

| Market Integrity Notice |

Guidance

September 1, 2005

No. 2005-029

Suggested Routing

- Trading
- Legal and Compliance

Key Topics

- Economic and Beneficial Ownership
- Manipulative and Deceptive Activity
- Market-on-Close Orders
- Wash Trading

UMIR Provisions Referenced

- Rule 2.2 – Manipulative and Deceptive Activities

Market Integrity Notices Referenced

- Market Integrity Notice 2004-021 – Entry of Off-Setting Market-on-Close Orders (August 26, 2004)

ENTERING ORDERS ON BOTH SIDES OF THE MARKET

Summary

This Market Integrity Notice provides guidance relating to the entry of orders on both sides of the market for the benefit of the same person. Subject to certain limited exceptions, the entry of orders on both sides of the market for the benefit of the same person will be considered to be manipulative and deceptive.

Questions / Further Information

For further information or questions concerning this notice contact:

James E. Twiss
Chief Policy Counsel

Telephone: 416.646.7277
Fax: 416.646.7265

e-mail: james.twiss@rs.ca

ENTERING ORDERS ON BOTH SIDES OF THE MARKET

Summary

This Market Integrity Notice provides guidance relating to the entry of orders on both sides of the market for the benefit of the same person. Subject to certain limited exceptions, the entry of orders on both sides of the market for the benefit of the same person will be considered to be manipulative and deceptive contrary to Rule 2.2 of the Universal Market Integrity Rules (“UMIR”).

General Prohibition

Rule 2.2(1) of UMIR prohibits any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace. A Participant or Access Person is prohibited from entering an order on a marketplace if the Participant or Access Person knows or ought reasonably to know that any resulting trade will be either fictitious or involve no change in beneficial or economic ownership.

Similarly, a Participant or Access Person will have contravened Rule 2.2(2) if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:

- a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
- an artificial ask price, bid price or sale price for the security or related security.

A Participant or an Access Person will be considered to have engaged in “wash trading”, a type of manipulative and deceptive activity, if the Participant or Access Person knows or ought reasonably to know that:

- orders for the purchase and for the sale of the same security are being entered on a marketplace;
- the orders are for the benefit of an account or accounts which have the same economic and beneficial owner or are under the direction or control of the same person; and
- the orders have the potential of trading with each other.

Market Integrity Notice 2004-021 – *Entry of Off-Setting Market-on-Close Orders* issued on August 26, 2004 sets out the position of Market Regulation Services Inc. (“RS”) that the entry by a Participant or Access Person into the Market-on-Close Facility operated by The Toronto Stock Exchange (“TSX”) of a Limit MOC Order to off-set a Market MOC Order entered by that Participant or Access Person constitutes a “wash trade”. It is unacceptable for a Participant or Access Person to undertake a “wash trade”, directly or indirectly, even in circumstances where

the Participant or Access Person is trying to “correct” an erroneous Market MOC Order that may not otherwise be cancelled in the Market-on-Close Facility.

Exceptions from the General Prohibition

RS will not consider a Participant or Access Person to be engaging in a manipulative or deceptive activity if the “wash trade” arises in the following circumstances:

- ***Trades Executed When Order Entered In Error*** – If a Participant or Access Person enters an order in error on a marketplace which executes against an existing order for the same beneficial or economic owner, the resulting “wash trade” will not be considered manipulative or deceptive provided the Participant or Access Person immediately contacts the Market Supervision Section of RS (at 416.646.7220 in Toronto or 604.643.6505 in Vancouver) for specific guidance based on the particular circumstances including the cancellation of the “wash trade”.
- ***Trades Executed by an Automated Program Trading System*** – If a Participant or Access Person uses an automated program trading system to generate orders, the matching of orders for the same beneficial or economic owner will not be treated as a manipulative or deceptive activity provided the Participant or Access Person has taken reasonable steps to ensure that the automated program trading system does not enter orders that may execute as a “wash trade” on a regular basis.
- ***Orders Generated by a Marketplace*** – If a Participant is a market maker in accordance with the Marketplace Rules of an Exchange or QTRS and the trading system of the Exchange or QTRS automatically generates orders in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations, the matching of principal orders, in whole or in part, with an automatically generated order will not be treated as a manipulative or deceptive activity.
- ***Consent of RS*** - If a Participant or Access Person is unable for any reason to cancel an existing order that the Participant or Access Person is otherwise entitled to cancel (e.g. for temporary technology problems experienced by the Participant or Access Person), RS may specifically permit a Participant or Access Person to enter additional orders that may execute as a “wash trade” if the Market Supervision Section of RS is satisfied that the entry of such orders would be in the interest of a fair and orderly market.

As set out in Market Integrity Notice 2004-021, Market Supervision may in some cases specifically authorize the entry of an off-setting Limit MOC Order for a Market MOC Order in the Market-on-Close Facility of the TSX. In determining whether to permit the entry of an off-setting order for the amount of an error or a lesser amount, Market Supervision will consider:

- the possible impact of the erroneous Market MOC Order on the closing price;

- the extent to which trading activity may have already occurred in the affected security based on the MOC imbalance report; and
- whether there is sufficient time to issue a notice to the market of the adjustment to the imbalance report.

Questions / Further Information

For further information or questions concerning this notice contact:

James E. Twiss,
Chief Policy Counsel,
Market Policy and General Counsel's Office,
Market Regulation Services Inc.,
Suite 900,
145 King Street West,
Toronto, Ontario. M5H 1J8

Telephone: 416.646.7277
Fax: 416.646.7265
e-mail: james.twiss@rs.ca

ROSEMARY CHAN,
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL