

**Ontario Securities Commission**

**Rule 48-501**

**Trading During Distributions, Formal Bids and Share Exchange Transactions**

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**Trading During Distributions, Formal Bids and Share Exchange Transactions**

**PART 1 - DEFINITIONS**

**1.1 Definitions**

In this Rule

“connected security” means, in respect of an offered security,

- (a) a security into which the offered security is immediately convertible, exchangeable or exercisable unless the security is a listed security or quoted security and the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the security at the commencement of the restricted period,
- (b) a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may significantly determine the value of the offered security,
- (c) if the offered security is a special warrant, the security which would be issued on the exercise of the special warrant, and
- (d) if the offered security is an equity security, any other equity security of the issuer,

where the security trades on a marketplace or a market where there is mandated transparency of orders or trade information;

“dealer-restricted period” means, for a dealer-restricted person, the period,

- (a) in connection with a prospectus distribution or a restricted private placement of an offered security, commencing on the later of
  - (i) the date two trading days prior to the day the offering price of the offered security is determined, and
  - (ii) the date on which a dealer enters into an agreement or reaches an understanding to participate in the prospectus distribution or restricted private placement of securities, whether or not the terms and conditions of such participation have been agreed upon, and

ending on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated,

- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the take-over bid circular, issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date of approval of the transaction by the security holders that will receive the offered security or the termination of the transaction by the issuer or issuers;

“dealer-restricted person” means, in respect of a particular offered security,

- (a) a dealer that
  - (i) is an underwriter, as defined in the Act, in a prospectus distribution or a restricted private placement,
  - (ii) is participating, as agent but not as an underwriter, in a restricted private placement, and
    - (A) the number of securities to be issued under the restricted private placement would constitute more than 10% of the issued and outstanding offered securities, and
    - (B) the dealer has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
  - (iii) has been appointed by an offeror to be the dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or

- (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining security holder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law, where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction,
- (b) a related entity of the dealer referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of a dealer referred to in clause (a) where,
  - (i) the dealer
    - (A) maintains and enforces written policies and procedures reasonably designed to prevent the flow of information regarding any prospectus distribution, private placement or transaction referred to in clause (a) to or from the related entity, department or division, and
    - (B) obtains an annual assessment of the operation of such policies and procedures,
  - (ii) the dealer has no officers or employees that solicit orders or recommend transactions in securities in common with the related entity, department or division, and
  - (iii) the related entity, department or division does not during the dealer-restricted period, in connection with the restricted security,
    - (A) act as a market maker (other than to meet its obligations under the rules of a recognized exchange),
    - (B) solicit orders from clients, or
    - (C) engage in proprietary trading,
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity for the dealer referred to in clause (a) or for a related entity of the dealer referred to in clause (b), or
- (d) any person or company acting jointly or in concert with a person or company described in clause (a), (b) or (c) for a particular transaction;

“exchange-traded fund” **[repealed]**

“highly-liquid security” means a listed security or quoted security that,

- (a) 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,
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day, or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” thereunder;

“issuer-restricted period” means, for an issuer-restricted person, the period,

- (a) in connection with a prospectus distribution or a restricted private placement of an offered security, commencing on the date two trading days prior to the day the offering price of the offered security is determined, and ending on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated,
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of the dissemination of the take-over bid circular, issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or other similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date of approval of the transaction by the security holders that will receive the offered security or the termination of the transaction by the issuer or issuers;

“issuer-restricted person” means, in respect of a particular offered security,

- (a) the issuer of the offered security,
- (b) a selling security holder of the offered security in connection with a prospectus distribution or restricted private placement,
- (c) an affiliated entity of the issuer of the offered security or a selling security holder; or
- (d) any person or company acting jointly or in concert with the person or company described in clause (a), (b) or (c) for a particular transaction;

“last independent sale price” means the last sale price of a trade on a market, other than a trade that a dealer-restricted person knows or ought reasonably to know was made by or on behalf of a person or company that is a dealer-restricted person or an issuer-restricted person;

