is significant enough. To capture when an agent’s involvement is significant, and hence there is a greater incentive to manipulate, the definition in the Amendments provides that when a Participant is acting as an agent but not as an underwriter in a “restricted private placement” of securities, the Participant will be considered to be a “dealer-restricted person” only if the number of securities issued under the restricted private placement would constitute more than 10% of the total issued and outstanding securities and the Participant has been allotted and is entitled to sell more than 25% of the securities to be issued.

- ***“issuer-restricted person” – carve out for insiders without material knowledge***

The definition of “issuer-restricted person” includes insiders of the issuer and selling securityholders. Concern was expressed that certain institutions, such as for example firms that manage discretionary accounts, could become insiders under clause (c) of the definition of insider under the Act or similar provisions of applicable securities legislation by virtue of owning or having control or discretion over more than 10% of the voting securities of an issuer but do not necessarily have an interest in the outcome of a distribution or transaction nor any knowledge which is any different from a securityholder who is not an insider. The definition of “issuer-restricted person” has been changed in the Amendments to exclude a person who is an insider of an issuer only by virtue of clause (c) of the definition of “insider” under the Act or similar provisions of applicable securities legislation if that person has not had within the preceding 12 months any board or management representation in respect of the issuer or selling securityholder and has no knowledge of any material information concerning the issuer or its securities that has not been generally disclosed.

- ***“offered security”***

The Amendments clarify that an “offered security” must be either a listed security or a quoted security including in circumstances where the security is be offered in connection with a take-over bid, issuer bid, amalgamation, arrangement, capital reorganization or similar transaction.

- ***“public distribution”***

In the Revised Proposal, the term “public distribution” was defined as a distribution of a security pursuant to a prospectus or private placement. From the comments received, it was clear that there was some confusion as to type of distribution to which restrictions would apply. The term has been removed and replaced in the Amendments with the terms “prospectus distribution” and “restricted private placement”. The term “restricted private placement” has been defined as a distribution pursuant to subsection 72(1)(b) of the Act or section 2.3

of Ontario Securities Commission Rule 45-501 – Exempt Distributions or similar provisions of applicable securities legislation.

### Exemptions

- ***Bids or Purchases at the Last Independent Sale Price***

Comments were received expressing concern that the exemption would limit the market stabilization price to the lesser of the distribution price (or if not determined, the last independent sale price) and the best independent bid price at the time of the bid and may, in certain circumstances, be more restrictive than the current exemption which restricts the bid to the lesser of the issue price (if determined) and the last independent sale price. The OSC was of the view that the price of the last independent sale is the fairest indicator of where market is since it represents an actual transaction. Use of the last independent sale price is also consistent with the initial stabilizing price in Reg. M. Further, the maximum price at which stabilization activities may take place has been revised in the rule. In the case of an offered security, the bid or purchase must not exceed the lesser of the distribution price and the last independent sale price. In the case of a connected security, the bid or purchase must not exceed the lesser of the last independent sale price at the commencement of the restricted period and at the time of the bid or purchase.

### Research Reports

- ***Research on single-issuers - Exemption for highly-liquid securities***

Considerable comment was received regarding the removal of the exemption for the issuance of single-issuer research reports in the first publication of the proposed rule. In particular, commenters noted that Ontario dealers would be significantly disadvantaged compared to their U.S. counterparts in a cross-border offering. Reg. M permits single-issuer reports to be issued, provided certain conditions are met including that the research is contained in a publication which is distributed with reasonable regularity in the normal course of business. In order to facilitate cross-border offerings by harmonizing regulatory requirements in the Amendments and Reg. M, and to provide a level playing field between issuers inter-listed with a market in the United States and other issuers in Ontario, the Amendments include an exemption for research reports in respect of issuers of securities which meet the definition of a “highly-liquid security”.

### Differences Between the Amendments and OSC Rule

Concurrent with the publication of this Market Integrity Notice regarding the approval of the Amendments, the OSC is publishing a notice regarding the Commission’s approval of the OSC Rule and the rescission of paragraph 26 of OSC Policy 5.1 and OSC Policy 62-601.

The provisions adopted under the UMIR parallel the provisions included in the OSC Rule. There are a number of minor differences in language and structure that reflect:

- the use of different defined terms and drafting protocols;
- the application of the UMIR provisions in all jurisdictions in which RS is recognized as a self-regulatory entity as compared to the application of the OSC Rule in Ontario only;
- the application of the UMIR provisions to listed securities and quoted securities as compared to the application of the OSC Rule to all securities the trading of which are subject to transparency requirements under National Instrument 21-101 – *Marketplace Operation*; and
- the application of the UMIR provisions to Participants and Access Persons as compared to the application of the OSC Rule to all persons, including issuers and dealers.

It should be noted that clause 3.1(i) of the OSC Rule allows a dealer to rely on exemptions contained in UMIR. In particular, the UMIR provisions allow a dealer-restricted person to bid for or purchase a restricted security as part of:

- a basket trade;
- a Program Trade;
- rebalancing of portfolios based on index changes;

- arbitrage activities for inter-listed securities;
- activities pursuant to Market Maker Obligations; and
- activities undertaken by derivatives market makers.

There are no substantive differences between the Amendments and the OSC Rule other than as a result of the four factors outlined above.

#### **Future Harmonization with Regulation M and the OSC Rule**

One of the key purposes of the Amendments was to harmonize to the extent possible with the OSC Rule and Reg. M.

