

13.1.2 RS Market Integrity Notice – Request for Comments – Provisions Respecting Trading During Certain Securities Transactions

March 21, 2008

No. 2008-005

RS MARKET INTEGRITY NOTICE

REQUEST FOR COMMENTS

PROVISIONS RESPECTING TRADING DURING CERTAIN SECURITIES TRANSACTIONS

Summary

This Market Integrity Notice provides notice that, on February 28, 2008, the Board of Directors of Market Regulation Services Inc. approved the publication for comment of proposed amendments to the Universal Market Integrity Rules respecting various aspects of trading during certain securities transactions. The proposed amendments would:

- peg the price restriction on purchases of a restricted security to the “best independent bid price” at the time of the entry of the order rather than the “last independent sale price” immediately prior to the execution of the order;
- provide that any mutual fund listed on an exchange that meets certain conditions would be an “Exempt Exchange-traded Fund” unless otherwise designated by a Market Regulator;
- make consequential amendments to the definition of “restricted private placement” as a result of changes to applicable securities legislation;
- clarify the definitions of “dealer-restricted person” and “restricted period”;
- clarify that the orders to be taken into account in determining “best ask price” and “best bid price” are limited to orders on marketplaces then open for trading; and
- make a number of editorial amendments including: repealing the definition of “last independent sale price”; changing references from “Exchange-traded Fund” to “Exempt Exchange-traded Fund”; and clarifying the definition of “connected security”.

Questions / Further Information

For further information or questions concerning this notice contact:

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PROVISIONS RESPECTING TRADING DURING CERTAIN SECURITIES TRANSACTIONS

Summary

This Market Integrity Notice provides notice that, on February 28, 2008, the Board of Directors ("Board") of Market Regulation Services Inc. ("RS") approved the publication for comment of proposed amendments to the Universal Market Integrity Rules ("UMIR") respecting various aspects of trading during certain securities transactions ("Proposed Amendments"). The Proposed Amendments would:

- peg the price restriction on purchases of a restricted security to the "best independent bid price" at the time of the entry of the order rather than the "last independent sale price" immediately prior to the execution of the order;
- provide that any mutual fund listed on an exchange that meets certain conditions would be an "Exempt Exchange-traded Fund" unless otherwise designated by a Market Regulator;
- make consequential amendments to the definition of "restricted private placement" as a result of changes to applicable securities legislation;
- clarify the definitions of "dealer-restricted person" and "restricted period";
- clarify that the orders to be taken into account in determining "best ask price" and "best bid price" are limited to orders on marketplaces then open for trading; and
- make a number of editorial amendments including: repealing the definition of "last independent sale price"; changing references from "Exchange-traded Fund" to "Exempt Exchange-traded Fund"; and clarifying the definition of "connected security".

Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, OSC and, in Quebec, by the Autorité des marchés financiers ("Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and National Instrument 23-101.

As a regulation services provider, RS administers and enforces trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") and Canadian Trading and Quotation System ("CNQ"), each as an Exchange; and for Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited ("Chi-X"), Liquidnet Canada Inc. ("Liquidnet"), Perimeter Markets Inc. (the operator of "BlockBook" and "Omega ATS") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an ATS. CNQ presently operates an "alternative market" known as "Pure Trading" that is entitled to trade securities that are listed on other Exchanges. Pure Trading presently trades securities listed on the TSX. egX Canada Inc. ("egX") is recognized in British Columbia as an Exchange and RS has agreed with egX to act as the regulation services provider for egX upon egX commencing trading operations.

The Rules Advisory Committee of RS ("RAC") reviewed the Proposed Amendments prior to their consideration by the Board. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The amendments to UMIR will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment and ratification of the changes by the Board. Implementation of certain of the Proposed Amendments would be deferred following approval by the Recognizing Regulators until a date determined by the Board to permit changes in the systems and procedures of various market participants. The implementation of the Proposed Amendments would be coordinated with other changes to UMIR respecting short sales and failed trades. (See "Technological Implications and Implementation Plan" on page 17.)

The text of the Proposed Amendments is set out in Appendix "A". Comments on the Proposed Amendments should be in writing and delivered by **April 21, 2008** to:

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Chief Policy Counsel,
Market Policy and General Counsel's Office,
Market Regulation Services Inc.,
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e-mail: james.twiss@rs.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Susan Greenglass
Manager, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 595-8940
e-mail: sgreenglass@osc.gov.on.ca

Commentators should be aware that a copy of their comment letter will be publicly available on the RS website (www.rs.ca under the heading "Market Policy" and sub-heading "Universal Market Integrity Rules") after the comment period has ended. A summary of the comments contained in each submission will also included in a future Market Integrity Notice dealing with the revision or the approval of the Proposed Amendments.

Background to the Proposed Amendments

Current UMIR Provisions

On May 9, 2005, the current provisions of UMIR governing trading during certain securities transactions became effective. Rule 7.7 governs the activities of dealers, issuers and others in connection with a distribution of securities, securities exchange takeover bid, issuer bid or amalgamation, arrangement, capital reorganization or similar transaction. Rule 7.7 prescribes acceptable activities and otherwise restricts trading activities to preclude manipulative conduct by persons with an interest in the outcome of the distribution of securities or other transactions¹.

Rule 7.7 imposes prohibitions or restrictions on a "dealer-restricted person" trading in certain securities during a "restricted period". A dealer-restricted person is defined as including a Participant that has been retained as:

- an underwriter in a prospectus distribution or restricted private placement;
- an agent, but not as an underwriter, in a restricted private placement that involves the distribution of more than 10% of the issued and outstanding shares and the Participant is entitled to sell more than 25% of the distribution;
- a dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange takeover bid or issuer bid if a security is offered as consideration; or
- a soliciting dealer or adviser in respect of the approval of an amalgamation, arrangement, capital reorganization or similar transaction.

In addition, a number of persons connected to the Participant will be considered to be a dealer-restricted person including:

- a related entity of the Participant (but not including various separate or distinct departments or divisions for which there are adequate policies and procedures to prevent the flow of information);
- a dealer, a partner, director, officer, or employee of the Participant or a related entity of the Participant; and

¹ For more details on the current provisions of UMIR, reference should be made to Market Integrity Notice 2005-007 - *Notice of Amendment Approval – Amendments Respecting Trading During Certain Securities Transactions* (March 4, 2005).

- a person acting jointly or in concert with the Participant or one of the connected persons.

A restricted security is defined as:

- an offered security, which includes a listed or quoted security:
 - that is the subject of a prospectus distribution or restricted private placement,
 - offered in a securities exchange take-over bid or an issuer bid, and
 - issuable pursuant to an amalgamation, arrangement, capital reorganization or similar transaction; or
- a connected security, which includes a listed or quoted security:
 - into which the offered security is immediately convertible, exchangeable or exercisable,
 - that, by the terms of the offered security, may significantly determine the value of the offered security,
 - into which the offered security is exercisable, if the offered security is a special warrant, and
 - that is an equity security of the issuer of the offered security.

During the restricted period (which, in the case of a prospectus distribution or restricted private placement, generally commences two days prior to the determination of pricing and ends on the completion of the selling process and, in the case of a take-over bid, issuer bid, amalgamation, arrangement, capital reorganization or similar transaction, commences on the date of the dissemination of the circular or similar document and ends on the termination of the bid or transaction or the approval of the transaction), a dealer-restricted person is not permitted to bid for or purchase a restricted security or attempt to “induce or cause any person to purchase a restricted security”. A number of exemptions apply including the ability to bid or purchase a restricted security:

- in the case of an offered security, at a price which does not exceed the lesser of:
 - the price at which the offered security will be issued if that price has been determined, and
 - the last independent sale price at the time of the entry of the order to purchase;
- in the case of a connected security, at a price which does not exceed the lesser of:
 - the last independent sale price at the commencement of the restricted period, and
 - the last independent sale price at the time of the entry of the order to purchase;
- that is a “highly-liquid security”² or an “Exchange-traded Fund”³; and
- that is an unsolicited client order or a client order that was solicited prior to the commencement of the restricted period.

Exemptions are also provided for trades that are:

- basket trades (at least 10 securities with restricted securities comprising not more than 20% of the value of the transaction);
- Program Trades (undertaken in conjunction with a trade in a derivative in accordance with marketplace rules);
- rebalancing of portfolios based on index changes;
- arbitrage activities for inter-listed securities;

² See ‘Definition of “Highly-Liquid Security”’ on pages 17 to 19 for details.

³ See ‘Definition of an “Exempt Exchange-traded Fund”’ on pages 12 and 13 for details.

- activities pursuant to market maker obligations in accordance with marketplace rules; and
- activities undertaken by derivatives market makers.

Where permitted by applicable securities legislation, a dealer-restricted person may “attempt to induce or cause a person to purchase a restricted security” by:

- soliciting subscriptions for the prospectus distribution or restricted private placement or soliciting tenders to a take-over bid or issuer bid; and
- publishing or disseminating information, opinions or recommendations on any other restricted security if similar information opinions or recommendations are included on other issuers or if the security of the issuer is a “highly-liquid security”.

Subject to certain limited exemptions, a dealer-restricted person may not bid for or purchase a restricted security during the applicable restricted period on behalf of an “issuer-restricted person” (which includes the issuer, a selling securityholder, an affiliated entity, an associated entity, an insider, an account over which any of these persons exercises direction or control, and any person acting jointly or in concert with any of these other persons).

OSC Rule 48-501

Effective May 9, 2005, OSC Rule 48-501 became effective and paragraph 26 of OSC Policy 5.1 and OSC Policy 62-601 was rescinded. The provisions of Rule 7.7 of UMIR paralleled the provisions of OSC Rule 48-501 subject to a number of minor differences in language and structure that reflect:

- the use of different defined terms and drafting protocols;
- the application of the UMIR provisions in all jurisdictions in which RS is recognized as a self-regulatory entity as compared to the application of OSC Rule 48-501 in Ontario only;
- the application of the UMIR provisions to listed securities and quoted securities as compared to the application of OSC Rule 48-501 to all securities the trading of which are subject to transparency requirements under the Marketplace Operation Instrument; and
- the application of the UMIR provisions to Participants and Access Persons as compared to the application of OSC Rule 48-501 to all persons, including issuers and dealers.

It should be noted that clause 3.1(j) of OSC Rule 48-501 allows a dealer to rely on exemptions contained in UMIR. In particular, Rule 7.7 of UMIR allows a dealer-restricted person to bid for or purchase a restricted security as part of:

- a basket trade;
- a Program Trade;
- rebalancing of portfolios based on index changes;
- arbitrage activities for inter-listed securities;
- activities pursuant to Market Maker Obligations; and
- activities undertaken by derivatives market makers.

Currently, there are no substantive differences between Rule 7.7 of UMIR and OSC Rule 48-501 other than as a result of the four factors outlined above. At this time, the OSC is not proposing any proposed changes to OSC Rule 48-501. To the extent that the Proposed Amendments are approved and implemented, there may be certain differences between the provisions of UMIR and OSC Rule 48-501. (See “Summary of the Impact of the Proposed Amendments” on page 17 for a description of the effect of the differences in the provisions of UMIR and OSC Rule 48-501.)

Recent Amendments and Proposed Amendments to Regulation M

One of the key objectives of the amendments to Rule 7.7 of UMIR which became effective on May 9, 2005 was to harmonize the provisions governing the activities of Participants involved in various securities transactions in the capacity of underwriter, agent,

soliciting dealer or adviser to the extent possible with OSC Rule 48-501 and the provisions applicable in the United States under Regulation M ("Reg. M") of the *Securities Exchange Act of 1934* (United States).

On December 9, 2004, the Securities and Exchange Commission ("SEC") published for comment proposed amendments to Reg. M.⁴ The more significant aspects of the proposed amendments to Reg. M would:

- amend the definition of restricted period for an initial public offering⁵ and to specifically adopt the administrative interpretation of the SEC in the context of a merger, acquisition or exchange offer⁶;
- update the dollar value thresholds, including for an "actively-traded security", to take into account inflation since the adoption of Reg. M⁷; and
- require disclosure of syndicate covering transactions and prohibit the use penalty bids when stabilization is undertaken⁸.

On August 6, 2007, the SEC published approved amendments to Rule 105 of Reg. M that prevent a person from effecting a short sale during a limited time period, shortly before pricing, and then purchasing, including entering into a contract of sale for, such security in a securities offering.⁹ The amendment was narrowly tailored to address short sales prior to pricing that can reduce the offering proceeds to the issuer without restricting other short sales before the offering. In April of 2007, staff of the Office of Economic Analysis ("OEA") of the SEC published the results of a study of the reasons for "failures to deliver" in connection with trading in equity initial public offerings ("IPO Study").¹⁰ In particular, the IPO Study set out to test the hypothesis that failures to deliver during an IPO, and failures to deliver generally, are the result of "naked" short selling. The IPO Study used short selling data from the SHO Study, as well as information collected by OEA staff on transactions involving short sales in connection with 295 IPOs between January 1, 2005 and May 20, 2006. The results of the IPO study found no evidence that short selling is related to either fails to deliver or to the inclusion of an IPO on the threshold list. OEA staff point out that their findings "present clear evidence questioning the use of fails to deliver to measure naked short selling, even outside the context of an IPO."¹¹

With the exception of the approved amendment to Rule 105, the SEC has not approved the proposed amendments or republished revised amendments. When the current Rule 7.7 of UMIR was adopted in 2005, RS had indicated that it would consider any amendments made to Reg. M when adopted. The Proposed Amendments do not incorporate any of the provisions suggested in 2004 for the amendment of Reg. M or the change to Rule 105 adopted in August of 2007. As part of this Request for Comments, RS has asked several specific questions on the extent to which UMIR should be harmonized with the provisions

⁴ SEC Release No. 33-8511, December 9, 2004.

⁵ The proposal would have the restricted period for an initial public offering commence on the earlier of reaching an understanding for a dealer to act as an underwriter and, if there is no underwriter, the time the registration statement is filed with the SEC. Under the current requirements, the restricted period would generally commence on the later of either 1 or 5 business days prior to the determination of the offering price depending on the size and liquidity of the issuer or the time that the dealer became involved in the distribution.

⁶ The SEC has a "long-standing interpretation" that the restricted period for mergers, acquisitions and exchange offers includes any valuation period (time when the market price of the offered security is a factor in determining the consideration) or election period (time when a securityholder has the right to elect among various forms of consideration including the offered security).

⁷ Under the current provisions of Reg. M, an "actively-traded security" is one with an average daily trading value of at least \$1 million and a public float of at least \$150 million. The proposal proposed to increase these values to least \$1.2 million and \$180 million respectively. Rule 7.7 of UMIR does not use market capitalization as part of the test of being a "highly-liquid security". Rather UMIR requires an average of 100 trades a day as a further measure of liquidity. If the definition of a "highly-liquid security" under UMIR was amended to provide a similar increase in the threshold to \$1.2 million, the number of securities that would qualify as at January 2, 2008 would be reduced by 33 issuers or approximately 8% of the 413 listed securities which qualified (including 4 of the 20 securities listed on the TSXV that qualified). Given the passage of time since the SEC first made the proposal, a further increase in the threshold to \$1.3 million (to compensate for inflation since 2004) would result in an additional 9 TSX-listed issuers and 2 TSXV-listed issuers failing to qualify as a "highly-liquid security" as at January 2, 2008.

⁸ A syndicate covering transaction occurs when the managing underwriter places a bid or effects a purchase on behalf of the underwriting syndicate in order to reduce a syndicate short position created in connection with the offering. Penalty bids are a means by which the managing underwriter may impose a financial penalty on syndicate members whose customers sell offering shares in the immediate aftermarket. Under UMIR, syndicate covering transactions are monitored based on current order marking requirements. Presently, UMIR does not deal with penalty bids.

⁹ SEC Release No. 34-56206, August 6, 2007.

¹⁰ Edwards, Amy K. and Hanley, Kathleen Weiss, (preliminary draft) "Short Selling and Failures to Deliver in Initial Public Offerings" (April 23, 2007). Available at SSRN: <http://ssrn.com/abstract=981242>.

¹¹ *Ibid*, p. 27. In part, the IPO Study concludes that IPOs are not as short sale constrained as suggested by the literature and provides evidence that failures to deliver may be related to factors associated with underwriter activities to support the offer price. The IPO Study notes that one explanation for under-pricing in IPOs in the academic literature has been that short selling is either difficult or impossible in the immediate aftermarket because of perceived short selling constraints, namely the assumption that shares of newly public companies are difficult to borrow. The IPO Study documents that short selling is prevalent early in the trading of IPOs.

of Regulation M. (See “Specific Matters on Which Comment is Requested” on pages 18 to 24.) RS may propose additional amendments to UMIR at a future date.

Summary of the Proposed Amendments

The following is a summary of the principal components of the Proposed Amendments:

Price Restrictions

Proposed “Best Independent Bid Price” at Time of Order Entry

Rule 7.7 of UMIR imposes prohibitions or restrictions on a Participant who is a “dealer-restricted person” trading in certain securities during a “restricted period” including a prohibition of bidding for or purchasing a restricted security. One exemption from this prohibition permits bids or purchases at a price that is not above the “last independent sale price” of the security. The term “last independent sale price” is defined as including “the last sale price of a trade, other than a trade that a dealer-restricted person knows or ought reasonably to know has been executed by or on behalf of a person that is a dealer-restricted person”.

RS recognizes that, in the absence of an information processor, there are practical difficulties for a Participant or Access Person to monitor affected orders to ensure compliance with the requirements of Rule 7.7. If trade information from all marketplaces is not available in a timely manner in a form that can be readily incorporated into the working of the trading system of a marketplace or the systems of a Participant, the systems can not accurately restrict purchases by a dealer-restricted person that would comply with Rule 7.7. The policy rationale for the price restrictions on a Participant involved in a distribution of securities (by means of a prospectus offering, private placement, take-over bid, issuer bid, amalgamation, arrangement or similar transaction) are aimed at removing the influence of the Participant in maintaining the price of the securities subject to the distribution at a price above a level that the market would otherwise determine. RS believes that the policy objectives underpinning the price restrictions on purchases during market stabilization and market balancing could be achieved by replacing the “last sale” price test with a restriction that the order can not be entered at a price above the best “independent” bid price at the time of order entry (and that any subsequent variation of the order can not increase the price of the order to a price that is more than the best “independent” bid price at the time of the variation of the order).

If the price of the order at the time of entry or variation is in line with the prevailing market there is no obvious attempt on the part of a dealer-restricted person to further increase the market price to a level that would not otherwise exist. In the view of RS, the elimination of tests based on the “last sale price” would assist Participants to manage affected orders and would facilitate the operation of systems that can enforce the price restrictions imposed by the rules. In order to comply with the “best price” obligations imposed by Rule 5.2, a Participant must be aware of the prevailing market as displayed in the consolidated market display at the time of the entry of the order.

Use of a test based on “best independent bid price” would limit the marketplaces in respect of which orders must be taken into consideration to marketplaces that must be considered for the purposes of “best price” obligations, namely marketplaces that:

- disseminate order data in real-time and electronically through one or more information vendors;
- permit dealers to have access to trading in the capacity as agent;
- provide fully-automated electronic order entry; and
- provide fully-automated order matching and trade execution.

Currently, each of Chi-X, CNQ (including Pure Trading), Omega, TSX and TSXV meets these four conditions.

Alternatives Considered

RS set out in Market Integrity Notice 2006-017 *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006) an administrative interpretation that would allow a Participant when determining the “last independent sale price” of a particular security to rely on trade information from the “principal market” for the trading of that security or, when trading on another marketplace, the last sale price on that other marketplace provided such trade on that other marketplace has been executed subsequent to the last sale on the principal market. RS recognizes that the ability to bid for or purchase a particular security on a marketplace other than the principal market at a price higher than the last independent sale price on the principal market may act as an inducement to direct trading activity by a dealer-restricted person away from the principal market. However, RS believed that this interpretation was supportable during the initial period following the introduction of multiple competitive marketplaces while a more thorough review was undertaken of all provisions governing market stabilization and market balancing activities. In the view of RS, the “principal market” designation could become an administrative burden for

Participants to monitor if trading activity in particular securities devolved to a number of marketplaces including alternative trading systems that may not provide order transparency.

Rule 3.1 of UMIR restricted the short sale of a security below the last sale price of the security. This price restriction on short sales was “system enforced” by the trading systems of the individual marketplaces. In a separate initiative, RS is proposing to repeal the price restrictions on short sales in order to parallel changes to short sale rules in the United States.¹² If the repeal of price restrictions on short sales is approved, Rule 7.7 of UMIR will be the only provision to specifically tie permitted trading activity to a price determined by the “last sale”.

No trading system of a marketplace “system enforced” compliance with the price restrictions on a dealer-restricted person. Each individual Participant therefore had to monitor compliance with the price restrictions imposed by Rule 7.7. While the administrative interpretation provided in Market Integrity Notice 2006-017 made monitoring easier by always permitting reference to the “principal market”, it was still possible that a dealer-restricted person could enter an immediately executable bid on a marketplace that would trade at a price higher than the “last sale price”. RS acknowledges that if the bid was not immediately executable, the operation of Rule 5.2 governing “best price” obligations would preclude another marketplace executing a trade at a price below the bid entered by the dealer-restricted person. However, the operation of Rule 5.2 would also require a dealer-restricted person to be aware of the “best bid price” and “best ask price” at the time of order entry.

Clarification of Price Restrictions in Certain Securities Transactions

In Market Integrity Notice 2005-013 – *Effective Date of Amendments Respecting Trading During Certain Securities Transactions* (May 2, 2005), RS provided additional guidance on the interpretation of the price restrictions. In particular, RS confirmed that if an “offered security” was to be issued pursuant to:

- a securities exchange take-over bid;
- an issuer bid; or
- an amalgamation, arrangement, capital reorganization or similar transaction.

a dealer-restricted person may bid or purchase the offered security in connection with market stabilization or market balancing activities at a price which does not exceed the lesser of:

- the last independent sale price at the commencement of the restricted period; and
- the last independent sale price at the time of the entry on a marketplace of the order to purchase.

The Proposed Amendments would incorporate this advice directly into Rule 7.7 with the appropriate modifications to refer to the “best independent bid price” rather than the “last independent sale price”.

Definition of “best independent bid price”

If the basis of the price restrictions on market stabilization and market balancing are changed from “last sale price”, the Proposed Amendments would define the “best independent bid price” as the best bid price, other than for an order that a dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.

Definition of “Exempt Exchange-traded Fund”

Effective August 27, 2004, UMIR was amended to add a definition of “Exchange-traded Fund” as a mutual fund:

- the units of which are:
 - a listed security or a quoted security, and
 - in continuous distribution in accordance with applicable securities legislation; and
- designated by the Market Regulator.

A security which qualifies as an “Exchange-traded Fund” is exempt from the price restrictions imposed on Participants involved in certain securities transactions during a “restricted period” for the purposes of Rule 7.7 of UMIR. To date, RS has designated a

¹² Market Integrity Notice 2007-017 – *Request for Comments – Provisions Respecting Short Sales and Failed Trades* (September 7, 2007).

total of 60 securities traded on the TSX as an “Exchange-traded Fund”¹³. Each of the securities designated by RS as an “Exchange-traded Fund” has also been designated by the OSC to be an “exchange-traded fund” for the purposes of OSC Rule 48-501.

The Proposed Amendments would replace references from “Exchange-traded Fund” to “Exempt Exchange-traded Fund”. In addition, the Proposed Amendments would replace the requirement that a mutual fund be designated by the Market Regulator prior to qualifying as an “Exempt Exchange-traded Fund” with a provision that any mutual fund the units of which are a listed or quoted security in continuous distribution in accordance with applicable securities legislation would qualify unless the Market Regulator had designated the mutual fund to be a security excluded from the definition of an “Exempt Exchange-traded Fund”.

The Proposed Amendments would set out guidance in the Policy respecting the factors that may be considered by the Market Regulator in determining to exclude a mutual fund from the definition. In particular, a mutual fund may be designated if the Market Regulator determines that the trading price of units of the fund may be susceptible to manipulation due to a particular feature of the mutual fund. Factors which the Market Regulator would take into account in making a designation to exclude a particular mutual fund would be:

- the lack of liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- the absence of the ability to redeem units at any time for a “basket” of the underlying securities in addition to cash;
- the absence of the ability to exchange a “basket” of the underlying securities at any time for units of the fund;
- the fact that the fund does not frequently make a net asset valuation calculation publicly available; and
- the fact that there are no derivatives based on units of the fund, the underlying index or the underlying securities listed on a marketplace.

None of these additional five factors would be determinative in and of itself and each security would be evaluated on its own merits.

Definition of “Restricted Period”

Currently, the definition of the “restricted period” provides that the restricted period commences two trading days prior to the day the offering price of the offered security is determined. The Proposed Amendments clarify that this aspect of the definition applies if the securities are to be issued at a fixed price as part of a non-continuous distribution. The Proposed Amendments also clarify that, if the offering price is determined by a formula involving trading activity in the offered security or a connected security on one or more marketplaces for a period of time, the restricted period commences two days prior to the first trading day included for the purposes of the formula. The Proposed Amendments provide that the restricted period will commence two trading days prior to the issuance of the offered security, if the securities are issued as part of:

- a continuous distribution;
- a distribution at a non-fixed price permitted by National Instrument 44-101 – *Short Form Prospectus Distributions*; or
- an at-the-market distribution for the purposes of National Instrument 44-102 – *Shelf Distributions*.

The Proposed Amendments confirm that in both of these cases, the “restricted period” may commence later if the Participant 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 less than two trading days prior to the determination of the offering price or the issuance of the offered security.

(In addition, while not part of the Proposed Amendments, comment is specifically requested on whether additional prohibitions and restrictions should apply during distributions “at-the-market” or “non-fixed price”. See “Prohibitions and Restrictions on Distributions “At-the-Market” or “Non-Fixed Price” on pages 20 to 22.)

¹³ See Market Integrity Notice 2007-023 -*Guidance – Designation of Additional Exchange-traded Funds (November 16, 2007)*. A current list of the securities which have been designated by RS as an “Exchange-traded Fund” (“ETF List”) is available on the RS website (at www.rs.ca) and may be accessed through the “Quick Links” on the homepage or under the heading “Timely Disclosure” on the “Surveillance” page.

The Proposed Amendments would also clarify that the restricted period ends on the date that is the earlier of the date:

- the selling process has ended and all stabilization arrangements relating to the offered security are terminated; and
- the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired.

By providing that the “restricted period” ends if the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired, the definition will permit a Participant that has been involved in a prospectus distribution or a restricted private placement and holds a green shoe option to cover over-allotments to be free from the prohibitions and restrictions under Rule 7.7. Since the issuance of the offered securities has been completed and all statutory rights of withdrawal or rescission have expired, the dealer-restricted person no longer has the same incentive to maintain the market price of the offered security. If the Participant has a short position in the offered securities as a result of over-allotments, the Participant would be able to purchase securities in the open market or exercise the green shoe option.

Definition of “Restricted Private Placement”

The Proposed Amendments would clarify the types of private placements that may become subject to the restrictions and prohibitions under Rule 7.7 as a result of changes in applicable securities legislation subsequent to May 9, 2005, the date the current provisions of Rule 7.7 became effective. Under the Proposed Amendments, a “restricted private placement” would include a distribution made pursuant to:

- section 2.3, 2.9 or 2.10 of National Instrument 45-106 – *Prospectus and Registration Exemptions*; or
- section 2.1 of Ontario Securities Commission Rule 45-501 – *Ontario Prospectus and Registration Exemptions* or similar provisions of applicable securities legislation.

In the addition, the Proposed Amendments would be applicable to a distribution only if the number of securities to be distributed constitutes more than 10% of the issued and outstanding securities of the class subject to the distribution. This limiting condition is currently in the definition of a “dealer-restricted person” and the Proposed Amendment moves the condition to the definition of “restricted private placement” to simplify the interpretation of the concept.

Interpretation of “Best Ask Price” and “Best Bid Price”

The Proposed Amendments would clarify that in determining the “best ask price” or the “best bid price” reference would only be made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:

- halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or
- halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.

This clarification in the interpretation of the “best ask price” and “best bid price” will directly affect the determination of “best independent ask price” and “best independent bid price”. This interpretation is consistent with guidance provided by RS in connection with the determination of the orders to which a “best price” obligation is owed under Rule 5.2 of UMIR. As a practical matter, this interpretation of “best ask price” and “best bid price” will result in a dealer-restricted person being unable to enter a bid (or an offer if sell orders also restricted) in the “pre-open” facility of a marketplace unless the security is able to be traded on another marketplace that is then open for trading.

Consequential and Editorial Amendments

The Proposed Amendments include a number of provisions which are consequential or of an editorial nature including:

- the repeal of the definition of “last independent sale price” as a consequence of the changes in the price restrictions imposed on dealer-restricted persons during the restricted period;
- the deletion from the definition of “dealer-restricted person” of the concept of acting as agent in a private placement constituting more than 10% of the issued and outstanding securities of the class that is subject to

the distribution as a consequence of the changes in the definition of “restricted private placement” to specifically include this limitation; and

- editorial changes to:
 - standardize the use of the phrase “foreign organized regulated market” when otherwise referring to foreign markets on which trades may be executed, and
 - clarify the definition of “connected security” by indicating that a security which meets any one of the components of the definition will be considered a “connected security”.

Summary of the Impact of the Proposed Amendments

The following is a summary of the most significant impacts of the adoption of the Proposed Amendments:

- moves the time for determining compliance with the price restrictions on market stabilization and market balancing activities to the time of order entry on a marketplace rather than time of execution;
- relieves a Participant from restrictions and prohibitions under Rule 7.7 if the Participant holds a green shoe option and all other offered securities have been issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired;
- confirms that price restrictions apply under Rule 7.7 if the price at which the offered security will be issued in a prospectus distribution or restricted private placement has not been determined or if the offered security will be issued pursuant to a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction; and
- clarifies that the restricted period will commence two trading days prior to the issuance of the offered security, if the securities are issued as part of:
 - a continuous distribution,
 - a distribution at a non-fixed price permitted by National Instrument 44-101 – *Short Form Prospectus Distributions*, or
 - an at-the-market distribution for the purposes of National Instrument 44-102 – *Shelf Distributions*.

To the extent that the Proposed Amendments are approved and implemented, the provisions of UMIR may differ from those of OSC Rule 48-501. Generally speaking, most of the changes that would be introduced by the Proposed Amendments are clarifications on the application of the existing provisions. As such, the application of UMIR and OSC Rule 48-501 may not necessarily be inconsistent. OSC Rule 48-501 will continue to tie its restrictions on purchases by a dealer-restricted person to the “last independent sale price” rather than “best independent bid price” under the Proposed Amendments. However, it should be noted that clause 3.1(i) of OSC Rule 48-501 allows a dealer to rely on exemptions contained in UMIR (which would include the exemption provided for purchases using reference to the “best independent bid price” that would be provided as a result of the adoption of the Proposed Amendments).

Technological Implications and Implementation Plan

Anticipated Systems Changes

The Proposed Amendments would change one of the essential components of the price restrictions on purchases by a dealer-restricted person during a restricted period from the last independent sale price of a security at the time of the execution of the order to the best independent bid price at the time of the entry of the order. In order to provide Participants and service providers with an opportunity to make changes to their programming to accommodate the introduction of this change, implementation of the various provisions related to price restrictions would be deferred for a period of not less than 90 days following the date of approval of the Proposed Amendments by the Recognizing Regulators on a date to be determined by the Board. It would be the intention of RS to issue a Market Integrity Notice announcing the date these provisions would be implemented at least 30 days in advance of the implementation date determined by the Board.

Co-ordination with Changes to UMIR Respecting Short Sales and Failed Trades

On September 7, 2007, RS published proposed amendments to UMIR respecting short sales and failed trades.¹⁴ One of the amendments contained in that proposal would repeal all of the price restrictions on short sales. One of the existing exemptions from the price restrictions on a short sale is the short sale of a security which is an “Exchange-traded Fund”. If the Proposed Amendments are approved prior to the implementation of the amendments related to short sales and failed trades, it would be necessary to amend the exemption provided from the price restrictions on a short sale under clause (g) of subsection (2) of Rule 3.1 to refer to an “Exempt Exchange-traded Fund” rather than an “Exchange-traded Fund”.

Specific Matters on Which Comment is Requested

Comment is requested on all aspects of the Proposed Amendments, including comments on policy alternatives that may be available to the implementation of the Proposed Amendments. However, comment is specifically requested on the following matters:

Definition of “Highly-Liquid Security”

Effective May 9, 2005, Rule 7.7 of UMIR was amended to provide an exemption from the price restrictions related to market stabilization and market balancing activities for securities which qualified as a “highly-liquid security”. The exemption for a highly-liquid security was justified on the basis that particular securities demonstrated sufficient liquidity that the intervention of purchasers connected to a Participant involved in a distribution of a security would have minimal impact on the market price. For the purposes of the exemption from the price restrictions during market stabilization and market balancing activities, 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 Reg. M and is considered to be an “actively-traded security” under that regulation.

Since May of 2005, RS has maintained 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. The list maintained by RS does not contain a listed security or a quoted security that is inter-listed with a market in the United States and that is considered to be “actively-traded” under Reg. M but which fails to meet the tests for average daily trades and average daily trading value on Canadian marketplaces. If a security is traded on Canadian marketplaces in both Cdn\$ and US\$ and the security is on the list of “highly-liquid securities” that status will apply to the security regardless of the currency in which the trade is made.

A separate list of highly-liquid securities is prepared by RS for each trading day. 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) and may be accessed through the “Quick Links” on the homepage.

Based on trading in the 60-days from November 2, 2007 to December 31, 2007, there were a total of 413 listed securities which qualified as a “highly-liquid security” of which 393 were listed on the TSX (representing 18.6% of the 2,116 issues then listed on the TSX) and 20 on TSXV (representing only 0.9% of the 2,338 issues then listed on TSXV). The number of securities which qualify as highly-liquid has changed since the introduction of the concept in line with fluctuations in overall trading activity. For example, on April 30, 2007, a total of 463 listed securities qualified of which 430 were listed on TSX and 33 on TSXV. On May 9, 2005, the date the concept of a “highly-liquid security” became effective, there were a total of 300 listed securities which qualified as a “highly-liquid security” of which 293

¹⁴ Market Integrity Notice 2007-017 – Request for Comments – Provisions Respecting Short Sales and Failed Trades (September 7, 2007).

were listed on the TSX and only 7 on TSXV.¹⁵ None of the securities listed on CNQ has qualified as a “highly-liquid security”.

Daily calculation ensures that the list of qualified securities reflects current trading activity in any particular security. For example, for the 20 trading days during the month of April of 2007, a total of 42 securities were added to the list while 28 securities were deleted (with 5 of the securities being both added and deleted during the month). Many of the changes simply reflected changes in the stock list or increased liquidity surrounding corporate events such as take-overs or mergers. However, RS also recognizes that the maintenance of a daily list may impose an administrative burden on Participants or their service providers.

1. *Should the list of “highly-liquid securities” be updated less frequently than each trading day? If so, what would be the appropriate frequency (e.g. weekly, monthly or quarterly)?*

Harmonization with Requirements in the United States

In 2007, the SEC has adopted a provision preventing a person from effecting a short sale during a limited time period, shortly before pricing, and then purchasing, including entering into a contract of sale for, such security in a securities offering. The SEC has also proposed to adopt a number of provisions regarding market stabilization including:

- amending the definition of restricted period for an initial public offering and in the context of a merger, acquisition or exchange offer;
- updating the dollar value thresholds, including for an “actively-traded security”, to take into account inflation since the adoption of Reg. M; and
- requiring disclosure of syndicate covering transactions and prohibit the use penalty bids when stabilization is undertaken.

RS has not proposed similar measures under UMIR as reviews and audits undertaken by RS have not found that there are significant problems in these areas in the Canadian context. In particular, it is the view of RS that the key element in the definition of a “highly-liquid security” is the number of transactions executed on average rather than the dollar amount traded. RS originally included the \$1,000,000 in average trading value as part of the definition in order to ensure that a security that traded a large number of times with minimal value did not qualify for the exemption as such a security could be more susceptible to price manipulation. Under the current definition, if a security had only on average 100 trades per day, the minimum number of trades required under the definition, the average value of each trade must be not less than \$10,000. RS did not propose an increase in the dollar threshold for a security to qualify as a “highly-liquid security” as part of the Proposed Amendments outlined in this Market Integrity Notice. However, RS might consider an increase in the dollar threshold if such a change to Reg. M is implemented in the United States.

2. *Would there be any specific costs or benefits associated with UMIR adopting additional provisions comparable to those in the United States related to market stabilization activities?*
3. *Would there be any specific benefit in adjusting for inflation the \$1,000,000 threshold for average daily trading value under the definition of “highly-liquid security”?*

Prohibitions and Restrictions on Distributions “At-the-Market” or “Non-Fixed Price”

The current provisions of Rule 7.7 presume that the dealer-restricted person has an interest in increasing the market price of a security that is offered to the public as part of distribution or other securities transaction. Recently, a number of issuers have expressed an interest in pursuing “at-the-market” offerings pursuant to National Instrument 44-102 – *Shelf Distributions* or a distribution at a “non-fixed price” permitted by National Instrument 44-101 – *Short Form Prospectus Distributions*. While securities legislation has contemplated both “at-the-market” offerings and “non-fixed price” distributions, historically neither has been used extensively in Canada. In its simplest form, an “at-the-market”

¹⁵ The securities listed on the TSX which qualified as a “highly-liquid security” as at May 2, 2005 accounted for approximately 81.7% of trades on the TSX during March and April of 2005 (as compared to 91.3% of trades on the TSX during November and December of 2007 for securities listed on the TSX which qualified as a “highly-liquid security” as at January 2, 2008) and approximately 90.2% of the value of trades on the TSX during March and April of 2005 (as compared to 95.3% of the value of trades on the TSX during November and December of 2007 for securities listed on the TSX which qualified as a “highly-liquid security” as at January 2, 2008). The securities listed on the TSXV which qualified as a “highly-liquid security” as at May 2, 2005 accounted for approximately 10.4% of trades on the TSXV during March and April of 2005 (as compared to 20.0% of trades on the TSXV during November and December of 2007 for securities listed on the TSXV which qualified as a “highly-liquid security” as at January 2, 2008) and approximately 18.1% of the value of trades on the TSXV during March and April of 2005 (as compared to 33.0% of the value of trades on the TSXV during November and December of 2007 for securities listed on the TSXV which qualified as a “highly-liquid security” as at January 2, 2008).

offering could involve a Participant acting solely as agent for the entry of sell orders on a marketplace at a commission rate comparable with the handling of any client order of a similar size and without any effort by the Participant to solicit clients or other dealers for purchase orders. If a Participant has such a limited involvement in the distribution, RS is of the view that the Participant would not be an “underwriter” for the purposes of applicable securities legislation and, as such, would not be a “dealer-restricted person” for the purposes of Rule 7.7 of UMIR. On the other hand, the “at-the-market” offering could be structured as an “equity line” under which the Participant would have agreed to guarantee the issuance of a minimum number of securities at the prevailing market price on specified dates or following advance notice from the issuer. In these circumstances, the Participant would have an interest in the success of the transaction comparable with that of an underwriter in a traditional prospectus offering.

In both an “at-the-market” distribution and a “non-fixed price” offering, a dealer-restricted person that is involved may have an incentive to reduce the market price of the offered security in certain circumstances. For example, if a dealer-restricted person had sold an amount of the particular security short into the market, that dealer-restricted person may have a perceived conflict between maximizing the proceeds for the issuer and being able to cover the short position in the “at-the-market” distribution or “non-fixed price” offering at a price below the proceeds of the short sale. To ensure that the proceeds of the distribution to the issuer have not been unduly affected by market activity of the dealer-restricted person, a provision may be desirable that would provide for prohibitions and restrictions on the offers and sales made by a dealer-restricted person involved in an “at-the-market” distribution or a “non-fixed price” distribution. A draft of a “possible” provision that would specially apply to an “at-the-market” distribution and a “non-fixed price” offering is set out as Appendix “C”. As contemplated in that draft, the prohibitions and restrictions on offers and sales during the restricted period by a dealer-restricted person would be in addition to and parallel the prohibitions and restrictions on bids and purchases. During “at-the-market” or “non-fixed price” distributions, a dealer-restricted person shall not at any time during the restricted period:

- offer or sell a restricted security for an account:
 - of a dealer-restricted person, or
 - over which the dealer-restricted person exercises direction or control; or
- attempt to induce or cause any person to sell a restricted security.

The exemptions would permit a dealer-restricted person during the restricted period to offer or sell the restricted security at a price less than the greater of:

- the best independent ask price at the commencement of the restricted period, and
- the best independent ask price at the time of the entry on a marketplace of the order to purchase.

Exemptions would be provided for trades that are:

- sales of a “highly-liquid security” or an “Exempt Exchange-traded Fund” or a connected security;
- the result of an unsolicited client order or a client order solicited prior to the commencement of the restricted period;
- basket trades (at least 10 securities with restricted securities comprising not more than 20% of the value of the transaction);
- Program Trades (undertaken in conjunction with a trade in a derivative in accordance with marketplace rules);
- rebalancing of portfolios based on index changes;
- arbitrage activities for inter-listed securities;
- activities pursuant to market maker obligations in accordance with marketplace rules; and
- activities undertaken by derivatives market makers.

During the restricted period of an “at-the-market” distribution or a “non-fixed price” offering, a dealer-restricted person would be restricted in acting in connection with a bid or purchase on behalf of person that the dealer-restricted person knew or ought reasonably to what was an “issuer-restricted person”. Persons closely connected to the issuer would

have an interest in ensuring that the trading price of the security was supported during the restricted period. However, in the view of RS, the interests of an issuer-restricted person are such that there is no need to restrict the ability of a dealer-restricted person to act in connection with a offer or sale by an issuer-restricted person during the restricted period for an "at-the-market" distribution or "non-fixed price" offering.

4. *Should RS consider amending UMIR at this time to deal with dealer-restricted persons bidding for or purchasing restricted securities during a restricted period for an "at-the-market" distribution and a "non-fixed price" offering or should any amendments be deferred until there has been more experience with such offerings?*
5. *If amendments should be considered at this time, are the possible provisions set out in Appendix "C" appropriate?*

Additional Exemptions When Acting on Behalf of an Issuer-Restricted Person

A dealer-restricted person may not bid for or purchase a restricted security during the applicable restricted period on behalf of an "issuer-restricted person" (which includes the issuer, a selling securityholder, an affiliated entity, an associated entity, an insider, an account over which any of these persons exercises direction or control, and any person acting jointly or in concert with any of these other persons). UMIR presently provides a number of exemptions from this prohibition to permit a dealer-restricted person to act in connection with:

- the exercise of existing options, rights, warrants or similar contractual arrangements;
- purchases under a Small Securityholder Selling and Purchase Arrangement;
- purchases pursuant to certain exempt issuer bids;
- solicitations pursuant to a securities exchange take-over bid or issuer bid; or
- subscriptions pursuant to a prospectus distribution or restricted private placement.

In each of the current exemptions, the ability of the dealer-restricted person to act in respect of the purchase or bid by the issuer-restricted person recognized that the transaction was principally for a purpose other than supporting the price of the restricted security and did not afford an advantage to the issuer-restricted person that was not otherwise available to other securityholders.

UMIR presently provides a number of exemptions for a dealer-restricted person if the type of security or the type of transaction is not amenable to undue price influences such as when the order is:

- for a security that is a "highly-liquid security" or an "Exempt Exchange-traded Fund";
- part of a "basket trade" (at least 10 securities with restricted securities comprising not more than 20% of the value of the transaction);
- part of a Program Trade (undertaken in conjunction with a trade in a derivative in accordance with marketplace rules); or
- made to rebalance a portfolio based on index changes.

These exemptions are not presently available when a dealer-restricted person is acting on behalf of an issuer-restricted person.

6. *Should RS consider providing similar exemptions to permit a dealer-restricted person to act as agent on a bid or purchase by an issuer-restricted person for these types of orders?*

The current definition of "issuer-restricted person" includes any person who is an insider of the issuer of the restricted security. RS is concerned that this definition may unduly prevent trading activity by certain persons who are not directly involved in or otherwise aware of undisclosed material information regarding a distribution or transaction. There are at least two approaches to providing relief in these circumstances. RS could consider a "carve-out" from the definition of "issuer-restricted person" (similar to that which presently exists in the definition of "dealer-restricted person") to exclude a person who is an insider of the issuer of the restricted security provided certain conditions are met, such as:

- the issuer maintains and enforces written policies and procedures that are reasonably designed to prevent the flow of material information that has not been publicly disclosed from the issuer regarding the offered security and the related transaction;
- the insider is generally excluded from receiving material information that has not been publicly disclosed; and
- the insider is not aware of any material information that has not been publicly disclosed regarding the offered security or the related transaction.

Alternatively, a general exemption could be provided to permit a dealer-restricted person to act on behalf of an issuer-restricted person who is an insider of the issuer of the restricted security if the transaction would be exempt from insider reporting requirements in accordance with certain of the provisions of National Instrument 55-101 – *Insider Reporting Exemptions* (“NI 55-101”). In particular, a dealer-restricted person would be able to act on a bid or purchase by:

- certain directors and senior officers (who, in addition to other requirements, do not have access in the ordinary course to undisclosed material facts or material information regarding the issuer of the restricted security) under Part 2 of NI 55-101;
- directors and senior officers of affiliates of insiders of a reporting issuer under Part 3 of NI 55-101; and
- automatic securities purchase plans under Part 5 of NI 55-101.

The advantage of this alternative is that the ability to use the exemption is tied directly to another “verifiable” event – the obligation to file an insider trading report under applicable securities legislation. From a policy perspective, the securities regulatory authorities have accepted that such trades are of a nature that does not require ordinary disclosure of the transaction through the filing of an insider trading report.

RS is of the view that the exemption, if proposed, would **not** extend the exemption to bids or purchases under a normal course issuer bid (which are otherwise exempt from the insider reporting requirement under Part 6 of NI 55-101) as it is the view of RS that purchases by the issuer in the open market during a restricted period should not be permitted as the issuer of the restricted security has a particular interest in maintaining the price of the security during the restricted period.

7. *Should RS consider providing additional exemptions to permit a dealer-restricted person to act as agent for certain insiders of the issuer of a restricted security? If so, what approach to providing such exemption would be preferable?*

Appendices

- Appendix “A” sets out the text of the Proposed Amendments to the Rules and Policies respecting trading during certain securities transactions;
- Appendix “B” contains the text of the relevant provisions of the Rules and Policies as they would read on the adoption of the Proposed Amendments together with a marked version of the current provisions highlighting the changes introduced by the Proposed Amendments; and
- Appendix “C” contains the text of possible additional restrictions on the selling activities of a dealer-restricted person who is involved in an “at-the-market” distribution or “non-fixed price” offering.

Questions / Further Information

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Appendix "A"

Provisions Respecting Trading During Certain Securities Transactions

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by:
 - (a) deleting the word "and" at the end of clause (c) of the definition of "connected security" and substituting "or";
 - (b) inserting the following definition of "best independent bid price":

"best independent bid price" means the best bid price, other than for an order that a dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.
 - (c) deleting subclause (ii) of clause (a) of the definition of "dealer-restricted person" and substituting the following:
 - (ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities and the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
 - (d) deleting the definition of "Exchange-traded Fund" and inserting the following definition of "Exempt Exchange-traded Fund":

"Exempt Exchange-traded Fund" means a mutual fund for the purposes the purposes of applicable securities legislation, the units of which:

 - (a) are a listed security or a quoted security; and
 - (b) are in continuous distribution in accordance with applicable securities legislation

but does not include a mutual fund that has been designated by the Market Regulator to be excluded from this definition.
 - (e) deleting the definition of "last independent sale price"; and
 - (f) deleting clause (a) of the definition of "restricted period" and substituting the following:
 - (a) in connection with a prospectus distribution or a restricted private placement of any offered security, commencing two trading days prior to:
 - (i) the day the offering price of the offered security is determined, if the securities are to be issued at a fixed price as part of a non-continuous distribution, or
 - (ii) the issuance of the offered security, if the securities are issued as part of:
 - (A) a continuous distribution,
 - (B) a distribution at a non-fixed price permitted by National Instrument 44-101 – *Short Form Prospectus Distributions*, or
 - (C) an at-the-market distribution for the purposes of National Instrument 44-102 – *Shelf Distributions*,

provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant 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 if that date is later than that determined for the purposes of clause (i) or (ii),

and ending on the date that is the earlier of the date:

- (iii) the selling process has ended and all stabilization arrangements relating to the offered security are terminated, and
 - (iv) the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired;
 - (g) deleting the definition of “restricted private placement” and substituting the following:
 - “**restricted private placement**” means a distribution of securities made pursuant to:
 - (a) section 2.3, 2.9 or 2.10 of National Instrument 45-106 – *Prospectus and Registration Exemptions*; or
 - (b) section 2.1 of Ontario Securities Commission Rule 45-501 – *Ontario Prospectus and Registration Exemptions* or similar provisions of applicable securities legislation,
 - and the number of securities to be distributed constitutes more than 10% of the issued and outstanding securities of the class subject to the distribution.
- 2. Subsection (6) of Rule 1.2 is amended by:
 - (a) deleting the word “and” at the end of clause (a);
 - (b) inserting the phrase “; and” at the end of clause (b); and
 - (c) inserting the following as clause (c):
 - (c) if the offering price is determined by a formula involving trading activity in the offered security or a connected security on one or more marketplaces for a period of time, the offering price shall be considered to be determined on the first trading day included in the calculation for the purposes of the formula.
- 3. Rule 1.2 is amended by adding the following as subsection (8):
 - (8) For the purposes of determining the “best ask price” or the “best bid price” at any particular time reference is made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:
 - (a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or
 - (b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.
- 4. Rule 7.7 is amended by:
 - (a) deleting subclause (i) of clause (a) of subsection (4) and substituting the following:
 - (i) in the case of an offered security:
 - (A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined,
 - (B) the best independent bid price at the commencement of the restricted period if the price at which the offered security will be issued in a prospectus distribution or restricted private placement has not been determined or if the offered security will be issued pursuant to a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction, and
 - (C) the best independent bid price at the time of the entry on a marketplace of the order to purchase,

- (b) deleting in paragraph (A) of subclause (ii) of clause (a) of subsection (4) the phrase “last independent sale price” and substituting “best independent bid price”;
- (c) deleting in paragraph (B) of subclause (ii) of clause (a) of subsection (4) the phrase “last independent sale price” and substituting “best independent bid price”;
- (d) inserting in subclause (ii) of clause (b) of subsection (4) the word “Exempt” prior to the word “Exchange-traded”;
- (e) deleting in subclause (i) of clause (c) of subsection (7) the phrase “market” and substituting “marketplace or foreign organized regulated market”.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:

1. Part 2 of Policy 1.1 is deleted and the following substituted:

Part 2 – Definition of “Exempt Exchange-traded Fund”

An “Exempt Exchange-traded Fund” is defined, in part, as a mutual fund for the purposes of applicable securities legislation, the units of which are a listed security or a quoted security and are in continuous distribution in accordance with applicable securities legislation. The definition excludes a mutual fund that has been designated by the Market Regulator to be excluded from the definition.

