

Market Integrity Notice |

Guidance

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Suggested Routing

- Trading
- Legal and Compliance

TRADING DURING CERTAIN SECURITIES TRANSACTIONS

Key Topics

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

Summary

This Market Integrity Notice provides guidance to a Participant relating to activities in a particular security that is subject to restrictions on market stabilization and market balancing under the Universal Market Integrity Rules.

UMIR Provisions Referenced

- Rule 1.2 - Interpretation
- Rule 7.7 – Trading During Certain Securities Transactions

Questions / Further Information

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Market Integrity Notices Referenced

- Market Integrity Notice 2005-007 – *Notice of Amendment Approval – Trading During Certain Securities Transactions* (March 4, 2005)
- Market Integrity Notice 2005-013 – *Effective Date of Amendments Respecting Trading During Certain Securities Transactions* (May 2, 2005)

TRADING DURING CERTAIN SECURITIES TRANSACTIONS

Summary

This Market Integrity Notice provides guidance to a Participant relating to activities in a particular security that is subject to restrictions on market stabilization and market balancing under the Universal Market Integrity Rules (“UMIR”).

Background

Effective May 9, 2005, the provisions of UMIR related to market stabilization and market balancing were amended. These amendments were co-ordinated with the introduction of Ontario Securities Commission Rule 48-501 (“OSC Rule 48-501”) that also deals with market stabilization and market balancing activities. The amendments to UMIR and OSC Rule 48-501 set out the requirements related to the trading activities of dealers, issuers and persons connected with the issuer during a distribution of securities, securities exchange take-over bid, issuer bid or amalgamation, arrangement, capital reorganization or similar transaction. Among other things, the amendments prohibited or restricted trading activities to preclude manipulative conduct by persons with an interest in the outcome of the distribution of securities or other transactions. In particular, the amendments impose prohibitions or restrictions on a “dealer-restricted person” trading in certain securities during a “restricted period”.

Reference should be made to Market Integrity Notice 2005-007 – Notice of Amendment Approval – *Amendments Respecting Trading During Certain Securities Transactions* (March 4, 2005) for more details regarding the amendments, including the full text of the amendments and the definitions of “dealer-restricted person”, “issuer-restricted person”, “restricted period”, “restricted private placement” and “restricted security”. Reference should also be made to Market Integrity Notice 2005-013 – *Effective Date of Amendments Respecting Trading During Certain Securities Transactions* (May 2, 2005) for additional guidance on acceptable activities, including exemptions provided for activities related to “highly-liquid securities”, during a distribution of securities, securities exchange take-over bid, an issuer bid, or an amalgamation, arrangement, capital reorganization or similar transaction.

Questions and Answers

The following is a list of frequently asked questions regarding the application of Rule 7.7 and the response of Market Regulation Services Inc. (“RS”) to each question:

1. Can the “restricted period” start even though the underwriting or agency agreement has not been executed?

In connection with a prospectus distribution or a restricted private placement of an offered security, the “restricted period” commences the later of two days prior to the day

the offering price of the offered security is determined, or the date the Participant enters into an agreement or reaches an understanding to participate in the distribution or restricted private placement, whether or not the terms and conditions of such participation have been agreed upon. The date on which the underwriting or agency agreement is executed is not determinative of the start of the restricted period.

2. *Is there a relationship between restrictions on “pre-marketing” activities and the commencement of a “restricted period”?*

By-law 29.13 of the Investment Dealers Association restricts “pre-marketing” activities of a dealer by prohibiting the solicitation of indications of interest from potential clients at any time after the dealer has had discussions with an issuer which are sufficiently specific to reasonably expect the dealer to propose an underwriting of equity securities until the earlier of the issuance of a receipt for the preliminary prospectus or the issuance of a press release announcing the distribution. The IDA By-law does not affect the commencement of a “restricted period” under Rule 7.7 of UMIR. A restricted period may commence notwithstanding that there has been no public disclosure of the forthcoming distribution.

3. *Does a “greenshoe option” have to be exercised before the “restricted period” can be considered to be at end?*

In the case of a prospectus distribution and a restricted private placement, the “restricted period” is deemed to have ended when the selling process has ended and all stabilization arrangements relating to the offered security are terminated. Rule 1.2(6)(a) of UMIR provides that in the case of a prospectus distribution, the selling process is considered to end when:

- the receipt for the prospectus has been issued;
- the Participant has distributed all of its allocated securities and, is no longer stabilizing; and
- all selling efforts have ceased.