The SEC published for comment on December 9, 2004 proposed amendments to Reg. M, after having proposed amendments to the provisions regarding research reports on November 3, 2004. The more significant proposed amendments to Reg. M would:

- amend the definition of restricted period for an initial public offering, merger, acquisition and exchange offer;
- update the dollar value thresholds for “actively-traded security” to take into account inflation since the adoption of Reg. M; and
- require disclosure of syndicate covering transactions and penalty bids when stabilization is undertaken.

RS will consider any amendments to Reg. M when adopted. If appropriate, RS may propose additional amendments to UMIR at a future date. It would be anticipated that any amendments to UMIR would be made in conjunction with amendments by the OSC to the OSC Rule.

#### **List of “Highly-Liquid Securities”**

The amendments provide that a “highly-liquid security” will be exempt from certain of the restrictions and prohibitions. A “highly-liquid security” is defined as a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day; or
- (b) is subject to Reg. M and is considered to be an “actively-traded security” under that regulation.

RS intends to maintain and distribute a list of securities which, based on data available to RS, fall within the definition of a “highly-liquid security” as a result of achieving the required number of average daily trades and average daily trading value on Canadian marketplaces. RS will not maintain a list of securities considered to be “actively-traded” under Reg. M. Persons may rely on this list or they may independently verify if a security meets the requirements of a “highly-liquid security” so long as they retain a record of the data they rely upon in verifying the requirements. RS expects that the list will be available on its website (at [www.rs.ca](http://www.rs.ca)) on or about May 2, 2005.

#### **Appendices**

- Appendix “A” sets out the text of the amendments to UMIR and the Policies to replace the current Rules 7.7 and 7.8;
- Appendix “B” highlights the changes made to the Amendments from the Revised Proposal; and
- Appendix “C” contains a summary of the comments received by RS on the Revised Proposal and by the OSC on the Revised OSC Rule together with the joint response of RS and the OSC to each of the comments.

**Questions**

Questions concerning this notice may be directed to:

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**Appendix "A"**

***Universal Market Integrity Rules***

**AMENDMENTS RESPECTING TRADING DURING CERTAIN SECURITIES TRANSACTIONS**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by deleting the definition of "restricted person".
2. Rule 1.1 is amended by deleting the definition of "offered security" and substituting the following:

**"offered security"** means all securities of the class of security that is, or will be upon issuance, a listed security or a quoted security and:

  - (a) is offered pursuant to a prospectus distribution or a restricted private placement;
  - (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under securities legislation;
  - (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under securities legislation; or
  - (d) would be issuable to a securityholder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from securityholders that will receive the offered security in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities legislation,

provided that, if the security described in clauses (a) to (d) is a unit comprised of more than one type or class, each security comprising the unit shall be considered to be an "offered security".
3. Rule 1.1 is amended by adding the following definitions:

**"basket trade"** means a simultaneous purchase of at least 10 listed securities or quoted securities, provided that any restricted security comprises not more than 20% of the total value of the transaction.

**"connected security"** means, in respect of an offered security:

  - (a) a listed security or quoted security into which the offered security is immediately convertible, exchangeable or exercisable unless the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the listed security or quoted security at the commencement of the restricted period;
  - (b) a listed security or quoted security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may significantly determine the value of the offered security;
  - (c) if the offered security is a special warrant, a listed security or quoted security which would be issued on the exercise of the special warrant; and
  - (d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security.

**"dealer-restricted person"** means, in respect of a particular offered security:

  - (a) a Participant that:
    - (i) is an underwriter, as defined in applicable securities legislation, in a prospectus distribution or a restricted private placement,



- (ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities and:
  - (A) the number of securities to be issued under the restricted private placement would constitute more than 10% of the issued and outstanding offered securities, and
  - (B) the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
- (iii) has been appointed by an offeror to be the dealer-manager, manager or soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
- (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining securityholder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law,

where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction;

- (b) a related entity of the Participant referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of the Participant if:
  - (i) the Participant maintains and enforces written policies and procedures in accordance with Rule 7.1 that are reasonably designed to prevent the flow of information from the Participant regarding the offered security and the related transaction,
  - (ii) the Participant has no officers or employees that solicit client orders or recommend transactions in securities in common with the related entity, department or division, and
  - (iii) the related entity, department or division does not during the restricted period in connection with the restricted security:
    - (A) act as a market maker (other than pursuant to Market Maker Obligations),
    - (B) solicit client orders, or
    - (C) enter principal orders or otherwise engage in proprietary trading;
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity, of the Participant referred to in clause (a) or for a related entity of the Participant referred to in clause (b); or
- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

**“equity security”** means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding-up of the issuer, in its assets.

**“highly-liquid security”** means a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day; or

- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” under that regulation.

“**issuer-restricted person**” means, in respect of a particular offered security:

- (a) the issuer of the offered security;
- (b) a selling securityholder of the offered security in connection with a prospectus distribution or restricted private placement;
- (c) an affiliated entity, an associated entity or insider of the issuer or selling securityholder of the offered security as determined in accordance with the provisions of applicable securities legislation but does not include a person who is an insider of an issuer by virtue of clause (c) of the definition of “insider” under the *Securities Act* (Ontario) and similar provisions of applicable securities legislation if that person:
  - (i) does not have, and has not had in the previous 12 months, any board or management representation in respect of the issuer or selling securityholder; and
  - (ii) does not have knowledge of any material information concerning the issuer or its securities that has not been generally disclosed; or
- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

“**last independent sale price**” means the last sale price of a trade, other than a trade that a dealer-restricted person knows or ought reasonably to know has been executed by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.

