

| Market Integrity Notice |

Guidance

March 24, 2006

No. 2006-009

Suggested Routing

- Trading
- Legal and Compliance

TRADES TO BE ON A MARKETPLACE WHEN ACTING AS AGENT

Key Topics

- Agent
- Change in Beneficial and Economic Ownership
- Trade

Summary

This Market Integrity Notice provides guidance on when Market Regulation Services Inc. would consider a Participant to be acting in respect of a trade as agent for a client in circumstances that would require the trade to be executed by means of the entry of an order on a marketplace in accordance with the Universal Market Integrity Rules.

UMIR Provisions Referenced

- Rule 6.4 – Trades to be on a Marketplace

Questions / Further Information

For further information or questions concerning this notice contact:

Felix Mazer
Counsel

Telephone: 416.646.7280

Fax: 416.646.7265

e-mail: felix.mazer@rs.ca

TRADES TO BE ON A MARKETPLACE WHEN ACTING AS AGENT

Summary

This Market Integrity Notice provides guidance on when Market Regulation Services Inc. (“RS”) would consider a Participant to be acting in respect of a trade as agent for a client in circumstances that would require the trade to be executed by means of the entry of an order on a marketplace in accordance with the Universal Market Integrity Rules (“UMIR”).

Background

Rule 6.4 of UMIR provides that a Participant, when acting as principal or agent, may not trade or participate in a trade other than through the entry of an order on a marketplace. Rule 6.4 provides a series of enumerated exceptions to this broad requirement. The obligation imposed by Rule 6.4 applies only when the Participant is trading or participating in a trade in a principal capacity or as agent for a client.

Indicators of “Acting as Agent” in Respect of a Trade

Ordinarily, a Participant would be considered to be “acting as agent” when involved in a transaction on behalf of a client. In particular, RS will consider a Participant to be acting as agent for a client in a transaction if the Participant undertakes any one of the following:

- charges the client a commission in respect of the completion of the transaction;
- provides the client with a “trade confirmation” in respect of the completion of the transaction;
- provides advice with respect to the structuring or the completion of the transaction;
- solicits the client to undertake the transaction;
- participates in a transaction that must be inter-mediated by a registrant in accordance with applicable securities legislation (and no other registrant has acted in connection with the transaction on behalf of the client); or
- locates or assists in the location of the counter-party to the transaction.

While each transaction would be evaluated on the basis of the specific fact situation, RS generally would consider that a Participant is not acting as agent for a client in respect of a trade if the Participant:

- completes a transaction on behalf of a client that involves no change in beneficial and economic ownership; or
- acts solely on the instructions of the client and performs functions that are purely administrative in nature.

RS accepts that the following functions performed by a Participant (on their own and without other indicators of acting as agent) will be considered administrative in nature:

- delivery by the Participant to a client of a certificate for a security registered in the name of the client that is in the possession of the Participant;
- guarantee of the signature of a client in respect of a certificate for a security registered in the name of the client;
- transfer of securities to another dealer or custodian in accordance with the instructions of the client (including the transfer of securities held in the name of the Participant or its nominee); and
- transfer of securities to the account of another client of the Participant in accordance with the instructions of the client (provided that the Participant is satisfied that the transaction is in compliance with applicable securities legislation including the ability to complete the transaction without the inter-mediation of a registrant).

If a Participant participates in a trade but has not acted as principal or agent, the Participant must maintain a written record with sufficient details to demonstrate why the transaction was undertaken other than by the entry of an order on a marketplace including the steps undertaken by the Participant to determine that the transaction is in compliance with applicable securities legislation. In particular, the Participant must be aware if a client undertakes a number of transactions in this fashion as the exemption from registration generally provided under applicable securities legislation for “isolated trades” may have ceased to be available. If the Participant has acted solely on the instructions of the client in the performance of administrative functions, the Participant is urged to obtain the instructions from the client in writing.

Questions / Further Information

For further information or questions concerning this notice contact:

Felix Mazer,
Counsel,
Market Policy and General Counsel's Office,
Market Regulation Services Inc.,
Suite 900,
145 King Street West,
Toronto, Ontario. M5H 1J8
Telephone: 416.646.7280
Fax: 416.646.7265
E-mail: felix.mazer@rs.ca

ROSEMARY CHAN,
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL