

Chapter 6

Request for Comments

6.1.1 Proposed Amendments to OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions and Proposed Changes to Companion Policy 48-501CP – Request for Comments

Request for Comment

Proposed Partial Repeal of Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions and Proposed Changes to Companion Policy 48-501CP

August 6, 2020

1. Introduction

The Ontario Securities Commission (**OSC**) is proposing amendments (**Partial Repeal**) of OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**OSC Rule 48-501** or **the Rule**) and changes to its related Companion Policy (**48-501CP**). The Proposed Amendments would:

- remove restrictions on dealers involved in distributions, formal bids and share exchange transactions; and
- remove restrictions on insiders and associated entities (collectively, **Insiders**) of issuers and selling shareholders involved in a transaction covered by the Rule, provided the Insider is not acting jointly or in concert with the issuer or selling shareholder,

The exemption from the prospectus requirement contained in Part 4 of OSC Rule 48-501 (**Part 4**) would remain in whole.

A copy of the amending instrument for the Partial Repeal is attached as **Appendix A** of this Notice. A blacklined version of OSC Rule 48-501 and 48-501CP giving effect to the Partial Repeal is attached as **Appendix B**. A cost-benefit analysis is attached at **Appendix C**.

The comment period will expire on November 4, 2020. For further details, see the “Request for Comment” section below.

2. Background

OSC Rule 48-501 places trading restrictions on issuers and selling shareholders and their affiliates, Insiders and dealers acting as an underwriter, dealer manager or in a similar capacity in respect of a transaction covered by the Rule.

Specifically, OSC Rule 48-501 restricts bids for, and purchases of, a security that is the subject of a transaction covered by the Rule (**Offered Securities**).¹ OSC Rule 48-501 generally restricts both bids and purchases of securities where they may affect the market price of an Offered Security. The Rule is intended to prevent market manipulation, specifically activity in the public markets, that can raise the market price of an Offered Security with the goal of improving the likelihood of success of a transaction covered by the Rule.

OSC Rule 48-501 complements the Universal Market Integrity Rules (**UMIR**) of the Investment Industry Regulatory Organization of Canada (**IIROC**), specifically UMIR Rule 7.7 *Trading During Certain Securities Transactions* (**UMIR Rule 7.7**), and also covers activity by entities outside of the regulatory jurisdiction of IIROC, such as issuers and Insiders.

UMIR Rule 7.7 contains the same restrictions and exemptions as OSC Rule 48-501 for dealer members of IIROC that are involved in distributions and other transactions covered by OSC Rule 48-501. For this reason, transactions by dealers made in compliance with UMIR Rule 7.7 are exempt from OSC Rule 48-501. The Proposed Amendments will therefore remove duplication with UMIR Rule 7.7.

¹ The Rule also restricts bids and purchases of “connected securities,” which are securities related to the Offered Security, where price movements in the connected security could be expected to influence the market price of the Offered Security. This prevents persons restricted under the Rule from doing, indirectly through bids and purchases of a connected security, what they could not do directly through bids and purchases of the Offered Security. For the purposes of this Notice, references to “Offered Securities” should be read to include connected securities.

While no comments were received referencing OSC Rule 48-501 in response to OSC Staff Notice 11-784 *Burden Reduction*, Staff have identified revisiting the Rule as an opportunity to eliminate unnecessary duplicative regulation and restrictions on trading activity that are more onerous than necessary to prevent manipulative trading activity. In particular,

- the restrictions on dealer activity duplicate UMIR Rule 7.7, and
- the class of persons associated with an issuer who are restricted by OSC Rule 48-501 (“Issuer-Restricted Persons” as defined in the Rule) is broader than necessary to achieve the goal of preventing market manipulation, necessitating exemption applications by Insiders that are routinely granted.

This is discussed in more detail in the “Substance and Purpose” section below.

3. Substance and Purpose

The Partial Repeal seeks to repeal provisions applicable to dealers (other than Part 4, as discussed below), and restrictions on Insiders by carving them out of the definition of “Issuer-Restricted Person,” unless they are acting jointly or in concert with an issuer. Trading by Insiders will continue to be subject generally to Ontario securities law, including provisions prohibiting manipulative and deceptive trading.

a) The scope of the Rule is duplicative and broader than necessary to achieve the regulatory objective

As noted above, the Rule duplicates the provisions of UMIR Rule 7.7 with respect to IIROC Dealer Members and is not necessary. Also, as an IIROC Rule, UMIR Rule 7.7 applies nationally, while OSC Rule 48-501 is limited to Ontario.