“**restricted period**” means, for a dealer-restricted person or an issuer-restricted person, the period:

- (a) in connection with a prospectus distribution or a restricted private placement of any offered security, commencing two trading days prior to the day the offering price of the offered security is determined and ending on the date the selling process has ended and all stabilization arrangements relating to the offered security are terminated provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant enters into an agreement or reaches an understanding to participate in the prospectus distribution or restricted private placement of securities, whether or not the terms and conditions of such participation have been agreed upon if that date is later;
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the securities exchange take-over bid circular or issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid; and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date for approval of the transaction by the securityholders that will receive the offered security or the termination of the transaction by the issuer or issuers.

“**restricted private placement**” means a distribution of offered securities made pursuant to clause 72(1)(b) of the *Securities Act* (Ontario) or section 2.3 of Ontario Securities Commission Rule 45-501 - *Exempt Distributions* or similar provisions of applicable securities legislation.

“**restricted security**” means:

- (a) the offered security; or
- (b) any connected security.

4. Rule 1.2 is amended by adding the following subsections:
- (6) For the purposes of the definition of "restricted period":
    - (a) the selling process shall be considered to end:
      - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
      - (ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering; and
    - (b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements.
  - (7) Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term "associate" in applicable securities legislation and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person.

5. Rule 7.7 is deleted and the following substituted:

**Trading During Certain Securities Transactions**

- (1) **Prohibitions** - Except as permitted, a dealer-restricted person shall not at any time during the restricted period:
  - (a) bid for or purchase a restricted security for an account:
    - (i) of a dealer-restricted person, or
    - (ii) over which the dealer-restricted person exercises direction or control; or
  - (b) attempt to induce or cause any person to purchase a restricted security.
- (2) **Prohibitions on Acting for Issuer-Restricted Persons** - Except as permitted, if a dealer-restricted person knows or ought reasonably to know that a person is an issuer-restricted person, the dealer-restricted person shall not at any time during the restricted period applicable to a particular issuer-restricted person bid for or purchase a restricted security for the account of that issuer-restricted person or an account over which that issuer-restricted person exercises direction or control.
- (3) **Deemed Recommencement of a Restricted Period** - If a Participant appointed to be an underwriter in a prospectus distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the Participant in connection with the prospectus distribution or the restricted private placement then a restricted period shall be deemed to have commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the Participant has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

- (4) **Exemptions** - Subsection (1) does not apply to a dealer-restricted person in connection with:
- (a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:
    - (i) in the case of an offered security:
      - (A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined, and
      - (B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,
    - (ii) in the case of a connected security:
      - (A) the last independent sale price at the commencement of the restricted period, and
      - (B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,

provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on an organized regulated market outside of Canada that publicly disseminates details of trades executed on that market other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;
  - (b) a restricted security that is:
    - (i) a highly-liquid security,
    - (ii) a unit of an Exchange-traded Fund, or
    - (iii) a connected security of a security referred to in subclause (i) or (ii);
  - (c) a bid or purchase by a dealer-restricted person on behalf of a client, other than a client that the dealer-restricted person knows or ought reasonably to know is an issuer-restricted person provided that:
    - (i) the client order has not been solicited by the dealer-restricted person, or
    - (ii) if the client order was solicited, the solicitation by the dealer-restricted person occurred prior to the commencement of the restricted period;
  - (d) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into by the dealer-restricted person prior to the commencement of the restricted period;
  - (e) a bid for or purchase of a restricted security is made pursuant to a Small Securityholder Selling and Purchase Arrangement undertaken in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
  - (f) the solicitation of a tender of securities to a securities exchange take-over bid or issuer bid;

- (g) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement;
  - (h) a bid or purchase of a restricted security to cover a short position entered into prior to the commencement of the restricted period;
  - (i) a bid or purchase of a restricted security is solely for the purpose of rebalancing a portfolio, the composition of which is based on an index as designated by the Market Regulator, to reflect an adjustment made in the composition of the index;
  - (j) a purchase that is or a bid that on execution would be:
    - (i) a basket trade, or
    - (ii) a Program Trade; or
  - (k) a bid for a purchase of a restricted security for an arbitrage account and the dealer-restricted person knows or has reasonable grounds to believe that a bid enabling the dealer-restricted person to cover the purchase is then available and the dealer-restricted person intends to accept such bid immediately.
- (5) **Exemptions on Acting for an Issuer-restricted Person** - Subsection (2) does not apply to a dealer-restricted person in connection with:
- (a) the exercise by an issuer-restricted person of an option, right, warrant, or a similar contractual arrangement held or entered into by the issuer-restricted person prior to the commencement of the restricted period;
  - (b) a bid or purchase by an issuer-restricted person of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
  - (c) an issuer bid described in clauses 93(3)(a) through (d) of the *Securities Act* (Ontario) or similar provisions of applicable securities legislation if the issuer did not solicit the sale of the securities sold under those provisions;
  - (d) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid; or
  - (e) a subscription for or purchase of an offered security pursuant to a prospectus distribution or a restricted private placement.
- (6) **Compilations and Industry Research** - Despite subsection (1), a dealer-restricted person may, if permitted under applicable securities legislation, publish or disseminate any information, opinion or recommendation relating to the issuer of a restricted security, if the information, opinion or recommendation is in a publication that is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person and:
- (a) the restricted security is a highly-liquid security; or
  - (b) the publication:
    - (i) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person, and
    - (ii) gives no materially greater space or prominence to the information, opinion or recommendation related to the restricted security or the issuer of the restricted security than that given to other securities or issuers.

- (7) **Transactions by Person with Market Maker Obligations** - Despite subsection (1), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account:
- (a) with the prior approval of a Market Integrity Official, enter a bid to move the calculated opening price of a restricted security to a more reasonable level;
  - (b) purchase a restricted security pursuant to their Market Maker Obligations; and
  - (c) bid for or purchase a restricted security:
    - (i) that is traded on another market for the purpose of matching a higher-priced bid posted on such market,
    - (ii) that is convertible, exchangeable or exercisable into another listed security for the purpose of maintaining an appropriate conversion, exchange or exercise ratio, and
    - (iii) to cover a short position resulting from sales made under their Market Maker Obligations.
- (8) **Transactions by the Derivatives Market Maker** - Despite subsection (1), a dealer-restricted person who is a derivatives market maker with responsibility for a derivative security the underlying interest of which is a restricted security may, for their derivatives market making trading account, bid for or purchase a restricted security if:
- (a) the restricted security is the underlying security of the option for which the person is the specialist;
  - (b) there is not otherwise a suitable derivative hedge available; and
  - (c) such bid or purchase is:
    - (i) for the purpose of hedging a pre-existing options position,
    - (ii) reasonably contemporaneous with the trade in the option, and
    - (iii) consistent with normal market-making practice.
- (9) **Application of Exemptions to a Dealer-Restricted Person and Issuer-Restricted Person** - Where a dealer-restricted person is also an issuer-restricted person the exemptions in subsections (4), (6), (7) and (8) continue to be available to the dealer-restricted person.

6. Rule 7.8 is deleted.

The Policies under the Universal Market Integrity Rules are hereby amended as follows:

1. The following is added as Policy 1.1:

**Policy 1.1 - Definitions**

**Part 1 – Definition of “connected security”**

The definition of a “connected security” includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may “significantly determine” the value of the offered security. The Market Regulator takes the view that, absent other mitigating factors, a connected security “significantly determines” the value of the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.

## Part 2 – Definition of “Exchange-traded Fund”

An “Exchange-traded Fund” is defined, in part, as a mutual fund designated by the Market Regulator as an exchange-traded fund for the purposes of the Rule. As guidance, an exchange-traded fund may be designated by the Market Regulator where it is determined that it would be difficult to manipulate the price of units of the mutual fund.

It would be the intention of the Market Regulator that the designation of a security would be done after consultation with the Ontario Securities Commission or other applicable securities regulatory authority. Acceptance of the designation by applicable securities regulatory authorities would be a pre-condition to any designation of a security as an “Exchange-traded Fund”. Other factors which the Market Regulator would take into account are:

- the liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- whether the units are redeemable at any time for a “basket” of the underlying securities in addition to cash;
- whether a “basket” of the underlying securities may be exchanged at any time for units of the fund;
- whether the fund tracks a recognized index on which information is publicly disseminated and generally available through the financial media; and
- whether derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace.

None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits before a request is made to the applicable securities regulatory authority to concur in the designation.

2. The following is added as Policy 1.2:

### Policy 1.2 - Interpretation

#### Part 1 – Meaning of “acting jointly or in concert”

The definitions of a “dealer-restricted person” and “issuer-restricted person” include a person acting jointly or in concert with a person that is also a dealer-restricted person or an issuer-restricted person, as applicable, for a particular transaction. For the purposes of these definitions, “acting jointly or in concert” has a similar meaning to that phrase as defined in section 91 of the *Securities Act* (Ontario) or similar provisions of applicable securities legislation, with necessary modifications. In the context of these definitions only, it is a question of fact whether a person is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases any restricted security will be presumed to be acting jointly or in concert with such dealer- or issuer-restricted person.

#### Part 2 – Meaning of “selling process has ended”

The definition of “restricted period”, with respect to a prospectus distribution and a “restricted private placement”, refers to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Rule 1.2(6)(a) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the Participant has distributed all securities allocated to it and, is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the Participant is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate’s short position. If the Participant or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a Participant that are held

and transferred to the inventory account of the Participant at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the inventory account of the Participant.

3. The following is added as Policy 7.7:

**Policy 7.7 – Trading During Certain Securities Transactions**

**Part 1 – Manipulative or Deceptive Activity**

Provisions prohibiting manipulative or deceptive activities, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets, are contained in Rule 2.2. Rule 7.7 generally prohibits purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. Rule 7.7 also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low possibility of manipulation. However, the Market Regulator is of the view that notwithstanding that certain trading activities are permitted under Rule 7.7, these activities continue to be subject to the general provisions relating to manipulative or deceptive activities in Rule 2.2 and the provisions on manipulation and fraud found in applicable securities legislation such that any activities carried out in accordance with Rule 7.7 must still meet the spirit of the general anti-manipulation provisions.

**Part 2 – Market Stabilization and Market Balancing**

Rule 7.7(4)(a) provides a dealer-restricted person with an exemption from the prohibitions in subsection (1) for market stabilization and market balancing activities subject to price limitations. Market stabilization and market balancing activities should be engaged in for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security.

The Market Regulator considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where dealer knows or should reasonably know that the market price is not fairly and properly determined by supply and demand. This might exist where, for example, the dealer is aware that the market price is a result of inappropriate activity by a market participant or that there is undisclosed material information regarding the issuer.

Market balancing activities should contribute to a fair and orderly market by contributing to price continuity and depth and by minimizing supply-demand disparity. Market balancing does not seek to prevent or unduly retard any price movements, but merely to prevent erratic or disorderly changes in price.

