

# Market Integrity Notice |

## Guidance

January 31, 2006

No. 2006-003

### Suggested Routing

- Trading
- Legal and Compliance

## SOLICITATION OF CLIENT ORDERS DURING A RESTRICTED PERIOD

### Key Topics

- Dealer-Restricted Person
- Restricted Period
- Restricted Security
- Solicitation of Orders

### Summary

This Market Integrity Notice provides guidance on:

- research which a Participant may publish during a restricted period; and
- the handling by a Participant of client orders resulting from unfilled portions of a client subscription under a prospectus distribution or restricted private placement.

### UMIR Provisions Referenced

- Rule 2.1 – Just and Equitable Principles
- Rule 7.7 – Trading During Certain Securities Transactions

### 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

### Market Integrity Notices Referenced

- Market Integrity Notice 2005-007 – *Notice of Amendment Approval – Trading During Certain Securities Transactions*
- Market Integrity Notice 2005-013 – *Effective Date of Amendments Respecting Trading During Certain Securities Transactions*

# SOLICITATION OF CLIENT ORDERS DURING A RESTRICTED PERIOD

## Summary

This Market Integrity Notice provides guidance on:

- research which a Participant may publish during a restricted period; and
- the handling by a Participant of client orders resulting from unfilled portions of a client subscription under a prospectus distribution or restricted private placement.

## Prohibition on Solicitation During a Restricted Period

Rule 7.7(1)(b) of the Universal Market Integrity Rules (“UMIR”) prohibits a Participant which is a dealer-restricted person from soliciting or otherwise inducing any person to purchase a restricted security during a restricted period.

This provision is part of package of amendments to UMIR regarding market stabilization and market balancing that became effective on May 9, 2005. For more details regarding the amendments, including the full text of the amendments (including definitions of “dealer-restricted person”, “restricted period”, “restricted private placement” and “restricted security”), reference should be made to Market Integrity Notice 2005-007 – *Notice of Amendment Approval – Amendments Respecting Trading During Certain Securities Transactions* issued on March 4, 2005. Reference should also be made to Market Integrity Notice 2005-013 – *Effective Date of Amendments Respecting Trading During Certain Securities Transactions* issued on May 2, 2005 for additional guidance on “highly-liquid securities” and acceptable bids or purchases during: a securities exchange take-over bid; an issuer bid; or an amalgamation, arrangement, capital reorganization or similar transaction.

## Exemption for Research

Under Rule 7.7(6), an exemption from the general prohibition is provided to permit a dealer-restricted person to publish information, opinions and recommendations relating to an issuer of a restricted security in a publication which is disseminated with reasonable regularity in the normal course of the dealer-restricted person’s business. Whether a publication is disseminated with “reasonable regularity” and “in the normal course of business” is a question of fact. It is the view of RS that a publication that has not been published within the previous twelve months, or has not provided coverage of the specific issuer within the previous twelve month period, would not fulfil the standard of “reasonable regularity”. Generally, the nature and extent of the published information respecting the restricted security must be consistent with prior publications and the dealer-restricted person should not undertake any new marketing, promotional or informational initiatives containing information on the restricted security during the restricted period.

### ***Research Related to a Highly-Liquid Security***

If the restricted security qualifies as a “highly-liquid” security there are no additional restrictions on the content of the research. A “highly-liquid security” is defined as a listed security or quoted security that:

- has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - an average of at least 100 times per trading day, and
  - with an average trading value of at least \$1,000,000 per trading day; or
- is subject to Regulation M of the *Exchange Act of 1934* (United States) and is considered to be an “actively-traded security” under that regulation.

RS maintains a list of securities which, based on data available to RS, meet the definition of a “highly-liquid security” as a result of achieving the required number of average daily trades and average daily trading value on Canadian marketplaces. Persons may rely on the list and summary prepared by RS or they may independently verify if a security meets the requirements of a “highly-liquid security” so long as they retain a record of the data they rely upon in verifying the requirements. The list of highly-liquid securities and the daily summary of changes is available on the RS website (at [www.rs.ca](http://www.rs.ca)) and may be accessed through the “Quick Links” on the homepage or under the heading “Timely Disclosure” on the “Surveillance” page.

### ***Research Related to Other Restricted Securities***

If the subject of the research is a restricted security that does not qualify as a “highly-liquid security”, the publication must meet certain requirements related to content in addition to the requirements on dissemination. In particular, the publication must:

- include similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer’s industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person; and
- give no materially greater space or prominence to the information, opinion or recommendation related to the restricted security or the issuer of the restricted security than that given to other securities or issuers.

Part 4 of the Policy 7.7 sets out the expectations of RS for “similar coverage” in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer’s industry. In this context, reference should be made to the relevant industry when determining what constitutes a “substantial number of issuers”. Generally, RS would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report, and in any event the number of issuers should not be less than three. In the view of RS, it would not be

acceptable for the research on the restricted security to be set out in a publication in a format designed to draw attention to the information respecting the restricted security.

### ***Unacceptable Research Activities***

RS is of the view that the exemption in Rule 7.7(6) is not available if the publication or dissemination of any information, opinion or recommendation relating to the issuer of a restricted security is:

- by any special or targeted distribution to an investor (research may be distributed to a prospective investor if such investor was on the mailing list for the research publication prior to the restriction period);
- outside usual research distribution channels;
- in a publication which was not disseminated prior to the restricted period to such investor on a reasonably regular basis in the normal course of the dealer's business; and
- in a publication which contains information respecting a restricted security of a nature or type not included in prior publications (e.g. it is not acceptable to add projections for the issuer if projections had not previously been included on a regular basis).

### **Unfilled Portion of a Client Subscription**

Under Rule 7.7(4)(g), a Participant is permitted during the restricted period to solicit a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement. If a client has subscribed to purchase a number of securities under an offering and the client is allocated fewer securities than the amount of the subscription, an order which is placed by the client to acquire additional shares through purchases on a marketplace will not be considered a "solicitation" provided the Participant has not recommended that such a purchase be made. When the client is informed that the allocation to the client under the offering will not satisfy the amount of the subscription, the Participant may indicate that an order for the purchase of additional securities may be entered on a marketplace but the Participant may not recommend that such an order be placed. If the Participant complies with the restriction on making a recommendation, the client order to be entered on a marketplace will not be considered to have been solicited even though the original subscription under the offering may have been solicited.

A Participant can not assume that a client would want to place an order on a marketplace for the purchase of the amount of the unfilled portion of a subscription under an offering or that the client would be prepared to acquire securities in an over-the-counter transaction prior to the listing or quoting of the securities. The client must specifically authorize that such an order be entered or over-the-counter trade be executed. Without the specific authorization of the client, it is the position of RS that the Participant has engaged in conduct which is contrary to just and equitable principles of trade under Rule 2.1 of UMIR.

**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