Staff believe that the inclusion of insiders and associated entities in the definition of “Issuer-Restricted Person” is broader than necessary to achieve the goal of preventing manipulative trading to ensure the success of a transaction covered by the Rule. The Partial Repeal will bring the definition in line with restrictions on issuer-related persons in analogous rules of the United States Securities and Exchange Commission.² Insiders will still be subject to section 126.1 of the Act, which prohibits market manipulation for any purpose, including attempting to ensure the success of a Subject Transaction.³ Insiders will continue to be subject to OSC Rule 48-501 if they act jointly or in concert with the issuer. For clarity, a controlling shareholder of an issuer is presumed to be acting jointly or in concert with the issuer.

The OSC has received a number of exemption applications from Insiders requesting relief from OSC Rule 48-501 and has granted the requested relief. These exemptions should now be considered routine and indicative of an over-broad reach of the Rule.

b) Potentially negative effects on at-the-market (ATM) distributions for Insiders

Most distributions have a clear end of distribution, after which time OSC Rule 48-501 ceases to apply. In the case of prospectus offerings and private placements, it is when the securities being distributed have been sold and the underwriter has ceased stabilization activities in the public markets. In the case of other transactions, it is when the transaction closes.

However, in the case of ATM distributions specifically, the securities are sold continuously by the issuer, using an investment dealer acting as agent, in the open market. The period during which OSC Rule 48-501 applies is open-ended and can be much longer than for a traditional distribution.

Under both OSC Rule 48-501 and UMIR Rule 7.7, dealers subject to the rules have a number of exemptions to allow normal course trading activity, including a complete exemption for trading in “highly-liquid” securities.⁴ In contrast, the exemptions available to Insiders are very limited. Insiders are effectively prohibited from trading in the market while the Rule is in effect. There is no equivalent to the exemption that dealers must trade highly-liquid securities without restriction. Therefore, the impact of the Rule on Insiders during an ATM is much greater than on dealers. This can create difficulties, such as when directors and officers need to purchase shares to meet minimum shareholding requirements set by the issuer.

² Regulation M (17 CFR. §§ 242.100-242.105) restricts “affiliated purchasers” in addition to dealers, issuers and selling shareholders. “Affiliated purchaser” is defined in 17 CFR § 100(b) as affiliates of the issuer or selling shareholder and any person acting directly or indirectly in concert with an issuer or selling security holder.

³ The Rule was adopted prior to the inclusion of section 126.1 in the Act, *i.e.*, before the Act had a prohibition on market manipulation.

⁴ A “highly-liquid” security is a listed 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.

c) *Part 4 – Research Reports*

The Proposed Amendments will not affect Part 4 of OSC Rule 48-501. Part 4 contains an exemption from the prospectus requirements for dealers involved in transactions covered by the Rule, subject to certain conditions designed to ensure that the research is issued in the normal course and not to create demand for the securities involved. Repealing Part 4 could create uncertainty as to whether publication of research reports in the normal course during a distribution or other transaction is permitted. Furthermore, Part 4 is not duplicated in UMIR Rule 7.7.⁵

Several proposed amendments have been made to Part 4 to clarify that it applies to dealer-restricted persons during the dealer-restricted period (as defined in the Rule). These are not substantive changes.

d) *Ontario-only Rule*

As OSC Rule 48-501 is an OSC-only rule, and no other jurisdiction has adopted a similar rule, the restrictions on Issuer-Restricted Persons only apply in Ontario.

4. Alternatives Considered

The OSC could amend OSC Rule 48-501 to provide more exemptions for Issuer-Restricted Persons, such as a highly-liquid security exemption. However, much of the Rule is duplicated by UMIR Rule 7.7 with respect to dealers, and maintaining the Rule with a few modifications is not consistent with the objective of burden reduction. It would also maintain an unlevel playing field for Insiders in Ontario given that the Rule is an Ontario-only rule.

In proposing amendments to OSC Rule 48-501 and changes to 48-501CP, the OSC did not rely on any unpublished study, report, or other material.