However, the restricted period does not end until any syndicate arrangement has also been terminated.

In the case of a restricted private placement, the selling process will be deemed to have ended when the Participant has allocated all its portion of the securities to be distributed under the offering and all stabilization arrangements have been terminated.

The selling efforts of a Participant will be considered to have ended if the Participant is no longer making an effort to sell and there is no intention to exercise an over-allotment option (a “greenshoe option”) other than to cover the short position of the Participant or syndicate. However, if the greenshoe option is held for the benefit of a syndicate, the syndicate must be terminated for the restricted period to be considered at an end.

4. If a Participant, who is part of a selling syndicate, fully distributes all of the securities allocated to it, can that Participant consider its “restricted period” to have ended?

With respect to a prospectus distribution and a “restricted private placement”, the “restricted period” ends on the date the selling process has ended **and** all stabilization arrangements relating to the offered security are terminated. To the extent that a Participant has allocated its entire allotment of the securities to be distributed under the offering, the Participant is **not** out of “restriction” until such time as all stabilization arrangements relating to the offered security are terminated. Stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated.

5. If a shareholder offers to sell additional shares of an over-subscribed secondary issue, may a Participant offer the securities to clients whose subscriptions were not filled (or partially filled)? Can a Participant contact clients that had “expressed an interest” in the distribution but failed to submit a subscription?

A Participant may contact a client that subscribed to purchase securities under an offering but was allocated fewer securities than the amount of the subscription. The contact will not be considered a solicitation if the client is offered a number of securities not exceeding the difference between the number of securities subscribed for and the number allocated under the offering. If additional shares remain available after satisfying any unfilled or partially filled subscriptions, the Participant may contact those clients who had confirmed to the Participant an intention to subscribe under the offering but, due to administrative error, delay or other circumstances, did not submit a completed subscription. In such a case, a Participant is required to maintain a written record with sufficient details to demonstrate the client’s intention to submit a subscription and the nature of the error, delay or other circumstances that caused the failed order. A Participant who contacts a client who had expressed interest in the securities to inform them of the available securities under any other circumstances during a restricted period is considered to have made a “solicitation” contrary to Rule 7.7(1)(b).

6. If a Participant that is “restricted” receives an unsolicited client order to sell a significant block of the security, can the Participant contact other dealers or clients as it would in the ordinary course?

In accepting the client order, the Participant must be aware that its “restricted” status in dealing with the particular security will affect the ability of the Participant to undertake certain activities to accommodate the execution of the client order. While the Participant may be able to approach certain clients that did not obtain complete fills of their subscriptions as described in the response to question 5 above, the Participant may not

solicit interest from other dealers or clients as such activities can not be differentiated from solicitations to support the distribution in which the Participant is involved.

7. *How are price restrictions determined in the case of a “unit” offering?*

If the offering consists of a “unit” comprised of two or more separate securities (such as a share and a purchase warrant), the “distribution” price for each component of the unit will be taken to be the allocation of the consideration set out in the prospectus or other offering document. Tax law requires that the consideration for a “unit” be allocated in a reasonable manner between the individual securities comprising the unit. RS will accept such allocated amounts as the distribution price for the securities comprising the unit.

8. *Are bids for the purchase of a restricted security by an issuer for the purpose of a dividend reinvestment or share purchase plan considered “issuer-restricted person” bids?*

Generally, a Participant will be able to undertake purchases for a dividend reinvestment plan, share purchase plan or other similar plan during a restricted period. If a person that is an “issuer-restricted person” (essentially, in these circumstances, any insider of the issuer) is a participant in a dividend reinvestment plan or a share purchase plan, such involvement will not preclude a Participant from acting on purchases by the plan during the restricted period. However, a person who is an “issuer-restricted person” should refer to OSC Rule 48-501 to determine if participation in such plans may be restricted or prohibited during the restricted period.

9. *Is a Participant who acts as “adviser” to an issuer that is the target of a securities exchange take-over bid a “dealer-restricted person”?*

The definition of dealer-restricted person includes a Participant that has been appointed by the **offeror** to be the dealer-manager, manager or soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid. A Participant acting as an adviser to the target company (the “offeree”) is not a dealer-restricted person.

Questions / Further Information

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