**Part 3 – Short Position Exemption**

Rule 7.7(4)(h) provides an exemption from the prohibitions in subsection (1) for a dealer-restricted person in connection with a bid for or purchase to cover a short position provided that short position was entered into before the commencement of the restricted period. Short positions entered into during the restricted period may be covered by purchases made in reliance upon the market stabilization exemption in Rule 7.7(4)(a), subject to the price limits set out in that exemption. (See “Part 5 – Trading Pursuant to Market Maker Obligations” for a discussion of the ability of persons with Market Maker Obligations to cover short positions arising during the restricted period pursuant to their Market Maker Obligations.)

**Part 4 – Research**

The Market Regulator is of the view that although sections 4.1 and 4.2 of OSC Rule 48-501 do permit a dealer-restricted person to disseminate research reports, this dissemination continues to be subject to the usual restrictions that are applicable to a dealer-restricted person in possession of material information regarding the issuer that has not been generally disclosed.



Rule 7.7(6) provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. The Rule requires that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Market Regulator considers that it is a question of fact whether a publication was disseminated “with reasonable regularity” and whether it was in the “normal course of business”. A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers’ earnings and revenues would likely only be permitted if they had previously been included on a regular basis. The Market Regulator may consider the distribution channels for the dissemination of the publication when considering whether a publication was “in the normal course of business”. The research should be distributed through the dealer-restricted person’s usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.

Rule 7.7(6)(b) requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer’s industry. In this context, reference should be made to the relevant industry when determining what constitutes a “substantial number of issuers”. Generally, the Market Regulator would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report, and in any event the number of issuers should not be less than three.

#### **Part 5 – Trading Pursuant to Market Maker Obligations**

Under Rule 7.7(7)(b), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account, purchase a restricted security pursuant to their Market Making Obligations. Not every purchase of a restricted security by a Market Maker will be considered to undertaken pursuant to their Market Making Obligations. For example, if a market making system of a marketplace permits a Market Maker to voluntarily participate in trades that participation may only result in purchases that are:

- made at prices which are permitted by Rule 7.7(4)(a); or
- to cover a short position resulting from sales made under their Market Maker Obligations.

Use of a voluntary participation feature in other circumstances, may result in the Market Maker not complying with the prohibitions or restrictions on trading under Rule 7.7.

“Market Maker Obligations” are defined as the obligations imposed by the rules of an Exchange or a QTRS on a member or user or a person employed by a member or user to guarantee:

- a two-sided market for a particular security on a continuous or reasonably continuous basis; and
- the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace.

Appendix "B"

*Universal Market Integrity Rules*

**AMENDMENTS RESPECTING TRADING DURING CERTAIN SECURITIES  
TRANSACTIONS MARKED TO THE REVISED PROPOSAL  
IN MARKET INTEGRITY NOTICE 2004-024**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by deleting the definition of "restricted person".
2. Rule 1.1 is amended by deleting the definition of "offered security" and substituting the following:

**"offered security"** means all securities of the class of security that is, or will be upon issuance, a listed security or a quoted security and:

  - (a) ~~is a listed security or quoted security of the class that~~ is offered pursuant to a prospectus public distribution or a restricted private placement;
  - (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under securities legislation;
  - (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under securities legislation; or
  - (d) would be issuable to a securityholder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from securityholders that will receive the offered security in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities legislationaw,

provided that, if the security described in clauses (a) to (d) is a unit comprised of more than one type or class, each security comprising the unit shall be considered to be an "offered security".
3. Rule 1.1 is amended by adding the following definitions:

**"basket trade"** means a simultaneous purchase of at least 10 listed securities or quoted securities, provided that any restricted security comprises not more than 20% of the total value of the transaction.

~~**"best independent bid price"** means the best bid price, other than a bid that a dealer restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer restricted person or an issuer restricted person.~~

**"connected security"** means, in respect of an offered security:

  - (a) a listed security or quoted security into which the offered security is immediately convertible, exchangeable or exercisable unless the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the listed security or quoted security at the commencement of the restricted period;
  - (b) a listed security or quoted security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may significantly determine the value of the offered security;
  - (c) if the offered security is a special warrant, a listed security or quoted security which would be issued on the exercise of the special warrant; and
  - (d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security.

“**dealer-restricted person**” means, in respect of a particular ~~offered~~ restricted security:

- (a) a Participant that:
  - (i) ~~has been appointed by an issuer to be~~ an underwriter, as defined in applicable securities legislation, in a prospectus public distribution or a restricted private placement,
  - (ii) is participating, as agent but not as an underwriter, in a public distribution-restricted private placement of securities and:
    - (A) the number of securities to be issued under the restricted private placement which would constitute more than 10% of the issued and outstanding offered securities, and
    - (B) the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
  - (iii) has been appointed by an offeror to be the dealer-manager, manager or soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
  - (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining securityholder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law,

where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction;

- (b) a related entity of the Participant referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of the Participant if:
  - (i) the Participant maintains and enforces written policies and procedures in accordance with Rule 7.1 that are reasonably designed to prevent the flow of information from the Participant regarding the offered security and the related transaction,
  - (ii) the Participant has no officers or employees that solicit client orders or recommend transactions in securities in common with the related entity, department or division, and
  - (iii) the related entity, department or division does not during the restricted period in connection with the restricted security:
    - (A) act as a market maker (other than pursuant to Market Maker Obligations),
    - (B) solicit client orders, or
    - (C) enter principal orders or otherwise engage in proprietary trading;
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity, of the Participant referred to in clause (a) or for a related entity of the Participant referred to in clause (b); or
- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

“**equity security**” means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding-up of the issuer, in its assets.

“**highly-liquid security**” means a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day; or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” ~~thereunder~~ under that regulation.

