

6.1.3 Proposed OSC Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions

ONTARIO SECURITIES COMMISSION
RULE 48-501

TRADING DURING
DISTRIBUTIONS, FORMAL BIDS AND
SHARE EXCHANGE TRANSACTIONS

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PART 1 - DEFINITIONS

1.1 Definitions

In this Rule

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

- (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,
- (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,
- (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, and
- (d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security;

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

- (a) in connection with a public distribution of an offered security, commencing on the later of the date
 - (i) on which a dealer enters into an agreement or reaches an understanding to participate in the distribution of securities by a prospectus, whether or not the terms and conditions of such participation have been agreed upon, and
 - (ii) two trading days prior to the day,
 - (A) the offering price of securities to be offered by a prospectus is determined,
 - (B) the consent of the exchange or quotation and trade reporting system to the distribution in the case of a wide distribution or private placement pursuant to the applicable marketplace rules, or
 - (C) the offering price of the special warrant is determined in the case of a distribution of special warrants, and

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

- (b) in connection with a securities exchange take-over bid or issuer bid, from the first public announcement of the securities exchange take-over bid or issuer bid until the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the bid is withdrawn, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, from the first public announcement of such transaction, until the approval of the transaction by the security holders or the termination of the transaction by the issuer or issuers;

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

- (a) the dealer appointed by

- (i) an issuer to be an underwriter involved in a public distribution but does not include a dealer that is part of the selling group only and is not obligated to purchase any of the distributed securities,
- (ii) an offeror to be the dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
- (iii) an issuer to be the soliciting dealer or adviser in respect of obtaining security holder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law,

where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction,

- (b) a related entity of the dealer referred to in paragraph (a),
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity for the dealer referred to in paragraph (a) or for a related entity of the dealer,
- (d) any person or company acting jointly or in concert with a person or company described in paragraphs (a), (b) or (c) for a particular transaction; or
- (e) an investment fund or account managed by a person or company described in paragraphs (a), (b), (c) or (d);

“exchange-traded fund” means a mutual fund

- (a) the units of which are
 - (i) a listed security or a quoted security, and
 - (ii) in continuous distribution in accordance with applicable securities legislation, and
- (b) designated by the Commission as an exchange-traded fund for the purposes of this rule;

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

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

“independent bid” means an order, other than a special terms order, to buy entered on a marketplace by or on behalf of a person who is not a dealer-restricted person or an issuer-restricted person;

“independent non-marketplace trade” means a trade executed on an exchange or organized regulated market outside of Canada that publicly disseminates details of trades executed on that market, of at least one standard trading unit made by or on behalf of a person who is not a dealer-restricted person or an issuer-restricted person;

“independent trade” means a trade on a marketplace of at least one standard trading unit made by or on behalf of a person who is not a dealer-restricted person or an issuer-restricted person;

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

- (a) in connection with a public distribution of an offered security, commencing two trading days prior to the day
 - (i) the offering price of securities to be offered by a prospectus is determined,
 - (ii) the consent of the exchange or quotation and trade reporting system to the distribution in the case of a wide distribution or private placement pursuant to the applicable marketplace rules, or

- (ii) the offering price of the special warrant is determined in the case of a distribution of special warrants, and

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

- (b) in connection with a securities exchange take-over bid or issuer bid, from the first public announcement of the securities exchange take-over bid or issuer bid until the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the bid is withdrawn, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or other similar transaction, from the first public announcement of such transaction, until the approval of the transaction by the security holders or the termination of the transaction by the issuer or issuers;

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

- (a) the issuer of the offered security,
- (b) a selling security holder of the offered security in connection with a public distribution,
- (c) an affiliated entity, associated entity or insider of the issuer of the offered security or the selling security holder,
- (d) any person or company acting jointly or in concert with the person or company described in paragraphs (a), (b) or (c) for a particular transaction, or
- (e) an investment fund or account managed by a person or company described in paragraphs (a), (b), (c) or (d);

“maximum permitted stabilization price” means,

- (a) for the offered security,
 - (i) the price at which the offered security will be issued in a public distribution, if that price has been determined, or
 - (ii) the price of the last independent trade, if
 - (A) the price at which the offered security will be issued in a public distribution has not been determined including where the security will be issued pursuant to an at-the-market offering as permitted by National Instrument 44-101 *Short Form Prospectus Distributions* or OSC Rule 41-501 *General Prospectus Requirements* or any successor instrument, or
 - (B) the offered security will be issued other than pursuant to a public distribution,
- (b) for a connected security, the highest price of an independent bid for that security at the commencement of the restricted period;

“offered security” means the security

- (a) that is a listed security or quoted security of the class that is the subject of a public distribution,
- (b) offered by an offeror in a securities exchange take-over bid,
- (c) offered by an issuer in an issuer bid, or
- (d) that would be issuable to a security holder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities law,

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

“public distribution” means a distribution of any security pursuant to

- (a) a prospectus;
- (b) a wide distribution or private placement in accordance with the applicable marketplace rules, or
- (c) an offering of special warrants; and

“restricted security” means

- (a) the offered security, other than, in the case of a public distribution, those offered securities comprising the distribution, or
- (b) any connected security.

1.2 Interpretation

- (1) **Affiliated Entity** – A person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company.
- (2) **Associated Entity** - Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term "associate" in subsection 1(1) of the Act and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person.
- (3) **Controlled** – For the purposes of the definition of “subsidiary entity”, an entity is considered to be controlled by a person or company if
 - (a) in the case of an entity that has directors
 - (i) the person or company beneficially owns or exercises control or direction over voting securities of the entity carrying more than 50 per cent of the votes for the election of directors, and
 - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the entity,
 - (b) in the case of a partnership or other entity that does not have directors, other than a limited partnership, the person or company beneficially owns or exercises control or direction over more than 50 per cent of the voting interests in the partnership or other entity, or
 - (c) in the case of an entity that is a limited partnership, the person or company is the general partner or controls the general partner within the meaning of paragraph (a) or (b).
- (4) **Equity Security** – An equity security is any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding up of the issuer, in its assets.
- (5) **Related Entity** - In respect of a dealer, a related entity is an affiliated entity of the dealer, which carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation,
- (6) **Special Terms Order** – An order is considered a special terms order if it is for the purchase or sale of a security
 - (a) for less than a standard trading unit,
 - (b) the execution of which is subject to a condition other than as to the price or date of settlement, or
 - (c) that on execution would be settled on a date other than
 - (i) the third business day following the date of the trade, or
 - (ii) any settlement date determined in accordance with applicable marketplace rules;
- (7) **Subsidiary Entity** - A person or company is considered to be a subsidiary entity of another person or company if
 - (a) it is controlled by

- (i) that other,
 - (ii) that other and one or more persons or companies, each of which is controlled by that other, or
 - (iii) two or more persons or companies, each of which is controlled by that other, or
- (b) it is a subsidiary entity of a person or company that is that other's subsidiary entity.

PART 2 - RESTRICTIONS

2.1 Dealer-restricted Person

Except as permitted, a dealer-restricted person shall not at any time during the dealer-restricted period,

- (a) bid for or purchase a restricted security for its, his or her own account or any account in which it, he or she has a beneficial interest or in respect of which it, he or she exercises direction or control or for the account of an issuer-restricted person, or any account in which the issuer-restricted person has a beneficial interest or in respect of which the issuer-restricted person exercises direction or control; or
- (b) attempt to induce or cause any person or company to purchase any restricted security.

2.2 Issuer-restricted Person

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

- (a) bid for or purchase a restricted security for its, his or her own account or any account in which it, he or she has a beneficial interest; or
- (b) attempt to induce or cause any person or company to purchase any restricted security.

2.3 Deemed Re-commencement of a Restricted Period

If a dealer appointed to be an underwriter in a public distribution receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the dealer in connection with the public distribution then a dealer-restricted period and issuer-restricted period shall be deemed to have re-commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the dealer has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

PART 3 - PERMITTED ACTIVITIES AND EXEMPTIONS

3.1 Exemptions from Trading Restrictions

Despite sections 2.1 and 2.2, a dealer-restricted person or an issuer-restricted person may bid for or purchase a restricted security in accordance with, or engage in activities referred to in this Part or Part 4 provided such activity is not engaged in for the purpose of creating a false or misleading appearance of actual or apparent active trading in, or artificially raising the price of, the restricted security.

3.2 Exemptions- Dealer-restricted Persons

Section 2.1 does not apply to a dealer-restricted person in connection with,

- (a) the bid for or purchase of a restricted security if the bid or purchase is at a price which does not exceed the lesser of
 - (i) the maximum permitted stabilization price, and
 - (ii) the highest independent bid then entered on a marketplace,provided that

- (iii) if the dealer-restricted person enters the bid prior to the commencement of trading on a trading day, the price also does not exceed the last sale price of the restricted security on the previous trading day,
 - (iv) if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last independent non-marketplace trade of the security, and
 - (v) if the bid or purchase is to cover a short sale entered into prior to the dealer-restricted period or pursuant to market making obligations, the price is not subject to paragraph (ii);
- (b) a restricted security that is
- (i) a highly-liquid security,
 - (ii) a unit or share of an exchange-traded fund,
 - (iii) a non-convertible debt security, non-convertible preferred share or asset-backed security that has an approved rating, or
 - (iv) a connected security of a security referred to in paragraphs (i), (ii) or (iii);
- (c) a bid for or purchase of securities if the bid or purchase is made through the facilities of a marketplace in accordance with applicable marketplace rules:
- (d) a bid or purchase by a dealer-restricted person on behalf of a client if
- (i) the client's order was not solicited, or
 - (ii) if the client's order was solicited, the solicitation occurred before the commencement of the dealer-restricted period;
- (e) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into prior to the commencement of the restricted period;
- (f) a bid or purchase of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed; or
- (g) if the prohibition is due to a securities exchange take-over bid or an issuer bid, the solicitation of acceptances of that bid by the dealer.

3.3 Exemptions- Issuer-restricted Persons

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

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

PART 4 - RESEARCH REPORTS

4.1 Compilations and Industry Research

Despite section 53 of the Act and section 2.1, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security provided that,

- (a) such information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person;
- (b) such information, opinion or recommendation includes similar information, opinions or recommendations with respect to a substantial number of companies in the issuer's industry or contains a comprehensive list of securities currently recommended by each such dealer-restricted person;
- (c) such information, opinion or recommendation is given no materially greater space or prominence in such publication than that given to other securities or issuers; and
- (d) an opinion or recommendation as favourable or more favourable as to the issuer or any class of its securities was published by the dealer-restricted person in the last publication of such dealer-restricted person addressing the issuer or its securities prior to the commencement of participation in the distribution.

4.2 Issuers of Exempt Securities

Despite section 53 of the Act and section 2.1, a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security referred to in clause 3.2(b) provided that such information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of the business of the dealer-restricted person.

PART 5 - EXEMPTION

5.1 Exemption

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