5. Authority for OSC Rule 48-501

The Proposed Amendments would be made pursuant to the rule-making authority in the following provisions of the *Securities Act* (Ontario): (i) paragraph 143(1)11 authorizes the Commission to make rules regulating the trading of publicly traded securities and (ii) paragraph 143(1)13 authorizes the Commission to regulate trading in securities to prevent trading that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

6. Request for Comment

We welcome your comments on the Proposed Amendments. Please submit your comments in writing on or before November 4, 2020. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please deliver your comments to:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-595-2318
Email: comments@osc.gov.on.ca

Please note that comments received will be made publicly available and posted on the OSC Website. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions with respect to this Notice or the Proposed Amendments may be referred to:

Timothy Baikie
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Ontario Securities Commission
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⁵ IIROC does not have the authority to grant exemptions from the prospectus requirements, so a similar provision in UMIR Rule 7.7 is only available to an IIROC Dealer Member if publication of the research report is permitted under applicable securities legislation.

APPENDIX A

**AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 48-501
Trading During Distributions, Formal Bids and Share Exchange Transactions**

1. ***Ontario Securities Commission Rule 48-501 is amended by this Instrument.***
2. ***Section 1.1 is amended by***
 - (a) ***deleting the definition of “exchange-traded fund”, and***
 - (b) ***replacing the definition of “issuer-restricted person” with the following:***

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

 - (a) the issuer of the offered security,
 - (b) a selling security holder of the offered security in connection with a prospectus distribution or restricted private placement,
 - (c) an affiliated entity of the issuer of the offered security or a selling security holder; or
 - (d) any person or company acting jointly or in concert with the person or company described in clause (a), (b) or (c) for a particular transaction;.
3. ***Subsection 1.2(2) is repealed.***
4. ***Section 2.1 is repealed.***
5. ***Section 3.1 is repealed.***
6. ***Section 4.1 is amended by replacing “Despite section 53 of the Act and section 2.1, a dealer-restricted person” with “Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person”***
7. ***Section 4.2 is amended by replacing “Despite section 53 of the Act and section 2.1, a dealer-restricted person” with “Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person”.***

CHANGES TO COMPANION POLICY 48-501CP
Trading During Distributions, Formal Bids and Share Exchange Transactions

1. ***Companion Policy 48-501CP Trading During Distributions, Formal Bids and Share Exchange Transactions is changed by this Document.***
2. ***Part 1 is deleted.***
3. ***Section 3.1 is changed by replacing “section 91 of the Act,” with “section 1.9 of National Instrument 62-104 Take-Over Bids and Issuer Bids,”.***
4. ***Part 4 is deleted.***
5. ***Sections 5.2, 5.2.1 and 5.3 are deleted.***

APPENDIX B

**Ontario Securities Commission
Rule 48-501**

Trading During Distributions, Formal Bids and Share Exchange Transactions

PART 1 - DEFINITIONS

1.1 Definitions

In this Rule

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

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

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

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

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

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

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

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

- (a) a dealer that
 - (i) is an underwriter, as defined in the Act, in a prospectus distribution or a restricted private placement,
 - (ii) is participating, as agent but not as an underwriter, in a restricted private placement, and

- (A) the number of securities to be issued under the restricted private placement would constitute more than 10% of the issued and outstanding offered securities, and
- (B) the dealer has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
- (iii) has been appointed by an offeror to be the dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
- (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining security holder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law, where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction,
- (b) a related entity of the dealer referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of a dealer referred to in clause (a) where,
 - (i) the dealer
 - (A) maintains and enforces written policies and procedures reasonably designed to prevent the flow of information regarding any prospectus distribution, private placement or transaction referred to in clause (a) to or from the related entity, department or division, and
 - (B) obtains an annual assessment of the operation of such policies and procedures,
 - (ii) the dealer has no officers or employees that solicit orders or recommend transactions in securities in common with the related entity, department or division, and
 - (iii) the related entity, department or division does not during the dealer-restricted period, in connection with the restricted security,
 - (A) act as a market maker (other than to meet its obligations under the rules of a recognized exchange),
 - (B) solicit orders from clients, or
 - (C) engage in proprietary trading,
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity for the dealer referred to in clause (a) or for a related entity of the dealer referred to in clause (b), or
- (d) any person or company acting jointly or in concert with a person or company described in clause (a), (b) or (c) for a particular transaction;

