

# | Market Integrity Notice |

## *Guidance*

July 29, 2005

No. 2005-028

### **Suggested Routing**

- Trading
- Legal and Compliance

### **Key Topics**

- Restricted Security
- “Short Exempt”
- Short Sale
- Special Terms Order

### **UMIR Provisions Referenced**

- Rule 1.1 – Definitions -“short sale”
- Rule 3.1 – Restrictions on Short Selling
- Rule 6.2 – Designations and Identifiers

### **Market Integrity Notices Referenced**

- Market Integrity Notice 2004-020 – Sales of Restricted Securities (August 13, 2004)

## **SALE OF SECURITIES SUBJECT TO TRANSFER RESTRICTIONS ONLY IN THE UNITED STATES**

### **Summary**

This Market Integrity Notice provides guidance on requirements under the Universal Market Integrity Rules with respect to the sale of securities which are subject to transfer restrictions only in the United States or to residents of the United States and are otherwise “freely-tradable” on a Canadian marketplace.

### **Questions / Further Information**

For further information or questions concerning this notice contact:

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## **SALE OF SECURITIES SUBJECT TO TRANSFER RESTRICTIONS ONLY IN THE UNITED STATES**

### **Summary**

This Market Integrity Notice provides guidance on the requirements under the Universal Market Integrity Rules (“UMIR”) with respect to the sale of securities which are subject to transfer restrictions only in the United States or to residents of the United States and are otherwise “freely-tradable” on a Canadian marketplace (a “U.S. Restricted Security”).

### **Background**

A Participant may be asked by a client to facilitate the sale or transfer of a listed security or a quoted security that qualifies as a U.S. Restricted Security due to transfer restrictions imposed pursuant to securities legislation in the United States, particularly Rule 144A under the *Securities Act of 1933*. Such restrictions do not preclude a person who is not a resident of the United States from purchasing the securities on a marketplace in Canada.

However, if the securities to be sold or transferred are subject to restrictions on transfer imposed by Canadian securities legislation or the marketplace on which the securities are listed or quoted, any transaction must comply with those requirements. For guidance on the sale on a marketplace of securities in these circumstances, reference should be made to Market Integrity Notice 2004-020 – *Sales of Restricted Securities* issued on August 13, 2004.

### **Entry of Orders for the Sale of a U.S. Restricted Security**

As a general rule, an order for the sale of a U.S. Restricted Security may be entered on a marketplace as:

- part of an intentional cross at a price between the best ask price and the best bid price when the Participant knows that the purchaser is not a resident of the United States or otherwise subject to the transfer restriction; or
- a Special Terms Order (that is subject to the condition that the purchaser not be a resident of the United States).

Orders entered as an intentional cross at a price between the best ask price and the best bid price may be executed on a marketplace without concern about potential interference by a party who may not be qualified to acquire the securities.

If a Participant enters an order on a marketplace to sell a U.S. Restricted Security as a Special Terms Order at a price below the best bid price, the Participant must contact each Participant

and Access Person who has entered orders disclosed in a consolidated market display at a better price than the price of the Special Terms Order and offer to satisfy their orders up to the volume of the Special Terms Order provided the Participant or Access Person is eligible to purchase the U.S. Restricted Security. If each Participant or Access Person with a better-priced order is either unwilling or unable to acquire the U.S. Restricted Security, the Special Terms Order may be executed at an inferior price with a party that is able to acquire the U.S. Restricted Security.

### **Marking Orders for the Sale of a U.S. Restricted Security**

An order to sell a U.S. Restricted Security entered on a marketplace will be considered to be a “short sale” for the purposes of the definition under Rule 1.1 of UMIR unless the seller has a reasonable belief that they will be able to deliver the security without restriction on the settlement date of the trade. Since the restriction under Rule 144A ceases to have effect when the security is acquired on a marketplace by a person who is not resident in the United States, the sell order may be marked in accordance with Rule 6.2(1)(b)(ix) as “short exempt”, being a short sale that is exempt from the restriction under Rule 3.1 that the sale be completed at a price not less than the last sale price of the security.

### **Questions / Further Information**

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