“**issuer-restricted person**” means, in respect of a particular ~~offered~~ restricted security:

- (a) the issuer of the offered security;
- (b) a selling securityholder of the offered security in connection with a prospectus public distribution or restricted private placement;
- (c) an affiliated entity, an associated entity or insider of the issuer or selling securityholder of the offered security as determined in accordance with the provisions of applicable securities legislation but does not include a person who is an insider of an issuer by virtue of clause (c) of the definition of “insider” under the Securities Act (Ontario) and similar provisions of applicable securities legislation if that person:
  - (i) does not have, and has not had in the previous 12 months, any board or management representation in respect of the issuer or selling securityholder; and
  - (ii) does not have knowledge of any material information concerning the issuer or its securities that has not been generally disclosed; or
- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

“**last independent sale price**” means the last sale price of a trade, other than a trade that a dealer-restricted person knows or ought reasonably to know has been executed by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.

“**public distribution**” means a distribution of a security pursuant to:

- (a) ~~a prospectus; or~~
- (b) ~~a private placement.~~

“**restricted period**” means, for a dealer-restricted person or an issuer-restricted person, the period:

- (a) in connection with a ~~prospectus public distribution or a restricted private placement~~ of any offered security, commencing two trading days prior to the day the offering price of the offered security is determined and ending on the date the selling process has ended and all stabilization arrangements relating to the offered security are terminated provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant enters into an agreement or reaches an understanding to participate in the prospectus public distribution or restricted private placement of securities, whether or not the terms and conditions of such participation have been agreed upon if that date is later;
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the securities exchange take-over bid circular or issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid; and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date for approval of the transaction by the securityholders

that will receive the offered security or the termination of the transaction by the issuer or issuers.

“restricted private placement” means a distribution of offered securities made pursuant to clause 72(1)(b) of the Securities Act (Ontario) or section 2.3 of Ontario Securities Commission Rule 45-501 - Exempt Distributions or similar provisions of applicable securities legislation.

**“restricted security”** means:

- (a) the offered security; or
- (b) any connected security.

4. Rule 1.2 is amended by adding the following subsections:

- (6) For the purposes of the definition of “restricted period”:
  - (a) the selling process shall be considered to end:
    - (i) in the case of a prospectus distribution pursuant to a prospectus, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased~~delivered to each subscriber a copy of the prospectus as required by applicable securities legislation~~, and
    - (ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering ~~and delivered to each subscriber a copy of all offering documents required to be provided to subscribers in connection with such offering~~; and
  - (b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements.
- (7) Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term "associate" in applicable securities legislation and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person.

5. Rule 7.7 is deleted and the following substituted:

**Trading During Certain Securities Transactions**

- (1) **Prohibitions** - Except as permitted, a dealer-restricted person shall not at any time during the restricted period:
  - (a) bid for or purchase a restricted security for an account:
    - (i) of a dealer-restricted person, or
    - (ii) over which the dealer-restricted person exercises direction or control; or
  - (b) attempt to induce or cause any person to purchase a restricted security.
- (2) **Prohibitions on Acting for Issuer-Restricted Persons** - Except as permitted, if a dealer-restricted person knows or ought reasonably to know that a person is an issuer-restricted person, the dealer-restricted person shall not at any time during the restricted period applicable to a particular issuer-restricted person bid for or purchase a restricted security for

the account of that issuer-restricted person or an account over which that issuer-restricted person exercises direction or control.

(3) **Deemed Recommencement of a Restricted Period** - If a Participant appointed to be an underwriter in a ~~prospectus~~public distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the Participant in connection with the ~~public prospectus~~ distribution or the restricted private placement then a restricted period shall be deemed to have commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the Participant has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

(4) **Exemptions** - Subsection (1) does not apply to a dealer-restricted person in connection with:

(a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:

(i) in the case of an offered security:

(A) the price at which the offered security will be issued in a ~~prospectus~~public distribution or restricted private placement, if that price has been determined, ~~and otherwise, the last independent sale price, and~~

(B) the ~~best~~last independent ~~bid~~sale price at the time of the entry on a marketplace of the order to bid or purchase,

(ii) in the case of a connected security:

(A) the ~~last~~best independent ~~sale~~bid price at the commencement of the restricted period, and

(B) the ~~best~~last independent ~~bid~~sale price at the time of the entry on a marketplace of the order to bid or purchase,

provided that:

~~(iii) — if the dealer restricted person enters the bid prior to the commencement of trading on a trading day, the price also does not exceed the last sale price of the restricted security on the previous trading day, and~~

~~(iv) — if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on an organized regulated market outside of Canada that publicly disseminates details of trades executed on that market other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;~~

(b) a restricted security that is:

(i) a highly-liquid security,

(ii) a unit of an Exchange-traded Fund, or

(iii) a connected security of a security referred to in subclause (i) or (ii);