“exchange-traded fund” ~~[Repealed] means a mutual fund, the units of which are~~

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

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

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

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

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

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

- (a) the issuer of the offered security,
- (b) a selling security holder of the offered security in connection with a prospectus distribution or restricted private placement,
- (c) an affiliated entity, ~~associated entity or insider~~ of the issuer of the offered security or a selling security holder ~~but does not include a person who is an insider by virtue of clause (c) of the definition of “insider” under the Act so long as that person:~~
 - ~~(i) does not have, and has had not in the previous 12 months, any board or management representation in respect of the issuer or selling security holder; and~~
 - ~~(ii) does not have knowledge of any material information concerning the issuer or its securities that has not been generally disclosed; or~~
- (d) any person or company acting jointly or in concert with the person or company described in clause (a), (b) or (c) for a particular transaction;

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

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

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

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

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

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

1.2 Interpretation

- (1) Affiliated Entity - The term “affiliated entity” has the meaning ascribed to that term in section 1.3 of National Instrument 21-101 – *Marketplace Operation*.
- (2) ~~[Repealed] 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 or company 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 or company.~~
- (3) Equity Security - An equity security is any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding up of the issuer, in its assets.
- (4) Related Entity - In respect of a dealer, a related entity is an affiliated entity of the dealer that carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation.
- (5) For the purposes of the definitions of “dealer-restricted period” and “issuer-restricted period”:
 - (a) the selling process shall be considered to end,
 - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
 - (ii) in the case of a restricted private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering; and
 - (b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a dealer after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the dealers that were party to the stabilization arrangements.

PART 2 - RESTRICTIONS

2.1 ~~[Repealed] Dealer-restricted Person~~

~~Except as permitted under sections 3.1, 4.1 and 4.2, a dealer-restricted person shall not at any time during the dealer-restricted period,~~

- ~~(a) bid for or purchase a restricted security for an account of a dealer-restricted person, an account over which the dealer-restricted person exercises direction or control, or, except in accordance with section 3.2, an account which the dealer-restricted person knows or reasonably ought to know, is an account of an issuer-restricted person; or~~
- ~~(b) attempt to induce or cause any person or company to purchase any restricted security.~~

2.2 Issuer-restricted Person

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

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

2.3 Deemed Re-commencement of a Restricted Period

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

shall be deemed to have re-commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the dealer has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

PART 3 - PERMITTED ACTIVITIES AND EXEMPTIONS

3.1 ~~[Repealed] Exemptions – Dealer restricted Persons~~

~~(1) Section 2.1 does not apply to a dealer restricted person in connection with,~~

~~(a) market stabilization or market balancing activities on a marketplace 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~~

~~(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, and~~

~~(B) the last independent sale price at the time of the entry of the bid or order to purchase, or~~

~~(ii) in the case of a connected security~~

~~(A) the last independent sale price at the commencement of the dealer restricted period, and~~

~~(B) the last independent sale price at the time of the entry of the bid or 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 an exchange or organized regulated market outside of Canada that publicly disseminates details of trades executed on that 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 or company 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 or share of an exchange traded fund, other than an exchange traded fund that the Investment Industry Regulatory Organization of Canada has designated as subject to section 7.7 of the Universal Market Integrity Rules, or~~

~~(iii) a connected security of a security referred to in subclause (i) or (ii);~~

~~(c) a bid or purchase by a dealer restricted person on behalf of a client, other than a client that the dealer restricted person knows or ought reasonably to know is a person or company that is an issuer restricted person, provided that~~

~~(i) the client's order was not solicited by the dealer restricted person, or~~

~~(ii) if the client's order was solicited, the solicitation occurred before the commencement of the dealer restricted period;~~

~~(d) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into by the dealer restricted person prior to the commencement of the dealer restricted period;~~

~~(e) a bid for 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;~~

~~(f) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid;~~

- ~~(g) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement;~~
 - ~~(h) a bid for or purchase of a restricted security to cover a short position entered into prior to the commencement of the dealer restricted period; or~~
 - ~~(i) a bid for or purchase of a restricted security if the bid or purchase is made through the facilities of a marketplace in accordance with applicable marketplace rules.~~
- ~~(2) Where a dealer restricted person is also an issuer restricted person the exemptions in subsection (1) and sections 4.1 and 4.2 continue to be available to the dealer restricted person.~~

3.2 Exemptions - Issuer-restricted Persons

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

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

PART 4 - RESEARCH REPORTS

4.1 Compilations and Industry Research

Despite section 53 of the Act ~~and section 2.4, during a dealer restricted period,~~ a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security provided that such information, opinion or recommendation,

- (a) is contained in a publication which:
 - (i) is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person, and
 - (ii) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of companies in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person; and
- (b) is given no materially greater space or prominence in such publication than that given to other securities or issuers.

4.2 Issuers of Highly-liquid Securities

Despite section 53 of the Act ~~and section 2.4, during a dealer restricted period,~~ a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security that is a highly-liquid security provided that such information, opinion, or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of the business of the dealer-restricted person.

PART 5 - EXEMPTION

5.1 Exemption

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

PART 6 [Lapsed]

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

Part 1 — Introduction [Repealed]

~~**1.1 Purpose** — Ontario Securities Commission Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions (the "Rule") imposes trading restrictions on dealers, issuers and certain related parties involved in a distribution of securities, take-over bids and certain other transactions. The Rule generally prohibits purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. This Companion Policy sets out the views of the Ontario Securities Commission (the "Commission") as to the interpretation of various terms and provisions in the Rule.~~

Part 2 — Definitions and Interpretations

2.1 "connected security" — The definition of "connected security" in section 1.1 of the Rule includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may *significantly determine* the value of the offered security. The Commission takes the view that, absent other mitigating factors, a connected security "significantly determines" the value of the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.

2.2 [Repealed]

2.3 End of "dealer-restricted period" and "issuer-restricted period" — distribution of securities and exercise of over-allotment option — The definitions of "dealer-restricted period" and "issuer-restricted period", with respect to a prospectus distribution and a "restricted private placement", refer to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Paragraph (a) of subsection 1.2(5) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the dealer has distributed all securities allocated to it and is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the dealer is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate's short position. If the dealer or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a dealer that are held and transferred to their inventory account at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the dealer's inventory account.

Part 3 — Restricted Persons

3.1 Meaning of "acting jointly or in concert" — The definitions of "dealer-restricted person" and "issuer-restricted person" in section 1.1 of the Rule include a person or company acting jointly or in concert with a person or company that is also a dealer-restricted person or an issuer-restricted person for a particular transaction. For the purposes of the Rule, "acting jointly or in concert" has a similar meaning to that phrase as defined in ~~section 91 of the Act~~, section 1.9 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, with necessary modifications. In the context of this Rule only, it is a question of fact whether a person or company is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person or company who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases a restricted security will be presumed to be acting jointly or in concert with such dealer-restricted person or issuer-restricted person.

3.2 Exclusion of "related party" — The definition of "dealer-restricted person" in clause 1.1(b) excludes a related entity where certain conditions are met. Subclause (i)(B) requires the dealer to obtain an annual assessment of the operation of the policies and procedures referred to in subclause (i)(A). In the Commission's view, this assessment may be conducted as part of the annual policy and procedure review of the supervision system as required by Policy 7.1 of the Universal Market Integrity Rules.

Part 4 — Marketplace and Marketplace Rules [Repealed]

- ~~4.1~~ ~~Meaning of "marketplace" — In this Rule, marketplace means all marketplaces as defined in section 1.1 of National Instrument 21-101 — *Marketplace Operation*.~~
- ~~4.2~~ ~~Meaning of "marketplace rules" — Marketplace rules refer to the rules, policies and other similar instruments adopted by a recognized stock exchange or recognized quotation and trade reporting system as approved by the applicable securities regulatory authority but not including any rules, policies or other similar instruments relating solely to the listing of securities on a stock exchange or to the quoting of securities on a quotation and trade reporting system.~~