“offered security” means all securities, that trade on a marketplace or a market where there is mandated transparency of orders or trade information, of the class of security that

- (a) is offered pursuant to a prospectus distribution or a restricted private placement,
- (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under securities legislation,
- (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under securities legislation, or
- (d) would be issuable to a security holder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from security holders that will receive the offered security in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities legislation,

provided that, if the security referred to in clauses (a) to (d) is a unit comprised of more than one type or class, each security comprising the unit shall be considered an offered security;

“restricted private placement” means a distribution of offered securities made pursuant to sections 2.3 or 2.30 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

“restricted security” means the offered security or any connected security.

## **1.2 Interpretation**

- (1) **Affiliated Entity** - The term “affiliated entity” has the meaning ascribed to that term in section 1.3 of National Instrument 21-101 – *Marketplace Operation*.
- (2) [Repealed].
- (3) **Equity Security** - An equity security is any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding up of the issuer, in its assets.
- (4) **Related Entity** - In respect of a dealer, a related entity is an affiliated entity of the dealer that carries on business in Canada and is registered as a dealer or

adviser in accordance with applicable securities legislation.

- (5) For the purposes of the definitions of “dealer-restricted period” and “issuer-restricted period”:
- (a) the selling process shall be considered to end,
    - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
    - (ii) in the case of a restricted private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering; and
  - (b) 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 such that any purchase or sale of a restricted security by a dealer after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the dealers that were party to the stabilization arrangements.

## **PART 2 - RESTRICTIONS**

### **2.1 [Repealed]**

### **2.2 Issuer-restricted Person**

Except as permitted under section 3.2, an issuer-restricted person shall not at any time during the issuer-restricted period,

- (a) bid for or purchase a restricted security for an account of an issuer-restricted person or an account over which the issuer-restricted person exercises direction or control; or
- (b) attempt to induce or cause any person or company to purchase any restricted security.

### **2.3 Deemed Re-commencement of a Restricted Period**

If a dealer appointed to be an underwriter in a prospectus distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the dealer in connection with the prospectus distribution or the restricted private placement then a dealer-restricted period and issuer-restricted period shall be deemed to have re-commenced upon receipt of such notice or notices and shall

be deemed to have ended at the time the dealer has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

### **PART 3 - PERMITTED ACTIVITIES AND EXEMPTIONS**

#### **3.1 [Repealed]**

#### **3.2 Exemptions - Issuer-restricted Persons**

Section 2.2 does not apply to an issuer-restricted person in connection with,

- (a) the exercise of an option, right, warrant, or a similar contractual arrangement held or entered into by the issuer restricted person prior to the commencement of the issuer-restricted period;
- (b) a bid or purchase of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
- (c) an issuer bid described in clauses 93(3)(a) through (d) of the Act if the issuer did not solicit the sale of the securities sold under those clauses;
- (d) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid; or
- (e) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement.

### **PART 4 - RESEARCH REPORTS**

#### **4.1 Compilations and Industry Research**

Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security provided that such information, opinion or recommendation,

- (a) is contained in a publication which:
  - (i) is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person, and
  - (ii) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of companies in the issuer's industry or contains a comprehensive list of securities currently recommended by the

dealer-restricted person; and

- (b) is given no materially greater space or prominence in such publication than that given to other securities or issuers.

#### **4.2 Issuers of Highly-liquid Securities**

Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security that is a highly-liquid security provided that such information, opinion, or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of the business of the dealer-restricted person.