- (c) a bid or purchase by a dealer-restricted person on behalf of a client, other than a client that the dealer-restricted person knows or ought reasonably to know is an issuer-restricted person provided that:
    - (i) the client order has not been solicited by the dealer-restricted person, or
    - (ii) if the client order was solicited, the solicitation by the dealer-restricted person occurred prior to the commencement of the restricted period;
  - (d) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into by the dealer-restricted person prior to the commencement of the restricted period;
  - (e) a bid for or purchase of a restricted security is made pursuant to a Small Securityholder Selling and Purchase Arrangement undertaken in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
  - (f) the solicitation of a tender of securities to a securities exchange take-over bid or issuer bid;
  - (g) a subscription for or purchase of an offered security pursuant to a prospectus~~public distribution~~ or restricted private placement;
  - (h) a bid or purchase of a restricted security to cover a short position entered into prior to the commencement of the restricted period;
  - (i) a bid or purchase of a restricted security is solely for the purpose of rebalancing a portfolio, the composition of which is based on an index as designated by the Market Regulator, to reflect an adjustment made in the composition of the index;
  - (j) a purchase that is or a bid that on execution would be:
    - (i) a basket trade, or
    - (ii) a Program Trade; or
  - (k) a bid for a purchase of a restricted security for an arbitrage account and the dealer-restricted person knows or has reasonable grounds to believe that a bid enabling the dealer-restricted person to cover the purchase is then available and the dealer-restricted person intends to accept such bid immediately.
- (5) **Exemptions on Acting for an Issuer-restricted Person** - Subsection (2) does not apply to a dealer-restricted person in connection with:
- (a) the exercise by an issuer-restricted person of an option, right, warrant, or a similar contractual arrangement held or entered into by the issuer-restricted person prior to the commencement of the restricted period;
  - (b) a bid or purchase by an issuer-restricted person of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
  - (c) an issuer bid described in clauses 93(3)(a) through (d) of the *Securities Act* (Ontario) or similar provisions of applicable securities legislation if the issuer did not solicit the sale of the securities sold under those provisions;
  - (d) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid; or
  - (e) a subscription for or purchase of an offered security pursuant to a prospectus~~public distribution~~ or a restricted private placement.

- (6) **Compilations and Industry Research** - Despite subsection (1), a dealer-restricted person may, if permitted ~~under in accordance with~~ applicable securities legislation, publish or disseminate any information, opinion or recommendation relating to the issuer of a restricted security ~~if the provided that such~~ information, opinion or recommendation:
- (a) ~~is contained~~ in a publication ~~that which~~:
    - (i) ~~is disseminated~~ with reasonable regularity in the normal course of business of the dealer-restricted person; ~~and~~:
  - (a) the restricted security is a highly-liquid security; or
  - (b) the publication: and
    - (i) ~~includes~~ similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person; ~~and~~
    - (ii) ~~is gives~~ no materially greater space or prominence to the information, opinion or recommendation related to the restricted security or the issuer of the restricted security in that publication than that given to other securities or issuers.
- (7) **Transactions by Person with Market Maker Obligations** - Despite subsection (1), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account:
- (a) with the prior approval of a Market Integrity Official, enter a bid to move the calculated opening price of a restricted security to a more reasonable level;
  - (b) purchase a restricted security pursuant to their Market Maker Obligations; and
  - (c) bid for or purchase a restricted security:
    - (i) that is traded on another market for the purpose of matching a higher-priced bid posted on such market,
    - (ii) that is convertible, exchangeable or exercisable into another listed security for the purpose of maintaining an appropriate conversion, exchange or exercise ratio, and
    - (iii) to cover a short position resulting from sales made under their Market Maker Obligations.
- (8) **Transactions by the Derivatives Market Maker** - Despite subsection (1), a dealer-restricted person who is a derivatives market maker with responsibility for a derivative security the underlying interest of which is a restricted security may, for their derivatives market making trading account, bid for or purchase a restricted security if:
- (a) the restricted security is the underlying security of the option for which the person is the specialist;
  - (b) there is not otherwise a suitable derivative hedge available; and
  - (c) such bid or purchase is:
    - (i) for the purpose of hedging a pre-existing options position,
    - (ii) reasonably contemporaneous with the trade in the option, and
    - (iii) consistent with normal market-making practice.



- (9) **Application of Exemptions to a Dealer-Restricted Person and Issuer-Restricted Person** - Where a dealer-restricted person is also an issuer-restricted person the exemptions in subsections (4), (6), (7) and (8) continue to be available to the dealer-restricted person.

6. Rule 7.8 is deleted.

The Policies under the Universal Market Integrity Rules are hereby amended as follows:

1. The following is added as Policy 1.1:

**Policy 1.1 - Definitions**

**Part 1 – Definition of “connected security”**

The definition of a “connected security” includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may “significantly determine” the value of the offered security. The Market Regulator takes the view that, absent other mitigating factors, a connected security “significantly determines” the value of the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.

**Part 2 – Definition of “Exchange-traded Fund”**

An “Exchange-traded Fund” is defined, in part, as a mutual fund designated by the Market Regulator as an exchange-traded fund for the purposes of the Rule. As guidance, an exchange-traded fund may be designated by the Market Regulator where it is determined that it would be difficult to manipulate the price of units of the mutual fund.

It would be the intention of the Market Regulator that the designation of a security would be done after consultation with the Ontario Securities Commission or other applicable securities regulatory authority. Acceptance of the designation by applicable securities regulatory authorities would be a pre-condition to any designation of a security as an “Exchange-traded Fund”. Other factors which the Market Regulator would take into account are:

- the liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- whether the units are redeemable at any time for a “basket” of the underlying securities in addition to cash;
- whether a “basket” of the underlying securities may be exchanged at any time for units of the fund;
- whether the fund tracks a recognized index on which information is publicly disseminated and generally available through the financial media; and
- whether derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace.

None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits before a request is made to the applicable securities regulatory authority to concur in the designation.

2. The following is added as Policy 1.2:

**Policy 1.2 - Interpretation**

**Part 1 – Meaning of “acting jointly or in concert”**

The definitions of a “dealer-restricted person” and “issuer-restricted person” include a person acting jointly or in concert with a person that is also a dealer-restricted person or an issuer-restricted person, as applicable, for a particular transaction. For the purposes of these definitions, “acting

jointly or in concert” has a similar meaning to that phrase as defined in section 91 of the *Securities Act* (Ontario) or similar provisions of applicable securities legislation, with necessary modifications. In the context of these definitions only, it is a question of fact whether a person is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases any restricted security will be presumed to be acting jointly or in concert with such dealer- or issuer-restricted person.