As guidance, a mutual fund may be designated by the Market Regulator if it is determined that the trading price of units of the fund may be susceptible to manipulation due to a particular feature of the mutual fund. Factors which the Market Regulator would take into account in making a designation to exclude a particular mutual fund would be:

- the lack of liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- the absence of the ability to redeem units at any time for a “basket” of the underlying securities in addition to cash;
- the absence of the ability to exchange a “basket” of the underlying securities at any time for units of the fund;
- the fact that the fund does not frequently make a net asset value calculation publicly available; and
- the fact that there are no derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace.

None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits.

Appendix "B"

Text of Rules and Policies to Reflect Proposed Amendments
Respecting Trading During Certain Securities Transactions

Text of Provisions of Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
<p>1.1 Definitions</p> <p>"best independent bid price" means the best bid price, other than for an order that a dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.</p>	<p>1.1 Definitions</p> <p>"best independent bid price" means the <u>best bid price, other than for an order that a dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.</u></p>
<p>"connected security" means, in respect of an offered security:</p> <p>(a) a listed security or quoted security into which the offered security is immediately convertible, exchangeable or exercisable unless the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the listed security or quoted security at the commencement of the restricted period;</p> <p>(b) a listed security or quoted 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;</p> <p>(c) if the offered security is a special warrant, a listed security or quoted security which would be issued on the exercise of the special warrant; or</p> <p>(d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security.</p>	<p>"connected security" means, in respect of an offered security:</p> <p>(a) a listed security or quoted security into which the offered security is immediately convertible, exchangeable or exercisable unless the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the listed security or quoted security at the commencement of the restricted period;</p> <p>(b) a listed security or quoted 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;</p> <p>(c) if the offered security is a special warrant, a listed security or quoted security which would be issued on the exercise of the special warrant; <u>or and</u></p> <p>(d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security.</p>
<p>"dealer-restricted person" means, in respect of a particular offered security:</p> <p>(a) a Participant that:</p> <p>...</p> <p>(ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities and the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,</p> <p>...</p>	<p>"dealer-restricted person" means, in respect of a particular offered security:</p> <p>(a) a Participant that:</p> <p>...</p> <p>(ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities and:</p> <p>(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</p> <p>(B) the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,</p> <p>...</p>

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<p>“Exempt Exchange-traded Fund” means a mutual fund for the purposes of applicable securities legislation, the units of which:</p> <p>(a) are a listed security or a quoted security; and</p> <p>(b) are in continuous distribution in accordance with applicable securities legislation</p> <p>but does not include a mutual fund that has been designated by the Market Regulator to be excluded from this definition.</p>	<p>“<u>Exempt Exchange-traded Fund</u>” means a mutual fund—<u> for the purposes of applicable securities legislation.</u></p> <p>(a) the units of which are:</p> <p><u>(a)</u> <u>are</u> a listed security or a quoted security; <u>and</u></p> <p><u>(b)</u> are in continuous distribution in accordance with applicable securities legislation; and</p> <p>(b) but does not include a mutual fund that has <u>been</u> designated by the Market Regulator <u>to be excluded from this definition.</u></p>
	<p>“last independent sale price” means the last sale price of a trade, other than a trade that a dealer-restricted person knows or ought reasonably to know has been executed by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.</p>
<p>“restricted period” means, for a dealer-restricted person or an issuer-restricted person, the period:</p> <p>(a) in connection with a prospectus distribution or a restricted private placement of any offered security, commencing two trading days prior to:</p> <p>(i) the day the offering price of the offered security is determined, if the securities are to be issued at a fixed price as part of a non-continuous distribution, or</p> <p>(ii) the issuance of the offered security, if the securities are issued as part of:</p> <p>(A) a continuous distribution,</p> <p>(B) a distribution at a non-fixed price permitted by National Instrument 44-101 – <i>Short Form Prospectus Distributions</i>, or</p> <p>(C) an at-the-market distribution for the purposes of National Instrument 44-102 – <i>Shelf Distributions</i>,</p> <p>provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant 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 if that date is later than determined for the purposes of clause (i) or (ii),</p> <p>and ending on the date that is the earlier of the date:</p> <p>(iii) the selling process has ended and all stabilization arrangements relating to the offered security are terminated, and</p>	<p>“restricted period” means, for a dealer-restricted person or an issuer-restricted person, the period:</p> <p>(a) in connection with a prospectus distribution or a restricted private placement of any offered security, commencing two trading days prior to:</p> <p>(i) the day the offering price of the offered security is determined, <u>if the securities are to be issued at a fixed price as part of a non-continuous distribution, or</u></p> <p><u>(ii) the issuance of the offered security, if the securities are issued as part of:</u></p> <p>(A) <u>a continuous distribution,</u></p> <p>(B) <u>a distribution at a non-fixed price permitted by National Instrument 44-101 – Short Form Prospectus Distributions, or</u></p> <p>(C) <u>an at-the-market distribution for the purposes of National Instrument 44-102 – Shelf Distributions,</u></p> <p><u>provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant 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 if that date is later than determined for the purposes of clause (i) or (ii),</u></p> <p>and ending on the date <u>that is the earlier of the date:</u></p> <p><u>(iii) the selling process has ended and all stabilization arrangements relating to the offered security are terminated</u> provided that, if the person is a dealer-</p>

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<p>(iv) the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired;</p> <p>(b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the securities exchange take-over bid circular or 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</p> <p>(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 for approval of the transaction by the securityholders that will receive the offered security or the termination of the transaction by the issuer or issuers.</p>	<p>restricted person, the period shall commence on the date the Participant 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 if that date is later; and</p> <p><u>(iv) the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal or rights of rescission in connection with such issuance have expired;</u></p> <p>(b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the securities exchange take-over bid circular or 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</p> <p>(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 for approval of the transaction by the securityholders that will receive the offered security or the termination of the transaction by the issuer or issuers.</p>
<p>“restricted private placement” means a distribution of securities made pursuant to:</p> <p>(a) section 2.3, 2.9 or 2.10 of National Instrument 45-106 – <i>Prospectus and Registration Exemptions</i>; or</p> <p>(b) section 2.1 of Ontario Securities Commission Rule 45-501 – <i>Ontario Prospectus and Registration Exemptions</i> or similar provisions of applicable securities legislation,</p> <p>and the number of securities to be distributed constitutes more than 10% of the issued and outstanding securities of the class subject to the distribution.</p>	<p>“restricted private placement” means a distribution of offered securities made pursuant to:</p> <p>(a) section 2.3, 2.9 or 2.10 of National Instrument 45-106 – <i>Prospectus and Registration Exemptions</i>; or</p> <p>(b) clause 72(1)(b) of the Securities Act (Ontario) or section 2.13 of Ontario Securities Commission Rule 45-501 - <u><i>Exempt Distributions-Ontario Prospectus and Registration Exemptions</i></u> or similar provisions of applicable securities legislation.</p> <p><u>and the number of securities to be distributed constitutes more than 10% of the issued and outstanding securities of the class subject to the distribution.</u></p>
<p>1.2 Interpretation</p> <p>(6) For the purposes of the definition of “restricted period”:</p> <p>(a) the selling process shall be considered to end:</p> <p>(i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has</p>	<p>1.2 Interpretation</p> <p>(6) For the purposes of the definition of “restricted period”:</p> <p>(a) the selling process shall be considered to end:</p> <p>(i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has</p>

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<p>allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and</p> <p>(ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering;</p> <p>(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 Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements; and</p> <p>(c) if the offering price is determined by a formula involving trading activity in the offered security or a connected security on one or more marketplaces for a period of time, the offering price shall be considered to be determined on the first trading day included in the calculation for the purposes of the formula.</p>	<p>allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and</p> <p>(ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering; and</p> <p>(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 Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements; <u>and-</u></p> <p>(c) <u>if the offering price is determined by a formula involving trading activity in the offered security or a connected security on one or more marketplaces for a period of time, the offering price shall be considered to be determined on the first trading day included in the calculation for the purposes of the formula.</u></p>
<p>(8) For the purposes of determining the “best ask price” or the “best bid price at any particular time reference is made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:</p> <p>(a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or</p> <p>(b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.</p>	<p><u>(8) For the purposes of determining the “best ask price” or the “best bid price at any particular time reference is made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:</u></p> <p><u>(a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or</u></p> <p><u>(b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.</u></p>
<p>7.7 Trading During Certain Securities Transactions</p> <p>(4) Exemptions - Subsection (1) does not apply to a dealer-restricted person in connection with:</p> <p>(a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:</p>	<p>7.7 Trading During Certain Securities Transactions</p> <p>(4) Exemptions - Subsection (1) does not apply to a dealer-restricted person in connection with:</p> <p>(a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:</p>