Part 5 — Exemptions

- 5.1 Fraud and Manipulation — Provisions against manipulation and fraud are found in securities legislation, specifically, Part 3 of National Instrument 23-101 — *Trading Rules* (NI 23-101) and section 126.1 of the *Securities Act* (Ontario) (when that provision comes into force). NI 23-101 prohibits manipulative or deceptive trading, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets. The Rule specifically prohibits certain trading activities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. The Rule also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low, possibility of manipulation. However, the Commission is of the view that notwithstanding that certain trading activities are permitted under the Rule these activities continue to be subject to the general provisions relating to manipulation and fraud found in securities legislation such that any activities carried out in accordance with the Rule must still meet the spirit of the general anti-manipulation and anti-fraud provisions.
- 5.2 ~~[Repealed] Market Stabilization and Market Balancing — Subsection 3.1(1) of NI 23-101 prohibits manipulation or fraud which includes, among other things, a transaction or series of transactions that a person or company knows, or ought reasonably to have known, would contribute to a misleading appearance of trading activity or an artificial price for a security. Companion Policy 23-101CP to NI 23-101 states that the Canadian securities regulatory authorities do not consider market stabilization activities carried out in connection with a distribution of securities to be activities in breach of subsection 3.1(1) provided such activities are carried out in accordance with applicable marketplace rules or provisions of securities legislation that permit market stabilization activities. Clause 3.1(1)(a) of the Rule provides dealer restricted persons with an exemption for market stabilization and market balancing activities subject to price limitations. Market stabilization and market balancing activities should be engaged in 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 interest for the restricted security.~~
- ~~The Commission considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where the dealer knows or should reasonably know that the market price is not fairly and properly determined by supply and demand. This might exist where, for example, the dealer is aware that the market price is a result of inappropriate activity by a market participant or that there is undisclosed material information regarding the issuer.~~
- ~~Market balancing activities should contribute to a fair and orderly market by contributing to price continuity and depth and by minimizing supply demand disparity. Market balancing does not seek to prevent or unduly retard any price movements, but merely to prevent erratic or disorderly changes in price.~~
- 5.2.1 ~~[Repealed] Exchange traded funds — Section 1.1 of the Rule defines an "exchange traded fund" as an open-ended mutual fund, the units of which are listed or quoted securities. Generally trading in exchange traded funds has not given rise to concerns of a misleading appearance of trading activity or artificial price and the Rule exempts trading in exchange traded funds. However, if the Investment Industry Regulatory Organization of Canada makes a designation that trading in a particular fund is subject to the corresponding provisions of the Universal Market Integrity Rules because it is concerned that trading in units of the fund may be susceptible to manipulation, trading in that exchange traded fund will be subject to the Rule.~~
- 5.3 ~~[Repealed] Short position Exemption — Subclause 3.1(1)(h) provides an exemption from the Rule for a dealer restricted person in connection with a bid for or purchase to cover a short position provided it was entered into before the commencement of the dealer restricted period. Short positions entered into during the dealer restricted period may be covered by purchases made in reliance upon the market stabilization exemption in clause 3.1(1)(a), subject to the price limits set out in that exemption.~~

Part 6 — Research

- 6.1** Section 53 of the Act — Part 4 of the Rule provides exemptions from section 53 of the Act which prohibits providing research that in the Commission's view constitutes an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade prior to the filing and receipt of the preliminary prospectus and prospectus. The Commission is of the view that although sections 4.1 and 4.2 do permit dealer-restricted persons to disseminate research reports, this dissemination continues to be subject to the usual restrictions applicable to dealer-restricted persons when they are in possession of material inside information regarding the issuer.
- 6.2** Meaning of "reasonable regularity" — Sections 4.1 and 4.2 of the Rule provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. Clause 4.1(a) and section 4.2 require that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Commission considers that it is a question of fact whether a publication was disseminated "with reasonable regularity" and whether it was in the "normal course of business". A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers' earnings and revenues would likely only be permitted if they had previously been included on a regular basis. In considering whether it was "in the normal course of business", the Commission may consider the distribution channels. The research should be distributed through the dealer-restricted person's usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.
- 6.3** Meaning of "similar coverage" and of "substantial number of companies" — Clause 4.1(b) of the Rule requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry. This should not be interpreted as requiring that the opinions and recommendations relating to the issuer and other issuers in the issuer's industry must be similar or the same. In this context, in determining what is a "substantial number of issuers", reference should be made to the relevant industry. Generally, the Commission would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report. In any event the number of issuers should not be less than three.

APPENDIX C
COST BENEFIT ANALYSIS

As set out in the main body of this Notice, the OSC is proposing the following amendments and changes:

- a Partial Repeal of OSC Rule 48-501 to limit its scope; and
- consequential changes to Companion Policy 48-501CP;

Please refer to the main body of this Notice.

