

| Market Integrity Notice |

Guidance

January 30, 2006

No. 2006-002

Suggested Routing

- Trading
- Legal and Compliance

Key Topics

- Canadian Unlisted Board (“CUB”)
- Grey Market Trading
- Listed Security
- Short Sales
- When Issued Trading

UMIR Provisions Referenced

- Rule 1.1 – Definitions – “trades on a when issued basis”
- Rule 3.1 – Restrictions on Short Selling

“WHEN ISSUED” TRADING

Summary

This Market Integrity Notice provides guidance relating to the ability of a Participant to undertake trading in a security which is qualified for distribution but which has not yet been issued by the issuer.

Questions / Further Information

For further information or questions concerning this notice contact:

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“WHEN ISSUED” TRADING

Summary

This Market Integrity Notice provides guidance relating to the ability of a Participant to undertake trading in a security which is qualified for distribution but which has not yet been issued by the issuer.

Definition

The term “trades on a when issued basis” is defined in Rule 1.1 of the Universal Market Integrity Rules (“UMIR”) as a purchase or sale of a security to be issued pursuant to:

- a prospectus offering where a receipt for the final prospectus for the offering has been issued by the applicable securities regulatory authority but the offering has not closed and settled;
- a proposed plan of arrangement, an amalgamation or a take-over bid prior to the effective date of the amalgamation or the arrangement or the expiry date of the take-over bid; or
- any other transaction that is subject to the satisfaction of certain conditions,

and the trade is to be settled only if the security is issued and the trade in the security prior to the issuance would not contravene the applicable securities legislation. Essentially, if the condition for the issuance or distribution of the security is not satisfied, all trades which have been executed on a “when issued” basis will be cancelled.

Trades to be on a Marketplace

If an Exchange or QTRS has posted a market to trade the security on a “when issued” basis, a Participant acting as principal or agent may not trade nor participate in a trade in the security on a “when issued” basis by means other than the entry of an order on a marketplace unless the transaction is specifically exempted from this requirement in accordance with the provisions of Rule 6.4 of UMIR. If no “when issued” market is posted by an Exchange or QTRS, a Participant may trade the security over-the-counter on a “when issued” basis (often referred to a trading in the “grey market”). If an Exchange has granted a “conditional listing”, the security may be traded over-the-counter on a “when issued” basis until such time as the Exchange or a QTRS actually posts a “when issued” market or the securities are issued or distributed and are able to trade on the “regular” market of the Exchange or QTRS.

In accordance with National Instrument 21-101, an alternative trading system (“ATS”) may trade any security that is listed on an Exchange or quoted on a QTRS. If an Exchange or QTRS has posted a “when issued” market in the security, the security will be considered to be a listed security or quoted security and may trade on a “when issued” basis on an ATS. If no “when

issued” market is posted by an Exchange or QTRS, an ATS will not be able to trade the security on a “when issued” basis.

Application of Short Sale Restrictions

The application of the price restrictions on a short sale under Rule 3.1 of UMIR will depend on whether the securities that have been subscribed for under a prospectus or which will be issued under an arrangement, amalgamation, take-over bid or similar transaction are to be sold in a “when issued” market or in the “regular” market in which the listed and outstanding securities of the same class already trade. If a person has entered into a contract to purchase a security that trades on a “when issued” basis (either by subscription to the offering or purchase on a “when issued” basis over-the-counter or on a marketplace) or would become the holder of such security as a result of an arrangement, amalgamation or take-over bid, that person may sell such securities on a “when issued” basis. If the sale is made on a “when issued” basis, the sale will not be considered a short sale (since the settlement of the sale will be subject to the condition that the securities be issued or distributed) However, if the sale is made in the “regular” market for that security where units of that security which are issued and outstanding trade, the sale will be considered a “short sale” and will be subject to the price restriction in Rule 3.1 of UMIR that the sale must not be completed at a price which is less than the last sale price. The sale is considered “short” in this circumstance because the issuance or distribution of the security is subject to a condition which may not be met and the trade will have to be settled with borrowed securities.

If a person does not have an entitlement to receive a security when that security is issued, any sale of that security in either the “when issued” or the “regular” market will be considered to be a short sale and the sale will be subject to the price restriction in Rule 3.1 of UMIR.

Reporting Transactions in the Grey Market

If a security is traded on a “when issued” basis over-the-counter in the so-called “grey market”, a Participant may be required to report such trade to the Canadian Unlisted Board (“CUB”) if the purchase or sale has been made in Ontario. Reference should be made to section 154 of Ontario Regulation 1015 (R.R.O. 1990) to determine if and by whom a trade report to CUB may be required.

Questions / Further Information

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