



Newcrest

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Re: Amendments Respecting Restrictions on Trading By a Participant During a Distribution and Restrictions on Trading During a Securities Exchange Take-Over Bid

We are pleased to comment on the proposed amendments to the Universal Market Integrity Rules (“UMIR”) and to OSC Rule 48-501. Generally, we believe that much of the proposal represents a positive change. However, we also have some comments and concerns as outlined below, particularly regarding the relaxation of certain research restrictions.

Basket Trades

The proposed draft defines a basket trade to be “at least 20 securities with restricted securities comprising not more than 10% of the value of the transaction.” The premise that it is prohibitively expensive to manipulate a single-name liquid security should equally apply to a basket of securities. We believe that the threshold of “20 securities or not more than 10% of the value” be reduced to 10 securities and not more than 20% of the value of the transaction. As stated above, we believe that the reduced basket of securities would still be consistent with desire to not manipulate the price of a security.

Restricted Period, Dealer Restricted Person, Issuer Restricted Person

In attempting to coordinate the OSC Rule with UMIR, the definition of “restricted period” covers both the activities of a “dealer restricted person” and an “issuer restricted person”. In combining the restrictions into one restricted period greater onus is placed on the member to restrict trading by or on behalf of “issuer restricted persons”. This onus is especially high where an “issuer restricted person” has an account at an affiliate (who would fall under the definition of “dealer restricted person”) of the member. Coordinating application of the rule and monitoring to ensure compliance with the restriction would be exceedingly difficult. For example, the possibility exists that an “issuer restricted person” holds an account with the discount brokerage division of TD Waterhouse Inc. Given that the account is maintained at a “dealer restricted person”, it would be the responsibility of TD Securities Inc., the institutional brokerage division to ensure that the “issuer restricted person” did not purchase a restricted security.

Restricted Period

The proposed definition of “restricted period”, and particularly the termination of the restricted period, is cast too broadly. The proposed amendment requires that the selling process be ended *and* all stabilization arrangements terminate. Stabilization activities can often go on for quite some time after closing. It would be more appropriate to define the termination of the restricted period as ending on the date the selling process has ended and the lead underwriter declares the syndicate to be out of distribution.

Highly Liquid Security

While we understand that the industry has spent considerable time debating the definition of “highly liquid security”, we are concerned about the requirements proposed in clause (a) – that the security trade an average of at least 100 times per trading day with an average trading value of at least \$1,000,000. We have observed that over a three month period there were at least 60 names in the Composite Index that did not trade 100 times per day. We suggest that a principal-based approach be used such that the clause does not act as an absolute condition but that the thresholds be used as a guideline to ensure that the spirit of the definition is met.

Research Restrictions

We are not clear about the proposed rule restrictions governing the publishing of research during a distribution. The proposed rule amendments appear to permit publishing information, opinion, or recommendation if the restricted security is a highly-liquid

security. Is this permission subject to the conditions set out in clause (b)? That is, does the research need to be part of an industry piece?

In any event, we have concerns about the potential conflicts that may arise if any type of research is permitted during a distribution. There exists the possibility that information contained in a research report will vary from the information contained in a prospectus. In addition, permitting research during a distribution allows a firm to act in a self-serving manner. A research report that reiterates a “buy” recommendation can still assist a Participant in successfully distributing a security.

The proposed rule amendment provides that the “opinion” or “recommendation” cannot be more favourable. If an analyst currently has a “buy” recommendation on a restricted security, it is possible to re-iterate the “buy” recommendation but adjust the estimates significantly upward on the security. Also, while the recommendation may remain the same, the tone of the piece could be much more bullish.

The proposed rule amendment uses the language “more favourable”. There exists the possibility that a recommendation could change from a “buy” to a “hold” on a issuer which becomes a restricted security.

Due to these possible conflict situations, we are concerned about opening up the industry to greater uncertainty in the rules as to what type of information, opinion, and recommendation is acceptable when a security becomes a restricted security.

Covering Short Positions

We note that the proposed amendment to the UMIR rule states that a dealer restricted person may bid for or purchase a restricted security if the bid or purchase is to cover a short sale made prior to the commencement of the restricted period. In these circumstances the price is not subject to sub-clause (i) – meaning the price is not subject to the maximum permitted stabilization price. The OSC Rule amendment indicates that the price is not subject to the highest independent bid then entered on a marketplace. We would appreciate receiving clarification on this issue.

Stabilizing Activities

The proposed draft permits the dealer restricted person to bid for or purchase a restricted security if the bid or purchase is made 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. As drafted, the section does not allow dealer restricted persons to stabilize securities where the current independent bid is below the MPSP. This would prohibit the stabilizing dealer restricted person to intervene with a greater bid that is still below the MPSP. The current rule permits such stabilizing activity. The draft should therefore change the word “and” to “or”.

Exemption for Re-balancing Index-based Portfolios

We are pleased that the proposed amendments include an exemption from making bids or purchases solely for the purpose of re-balancing 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. However, we believe that the proposed rule ought to allow a Participant to apply for exemptions on specific baskets for inclusion in the Market Regulators' index list.

We appreciate the opportunity to comment on the proposed amendments respecting restrictions on trading by a Participant during a distribution and restrictions on trading during a securities exchange take-over bid. We would be pleased to discuss any of the foregoing with you at your convenience.

Yours truly,

Sandra Blake
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