### **Part 2 – Meaning of “selling process has ended”**

The definition of “restricted period”, with respect to a prospectus distribution and a “restricted private placement”, refers to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Rule 1.2(6)(a) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the Participant has distributed all securities allocated to it and, is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the Participant is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate’s short position. If the Participant or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a Participant that are held and transferred to the inventory account of the Participant at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the inventory account of the Participant.

3. The following is added as Policy 7.7:

### **Policy 7.7 – Trading During Certain Securities Transactions**

#### **Part 1 – Manipulative or Deceptive Activity**

Provisions prohibiting manipulative or deceptive ~~activities~~ trading, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets, are contained in Rule 2.2. Rule 7.7 generally prohibits purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. Rule 7.7 also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low possibility of manipulation. However, the Market Regulator is of the view that notwithstanding that certain trading activities are permitted under Rule 7.7, these activities continue to be subject to the general provisions relating to manipulative or deceptive ~~activities~~ trading in Rule 2.2 and the provisions on manipulation and fraud found in applicable securities legislation such that any activities carried out in accordance with Rule 7.7 must still meet the spirit of the general anti-manipulation provisions.

#### **Part 2 – Market Stabilization and Market Balancing**

Rule 7.7(4)(a) provides a dealer-restricted person with an exemption from the prohibitions in subsection (1) for market stabilization and market balancing activities subject to price limitations. Market stabilization and market balancing activities should be engaged in for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security.

The Market Regulator considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where dealer knows or should reasonably know that the market price is not fairly and properly determined by supply and demand. This might exist where, for example, the dealer is aware that the market price is a result of inappropriate activity by a market participant or that there is undisclosed material information regarding the issuer.

Market balancing activities should contribute to a fair and orderly market by contributing to price continuity and depth and by minimizing supply-demand disparity. Market balancing does not seek to

prevent or unduly retard any price movements, but merely to prevent erratic or disorderly changes in price.

### Part 3 – Short Position Exemption

Rule 7.7(4)(h) provides an exemption from the prohibitions in subsection (1) for a dealer-restricted person in connection with a bid for or purchase to cover a short position provided that short position was entered into before the commencement of the restricted period. Short positions entered into during the restricted period may be covered by purchases made in reliance upon the market stabilization exemption in Rule 7.7(4)(a), subject to the price limits set out in that exemption. (See “Part 5 – Trading Pursuant to Market Maker Obligations” for a discussion of the ability of persons with Market Maker Obligations to cover short positions arising during the restricted period pursuant to their Market Maker Obligations.)

### Part 4 – Research

The Market Regulator is of the view that although sections 4.1 and 4.2 of OSC Rule 48-501 does not permit a dealer-restricted person~~dealers~~ to disseminate research reports, this dissemination continues to be subject to the usual restrictions that are applicable to a ~~where the dealer-restricted person or the analyst covering the issuer of the offered security or any other representative of the dealer is~~ in possession of material information regarding the issuer that has not been generally~~publicly~~ disclosed.

Rule 7.7(6) provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. The Rule requires that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Market Regulator considers that it is a question of fact whether a publication was disseminated “with reasonable regularity” and whether it was in the “normal course of business”. A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers’ earnings and revenues would likely only be permitted if they had previously been included on a regular basis. The Market Regulator may consider the distribution channels for the dissemination of the publication when considering whether a publication was “in the normal course of business”. The research should be distributed through the dealer-restricted person’s usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.

Rule 7.7(6)(~~ba~~) requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer’s industry. In this context, reference should be made to the relevant industry when determining what constitutes a “substantial number of issuers”. Generally, the Market Regulator would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report, and in any event the number of issuers should not be less than three.

### Part 5 – Trading Pursuant to Market Maker Obligations

Under Rule 7.7(7)(b), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account, purchase a restricted security pursuant to their Market Making Obligations. Not every purchase of a restricted security by a Market Maker will be considered to undertaken pursuant to their Market Making Obligations. For example, if a market making system of a marketplace permits a Market Maker to voluntarily participate in trades that participation may only result in purchases that are:

- made at prices which are permitted by Rule 7.7(4)(a); or
- to cover a short position resulting from sales made under their Market Maker Obligations.

Use of a voluntary participation feature in other circumstances, may result in the Market Maker not complying with the prohibitions or restrictions on trading under Rule 7.7.

“Market Maker Obligations” are defined as the obligations imposed by the rules of an Exchange or a QTRS on a member or user or a person employed by a member or user to guarantee:

- a two-sided market for a particular security on a continuous or reasonably continuous basis; and
- the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace.

~~As such, a Market Maker on the Toronto Stock Exchange will be entitled to make bids or purchases at prices above those permitted by Rule 7.7(4)(a) if the bid or purchase is required to satisfy:~~

- ~~• the spread goal commitments of the Market Maker;~~
- ~~• the minimum guaranteed fill obligation; or~~
- ~~• the obligation for the trading of odd lots.~~

**Appendix "C"**

**OSC RULE 48-501 AND AMENDMENTS TO THE UNIVERSAL MARKET INTEGRITY RULES**

**Joint Summary of Comments and Responses**

RS and the OSC have prepared a joint summary of comments and responses in connection with the Revised OSC Rule 48-501 and the Revised Proposal for amendments to UMIR. See Chapter 5 of this Bulletin for the Joint Summary of Comments and Responses.