### **PART 5 - EXEMPTION**

#### **5.1 Exemption**

The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

#### **PART 6 [Lapsed]**



**Companion Policy 48-501 CP  
to Rule 48-501  
Trading During Distributions, Formal Bids and  
Share Exchange Transactions**

**Part 1 — [Repealed]**

**Part 2 — Definitions and Interpretations**

- 2.1** "connected security" — The definition of "connected security" in section 1.1 of the Rule includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may *significantly determine* the value of the offered security. The Commission takes the view that, absent other mitigating factors, a connected security "significantly determines" the value of the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.
- 2.2** [Repealed]
- 2.3** End of "dealer-restricted period" and "issuer-restricted period" — distribution of securities and exercise of over-allotment option — The definitions of "dealer-restricted period" and "issuer-restricted period", with respect to a prospectus distribution and a "restricted private placement", refer to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Paragraph (a) of subsection 1.2(5) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the dealer has distributed all securities allocated to it and is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the dealer is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate's short position. If the dealer or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a dealer that are held and transferred to their inventory account at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the dealer's inventory account.

### **Part 3 — Restricted Persons**

- 3.1** Meaning of "acting jointly or in concert" — The definitions of "dealer-restricted person" and "issuer-restricted person" in section 1.1 of the Rule include a person or company acting jointly or in concert with a person or company that is also a dealer-restricted person or an issuer-restricted person for a particular transaction. For the purposes of the Rule, "acting jointly or in concert" has a similar meaning to that phrase as defined in section 1.9 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, with necessary modifications. In the context of this Rule only, it is a question of fact whether a person or company is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person or company who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases a restricted security will be presumed to be acting jointly or in concert with such dealer-restricted person or issuer-restricted person.
- 3.2** Exclusion of "related party" — The definition of "dealer-restricted person" in clause 1.1(b) excludes a related entity where certain conditions are met. Subclause (i)(B) requires the dealer to obtain an annual assessment of the operation of the policies and procedures referred to in subclause (i)(A). In the Commission's view, this assessment may be conducted as part of the annual policy and procedure review of the supervision system as required by Policy 7.1 of the Universal Market Integrity Rules.

### **Part 4 — [Repealed]**

### **Part 5 — Exemptions**

- 5.1** Fraud and Manipulation — Provisions against manipulation and fraud are found in securities legislation, specifically, Part 3 of National Instrument 23-101 — *Trading Rules* (NI 23-101) and section 126.1 of the *Securities Act* (Ontario) (when that provision comes into force). NI 23-101 prohibits manipulative or deceptive trading, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets. The Rule specifically prohibits certain trading activities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. The Rule also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low, possibility of manipulation. However, the Commission is of the view that notwithstanding that certain trading activities are permitted under the Rule these activities continue to be subject to the general provisions relating to manipulation and fraud found in securities legislation such that any activities carried out in accordance with the Rule must still meet the spirit of the general anti-manipulation and anti-fraud provisions.
- 5.2** **[Repealed]**

**5.2.1** [Repealed]

**5.3** [Repealed]

## **Part 6 — Research**

**6.1** Section 53 of the Act — Part 4 of the Rule provides exemptions from section 53 of the Act which prohibits providing research that in the Commission's view constitutes an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade prior to the filing and receipt of the preliminary prospectus and prospectus. The Commission is of the view that although sections 4.1 and 4.2 do permit dealer-restricted persons to disseminate research reports, this dissemination continues to be subject to the usual restrictions applicable to dealer-restricted persons when they are in possession of material inside information regarding the issuer.

**6.2** Meaning of "reasonable regularity" — Sections 4.1 and 4.2 of the Rule provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. Clause 4.1(a) and section 4.2 require that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Commission considers that it is a question of fact whether a publication was disseminated "with reasonable regularity" and whether it was in the "normal course of business". A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers' earnings and revenues would likely only be permitted if they had previously been included on a regular basis. In considering whether it was "in the normal course of business", the Commission may consider the distribution channels. The research should be distributed through the dealer-restricted person's usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.

**6.3** Meaning of "similar coverage" and of "substantial number of companies" — Clause 4.1(b) of the Rule requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry. This should not be interpreted as requiring that the opinions and recommendations relating to the issuer and other issuers in the issuer's industry must be similar or the same. In this context, in determining what is a "substantial number of issuers",

reference should be made to the relevant industry. Generally, the Commission 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. In any event the number of issuers should not be less than three.