

PART 4 – FRONTRUNNING

4.1 Frontrunning

- (1) A Participant with knowledge of a client order that on entry could reasonably be expected to affect the market price of a security, shall not, prior to the entry of such client order,
 - (a) enter a principal order or a non-client order on a marketplace, foreign organized regulated market or other market, including any over-the-counter market, for the purchase or sale of the security or any related security;
 - (b) solicit an order from any other person for the purchase or sale of the security or any related security; or
 - (c) inform any other person, other than in the necessary course of business, of the client order.

- (2) A Participant does not contravene subsection (1) if:
 - (a) no director, officer, partner, employee or agent of the Participant who made or participated in making the decision to enter a principal order or non-client order or to solicit an order had actual knowledge of the client order;
 - (b) an order is entered or trade made for the benefit of the client for whose account the order is to be made;
 - (c) an order is solicited to facilitate the trade of the client order;
 - (d) a principal order is entered to hedge a position that the Participant had assumed or agreed to assume before having actual knowledge of the client order provided the hedge is:
 - (i) commensurate with the risk assumed by the Participant, and
 - (ii) entered into in accordance with the ordinary practice of the Participant when assuming or agreeing to assume a position in the security;
 - (e) a principal order is made to fulfil a legally binding obligation entered into by the Participant before having actual knowledge of the client order; or
 - (f) the order is entered for an arbitrage account.

POLICY 4.1 – FRONTRUNNING

Part 1 – Examples of Frontrunning

Rule 4.1 provides that no Participant shall trade in equities or derivatives to take advantage of information concerning a client order that has not been entered on a market place that reasonably can be expected to change the prices of the equities or the related options or futures contracts. Without limiting the generality of the Rule, the following are examples of transactions covered by the prohibition:

- (a) a transaction in an option, including an option where the underlying interest is an index, when the Participant has knowledge of the unentered client order for the underlying securities;
- (b) a transaction in a future where the underlying interest is an index when the Participant has knowledge of the unentered client order that is a program trade or index option transaction; and
- (c) a transaction in an index option when the Participant has knowledge of the unentered client order that is a program trade or an index futures transaction.

Rule 10.4 extends the prohibition to cover orders entered by a related entity of the Participant or a director, officer, partner or employee of the Participant or a related entity of the Participant.

Part 2 – Specific Knowledge Required

In order to constitute frontrunning contrary to Rule 4.1, the person must have specific knowledge concerning the client order that, on entry, could reasonably be expected to affect the market price of a security. A person with knowledge of such a client order must insure that the client order has been entered on a marketplace before that person can:

- enter a principal order or non-client order for the security or any related security;
- solicit an order for the security or any related security; or
- inform any other person about the client order, other than in the necessary course of business.

Trading based on non-specific pieces of market information, including rumours, does not constitute frontrunning.

Defined Terms: NI 21-101 section 1.1 – “order”

UMIR section 1.1 – “arbitrage account”, “client order”, “employee”, “foreign organized regulated market”, “hedge”, “marketplace”, “non-client order”, “Participant”, “principal order”, “Program Trade” and “related security”

UMIR section 1.2(2) – “person” and “trade”

Regulatory History: Effective May 16, 2008, the applicable securities commissions approved an amendment to Rule 4.1 to replace the phrase “stock exchange or market” with “foreign organized regulated market or other market”.

Disciplinary Proceedings: Rule 4.1(1)(c) was considered ***In the Matter of Garrett Steven Prins (“Prins”)*** (April 1, 2003) OOS 2003-001. See disciplinary proceedings under 2.1.

Disciplinary Proceedings:	<p><u>In the Matter of Frank Patrick Greco (“Greco”) (May 28, 2003) Decision 2003-004</u></p> <p><i>Facts – Between November 22, 2001 and April 1, 2002, Greco, a Registered Trader employed at Griffiths McBurney & Partners, traded on information respecting pending undisclosed client orders obtained from a trader at another Participant resulting in frontrunning and conduct inconsistent with just and equitable principles of trade by Greco. Also, during this period Greco failed to properly designate short sales and executed prohibited trades in a security at a time when his employer was involved in a distribution of the security.</i></p> <p><i>Held – Taking advantage of information respecting a client order that has not yet been entered in a marketplace to trade ahead of the client order harms the integrity of the marketplace. Greco acted contrary to just and equitable principles of trade and violated the frontrunning provisions of UMIR and the Toronto Stock Exchange rules.</i></p> <p><i>Requirements Considered – TSX Rules 4-204(1), 4-301(1) and (8) and 7-106(1)(b); Comparable UMIR Provision Rules 4.1(1)(a) and 2.1(1)</i></p> <p><i>Sanction - \$65,000 fine and costs of \$17,000; disgorgement of \$2,105 of benefits; suspension from access to the Toronto Stock Exchange for three months</i></p>
Disciplinary Proceedings:	<p><u>In the Matter of Donald Greco (“Greco”) (July 15, 2003) Decision 2003-005</u></p> <p><i>Facts – On November 22, 2001, Greco, a registered trader, with knowledge of an undisclosed pending client order in a particular security used that information to buy shares in the security.</i></p> <p><i>Held – With knowledge of an undisclosed client order which could reasonably be expected to affect the market price of such security, Greco traded in this security, and as such, contravened TSX Rule 4-204(1).</i></p> <p><i>Requirements Considered – TSX Rule 4-204(1). Comparable UMIR Provision – Rule 4.1</i></p> <p><i>Sanction - \$15,000 fine and costs of \$10,000; disgorgement of \$250; one month suspension</i></p>
Disciplinary Proceedings:	<p>Rule 4.1 was considered <u>In the Matter of Kai Tolpinrud (“Tolpinrud”) (January 16, 2006) OOS 2004-001</u>. See Disciplinary Proceedings under Rule 2.1.</p>
Disciplinary Proceedings:	<p><u>In the Matter of Jason Fediuk (“Fediuk”) (February 15, 2005) Decision 2005-002</u></p> <p><i>Facts – Fediuk, a trader at Salman Partners Inc. (“Salman”), had an outstanding short position in TVX, a TSX listed issuer, in his personal account. On April 26, 2002, a Salman client placed a significant buy order for shares of TVX with a trader that worked in close physical proximity to Fediuk. Within minutes of the Salman client order being received by that trader, Fediuk placed a jitney order to buy shares of TVX to cover his outstanding short position.</i></p> <p><i>Held – While the Panel agreed that the timing of the trades and use of an undisclosed jitney order to avert losses in his personal account was suspicious, it held that RS did not prove that Fediuk knew of the client order when he entering trades for his personal account.</i></p> <p><i>Requirements Considered – Rule 4.1(1)(a)</i></p> <p><i>Disposition – charges against Fediuk dismissed</i></p>