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<p>(i) in the case of an offered security:</p> <p>(A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined,</p> <p>(B) the best independent bid price at the commencement of the restricted period if the price at which the offered security will be issued in a prospectus distribution or restricted private placement has not been determined or if the offered security will be issued pursuant to a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction, and</p> <p>(C) the best independent bid price at the time of the entry on a marketplace of the order to purchase,</p> <p>(ii) in the case of a connected security:</p> <p>(A) the best independent bid price at the commencement of the restricted period, and</p> <p>(B) the best independent bid price at the time of the entry on a marketplace of the order to purchase,</p> <p>provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on a foreign organized regulated market other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;</p> <p>(b) a restricted security that is:</p> <p>(i) a highly-liquid security,</p> <p>(ii) a unit of an Exempt Exchange-traded Fund, or</p> <p>(iii) a connected security of a security referred to in subclause (i) or (ii);</p> <p>...</p>	<p>(i) in the case of an offered security:</p> <p>(A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined, and</p> <p><u>(B) the best independent bid price at the commencement of the restricted period if the price at which the offered security will be issued in a prospectus distribution or restricted private placement has not been determined or if the offered security will be issued pursuant to a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction, and</u></p> <p>(C)the last independent sale best independent bid price at the time of the entry on a marketplace of the order to purchase,</p> <p>(ii) in the case of a connected security:</p> <p>(A) the last independent sale best independent bid price at the commencement of the restricted period, and</p> <p>(B) the last independent sale best independent bid price at the time of the entry on a marketplace of the order to purchase,</p> <p>provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on a foreign organized regulated market other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;</p> <p>(b) a restricted security that is:</p> <p>(i) a highly-liquid security,</p> <p>(ii) a unit of an <u>Exempt Exchange-traded Fund</u>, or</p> <p>(iii) a connected security of a security referred to in subclause (i) or (ii);</p> <p>...</p>

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<p>(7) Transactions by Person with Market Maker Obligations - Despite subsection (1), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account:</p> <p>...</p> <p>(c) bid for or purchase a restricted security:</p> <p>(i) that is traded on another marketplace or foreign organized regulated market for the purpose of matching a higher-priced bid posted on such marketplace or foreign organized regulated market,</p> <p>...</p>	<p>(7) Transactions by Person with Market Maker Obligations - Despite subsection (1), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account:</p> <p>...</p> <p>(c) bid for or purchase a restricted security:</p> <p>(i) that is traded on another <u>marketplace or foreign organized regulated</u> market for the purpose of matching a higher-priced bid posted on such <u>marketplace or foreign organized regulated</u> market,</p> <p>...</p>
<p>Policy 1.1 Definitions</p> <p>Part 2 – Definition of “Exempt Exchange-traded Fund”</p> <p>An “Exchange-traded Fund” is defined, in part, as a mutual fund for the purposes the purposes of applicable securities legislation, the units of which are a listed security or a quoted security and are in continuous distribution in accordance with applicable securities legislation. The definition excludes a mutual fund that has been designated by the Market Regulator to be excluded from the definition.</p> <p>As guidance, a mutual fund may be designated by the Market Regulator if the Market Regulator determines that the trading price of units of the fund may be susceptible to manipulation due to a particular feature of the mutual fund. Factors which the Market Regulator would take into account in making a designation to exclude a particular mutual fund would be:</p> <ul style="list-style-type: none"> the lack of liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund); the absence of the ability to redeem units at any time for a “basket” of the underlying securities in addition to cash; the absence of the ability to exchange a “basket” of the underlying securities at any time for units of the fund; the fact that the fund does not frequently make a net asset value calculation publicly available; and the fact that there are no derivatives based on units of the fund, the underlying index or the underlying securities listed on a marketplace. <p>None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits.</p>	<p>Policy 1.1 Definitions</p> <p>Part 2 – Definition of “<u>Exempt Exchange-traded Fund</u>”</p> <p>An “Exchange-traded Fund” is defined, in part, as a mutual fund <u>for the purposes the purposes of applicable securities legislation, the units of which are a listed security or a quoted security and are in continuous distribution in accordance with applicable securities legislation. The definition excludes a mutual fund that has been designated by the Market Regulator to be excluded from the definition.</u> designated by the Market Regulator as an exchange-traded fund for the purposes of the Rule. As guidance, a mutual n <u>mutual</u> exchange-traded fund may be designated by the Market Regulator where it is determined if <u>the Market Regulator determines that the trading price of units of the fund may be susceptible to manipulation due to a particular feature</u> it would be difficult to manipulate the price of units of the mutual fund.</p> <p>It would be the intention of the Market Regulator that the designation of a security would be done after consultation with the Ontario Securities Commission or other applicable securities regulatory authority. Acceptance of the designation by applicable securities regulatory authorities would be a precondition to any designation of a security as an “Exchange-traded Fund”. Other fFactors which the Market Regulator would take into account are in making a designation to exclude <u>a particular mutual fund would be:</u></p> <ul style="list-style-type: none"> the <u>lack of liquidity</u> or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund); whether the <u>absence of the ability to redeem units are redeemable</u> at any time for a “basket” of the underlying securities in addition to cash; whether a <u>the absence of the ability to exchange a “basket” of the underlying securities may be exchanged</u> at any time for units of the fund; whether the <u>fund tracks a recognized index on which</u>

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	<p>information is publicly disseminated and generally available through the financial media fact that the fund does not frequently make a net asset value calculation publicly available; and</p> <ul style="list-style-type: none"> whether the fact that there are no derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace. <p>None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits before a request is made to the applicable securities regulatory authority to concur in the designation</p>

Appendix “C”

**Possible Provisions Respecting Prohibitions and Restrictions
on Distributions “At-the-Market” or “Non-Fixed Price”**

The following is the text of possible amendments to Rule 1.1. and Rule 7.7 that could be added if it was determined that additional prohibitions and restrictions on distributions “At-the-Market” or “Non-Fixed Price” are warranted as discussed under the heading “Specific Matters on Which Comment is Requested”. ***This text is provided only as background to assist in the provision of comments and is not part of the Proposed Amendments.***

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by inserting the following definition of “best independent ask price”:

“**best independent ask price**” means the best ask price, other than for an order that a dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.

2. Rule 7.7 is amended by the following subsections:

(10) **Additional Restrictions During Distributions “At-the-Market” or “Non-Fixed Price”**

Except as permitted, if a dealer-restricted person is involved in a distribution at a non-fixed price permitted by National Instrument 44-101 – *Short Form Prospectus Distributions* or an at-the-market distribution for the purposes of National Instrument 44-102 – *Shelf Distributions*, the dealer-restricted person, in addition to any other prohibition or restriction provided for in this Rule, shall not at any time during the restricted period:

- (a) offer or sell a restricted security for an account:
 - (i) of a dealer-restricted person, or
 - (ii) over which the dealer-restricted person exercises direction or control; or
- (b) attempt to induce or cause any person to sell a restricted security.

(11) **Exemptions from Additional Restrictions During Distributions “At-the-Market” or “Non-Fixed Price”**

Subsection (10) does not apply to a dealer-restricted person in connection with:

- (a) market stabilization or market balancing activities where the offer or sale of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the offer or sale is at a price which is not less than the greater of:
 - (i) best independent ask price at the commencement of the restricted period, and
 - (ii) the best independent ask price at the time of the entry on a marketplace of the order to purchase,

provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on a foreign organized regulated market other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;

- (b) a restricted security that is:
 - (i) a highly-liquid security,

- (ii) a unit of an Exempt Exchange-traded Fund, or
 - (iii) a connected security of a security referred to in subclause (i) or (ii);
- (c) an offer or sale a dealer-restricted person on behalf of a client provided that:
 - (i) the client order has not been solicited by the dealer-restricted person, or
 - (ii) if the client order was solicited, the solicitation by the dealer-restricted person occurred prior to the commencement of the restricted period;
- (d) an offer or sale of a restricted security is solely for the purpose of rebalancing a portfolio, the composition of which is based on an index as designated by the Market Regulator, to reflect an adjustment made in the composition of the index;
- (e) a sale that is or an offer that on execution would be:
 - (i) a basket trade, or
 - (ii) a Program Trade;
- (f) an offer or sale of a restricted security for an arbitrage account and the dealer-restricted person knows or has reasonable grounds to believe that an offer enabling the dealer-restricted person to cover the sale is then available and the dealer-restricted person intends to accept such offer immediately;
- (g) the Market Maker Obligations of the dealer-restricted person for the restricted security; or
- (h) orders for the derivatives market making trading account of a dealer-restricted person who is a derivatives market maker with responsibility for a derivative security the underlying interest of which is the restricted security provided:
 - (i) there is not otherwise a suitable derivative hedge available, and
 - (ii) such offer or sale is:
 - (A) for the purpose of hedging a pre-existing options position,
 - (B) reasonably contemporaneous with the trade in the option, and
 - (C) consistent with normal market-making practice.