Terms that are defined in the Notice have the same meaning in this Appendix.

1. Overview

The Partial Repeal

- removes restrictions on dealers involved in distributions, formal bids, and share exchange transactions as these duplicate provisions found in the UMIR; and
- remove restrictions on Insiders of an issuer or selling shareholder involved in a transaction covered by the Rule, provided the Insider is not acting jointly or in concert with the issuer or selling shareholder.

The Rule is an Ontario-only rule and will therefore have no effect on other jurisdictions should it be partially repealed.⁶ During the comment period, should the OSC be advised of concerns from marketplace participants, OSC staff will review and carefully analyse whether there are any material concerns or risks to be aware of should the proposed partial repeal of the Rule be approved.

2. Affected Stakeholders

Dealers and Insiders

The stakeholders are dealers, issuers and Insiders subject to the Rule.

- i. **Dealers:** The proposed amendments will remove duplication between 48-501 and UMIR Rule 7.7. Part 4 of 48-501, *Research Reports*, would continue to remain in effect, providing an exemption from prospectus requirements for normal course research reports issued during a distribution or other transaction. We understand that many research reports are issued by dealers in reliance of the exemption from the prospectus requirements in Part 4 of 48-501 and therefore we believe these dealers would not support a repeal of Part 4. Dealers will still be subject to the equivalent restrictions in UMIR Rule 7.7.
- ii. **Insiders:** The OSC has, over time, received a number of requests for exemptions from 48-501 to allow open market purchases by Insiders and the requested relief has been granted in each case. Staff believe that the Rule creates an unnecessary burden on Insiders. The proposed amendments would remove trading restrictions imposed on Insiders and put Ontario-based Insiders in the same position as Insiders in other jurisdictions as the Rule is an Ontario-only rule.
- iii. **Issuers:** Issuers, selling shareholders and their affiliates will continue to be subject to the restrictions in 48-501, as will Insiders acting jointly or in concert with any of the foregoing.

3. Qualitative and Quantitative Analysis of the Anticipated Costs and Benefits of the Proposed Amendments

3.1 *Qualitative Analysis*

- i. **Dealers:** As the provisions of the Rule that apply to dealers are duplicated in UMIR Rule 7.7, there will be little or no impact on dealers unless a dealer is also an issuer or Insider, which is rare.
- ii. **Insiders:** Staff do not have any data with respect to Insiders' lost ability to trade under the current Rule, which is the most significant impact of the Rule. However, staff are able to estimate the costs associated with exemptive relief applications from the requirements in 48-501 and the administrative costs associated with

⁶ UMIR 7.7 applies to IIROC dealer members involved in distributions and other transactions nationally.

such exemptions on behalf of applicants' filing counsel. With the proposed amendments to 48-501, Insiders will no longer have to apply to the OSC for what is now routine relief, nor will they be required to pay the related fees for such exemption applications.

3.2 *Quantitative Analysis*

The information set out below provides the estimated cost reductions (subject to the assumptions below) that may arise as a result of the proposed amendments to 48-501.

As part of our research, Staff analyzed historical applications filed by Insiders requesting relief from the Rule between 2016 and 2019. OSC staff received three exemptive relief applications over that period, or an average of one per year. Each application has an associated filing fee of \$4,800.

With respect to administrative costs associated with the filing of 48-501 applications, we assume that an Insider applying for exemptive relief would engage external counsel to assist with drafting the application. We assume that a lawyer with approximately 6 to 10 years of experience would assist with the drafting and the average hourly rate in Ontario for a lawyer with this level of experience is \$327.50⁷. We further assume that it would take external counsel approximately 20 hours to complete the application for a total cost of \$6,550 per filing.

Therefore, based on this analysis and using the estimated cost information noted above, we have estimated the cost savings resulting from the Proposed Amendments to be approximately \$11,350 per application.

⁷ Bruineman, Marg. "The right price: Canadian Lawyer's 2018 Legal Fees Survey shows some bright spots for law firms despite a highly competitive market" Canadian Lawyer, April 2018 https://www.canadianlawyermag.com/staticcontent/AttachedDocs/CL_Apr_18_LegalFeesSurvey.pdf consulted on November 1, 2019