

6.1.4 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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ONTARIO SECURITIES COMMISSION
RULE 48-501

TRADING DURING
DISTRIBUTIONS, FORMAL BIDS AND
SHARE EXCHANGE TRANSACTIONS

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

“best independent bid price” means the highest bid price entered on a marketplace, other than a bid that a 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;

“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;

“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
 - (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 public distribution of securities, whether or not the terms and conditions of such participation have been agreed upon, andending 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 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 the information circular for such transaction and ending on the 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 restricted security,

- (a) a dealer that
 - (i) has been appointed by an issuer to be an underwriter in a public distribution,
 - (ii) is participating, as agent, in a public distribution of securities that would constitute more than 10% of the issued and outstanding offered securities,

- (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 public distribution 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” means a mutual fund,

- (a) the units of which are
 - (i) listed securities or quoted securities, and
 - (ii) in continuous distribution in accordance with applicable securities legislation, and
- (b) designated by the Director 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;

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

- (a) in connection with a public distribution 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 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 the information circular for such transaction and ending on the 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 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, 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 of the class of security that

- (a) is offered pursuant to a public distribution,
- (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 securityholders 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 law,

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;

“public distribution” means a distribution of a security pursuant to a prospectus or private placement; 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) **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 distribution pursuant to a prospectus, if a receipt has been issued for the final prospectus and the dealer has allocated all of its portion of the securities to be distributed under the prospectus and delivered to each subscriber a copy of the prospectus as required by applicable securities legislation, and
 - (ii) in the case of a private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering and delivered to each subscriber a copy of all offering documents required to be provided to subscribers in connection with such 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 Dealer-restricted Person - Except as permitted under sections 3.1 and 4.1, 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 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 - 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 public distribution, if that price has been determined, and otherwise, the last independent sale price, and
 - (B) the best independent bid price at the time of the bid or purchase, or
 - (ii) in the case of a connected security
 - (A) the best independent bid price at the commencement of the dealer-restricted period, and
 - (B) the best independent bid price at the time of the bid or purchase,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, and
 - (iv) 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, 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 public distribution;
 - (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 section 4.1 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 public distribution.

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 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 issuers 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.

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.

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“best independent bid price” means the highest bid price entered on a marketplace, other than a bid that a 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;

“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 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 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~~ 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 ~~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) the date two trading days prior to the day the offering price of the offered security is determined, and
 - (iii) the date on which a dealer enters into an agreement or reaches an understanding to participate in the public 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, are terminated,~~

- (b) in connection with a securities exchange take-over bid or issuer bid, ~~from commencing on the first public announcement date of the securities exchange take-over bid or circular,~~ issuer bid

~~until~~information 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 ~~is withdrawn~~, and

- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, ~~from the first public announcement of~~commencing on the date of the information circular for such transaction, until and ending on the 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 restricted security,

- (a) ~~the~~a dealer appointed by ~~that~~
- (i) ~~has been appointed by 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) is participating, as agent, in a public distribution of securities that would constitute more than 10% of the issued and outstanding offered securities,
 - ~~(#)-~~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 ~~paragraph (a), 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 public distribution 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 ~~paragraph~~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 ~~paragraphs~~clause (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 fund₂

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

“highly-liquid security” means a listed security or quoted security that₂

- (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” thereunder₂

“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 on the date two trading days prior to the day~~(i)~~ the offering price of ~~securities to be~~the offered by a ~~prospectus~~security 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~~
 - ~~(iii) the offering price of the special warrant is determined in the case of a distribution of special warrants, and and ending on the date the selling process ends and all stabilization arrangements relating to the offered security terminate, are terminated.~~
- (b) in connection with a securities exchange take-over bid or issuer bid, ~~from~~commencing on the first public announcement date of the securities exchange take-over bid ~~or~~circular, issuer bid ~~until~~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 is withdrawn, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or other similar transaction, ~~from the first public announcement of~~commencing on the date of the information circular for such transaction, ~~until~~ and ending on the 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 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, or
- (d) any person or company acting jointly or in concert with the person or company described in paragraphs clause (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;~~

“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 the security(a) that is a listed security or quoted securityall securities of the class of security that is the subject of

- (a) is offered pursuant to a public distribution,
- (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) ~~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 from securityholders 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 law,

provided that, if the security referred to in paragraphs 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;

“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. The term “affiliated entity” has the meaning ascribed to that term in section 1.3 of National Instrument 21-101 – *Marketplace Operation*.~~
- (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 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-
- (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), or company.~~
- (3) (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.
- (4) ~~(5) Related Entity - In respect of a dealer, a related entity is an affiliated entity of the dealer, which that 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.~~
- (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 distribution pursuant to a prospectus, if a receipt has been issued for the final prospectus and the dealer has allocated all of its portion of the securities to be distributed under the prospectus and delivered to each subscriber a copy of the prospectus as required by applicable securities legislation, and
 - (ii) in the case of a private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering and delivered to each subscriber a copy of all offering documents required to be provided to subscribers in connection with such 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 Dealer-restricted Person** ~~— Except as permitted, under sections 3.1 and 4.1, 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~~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 its, his or her own~~an account or any account in which it, he or she has a beneficial interest 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 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.~~

3.1 3.2 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) the maximum permitted stabilization price, and in the case of an offered security
- (A) the price at which the offered security will be issued in a public distribution, if that price has been determined, and otherwise, the last independent sale price, and
- (B) the best independent bid price at the time of the bid or purchase, or
- (ii) in the case of a connected security
- (A) the best independent bid price at the commencement of the dealer-restricted period, and
- (ii) the highestbest independent bid then entered on a marketplace, price at the time of the bid or purchase,
- 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, and
- (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~~ 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;
- (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, or
- (iii) ~~a non convertible debt security, non convertible preferred share or asset backed security that has an approved rating, or~~

- ~~(iii)~~ ~~(iv)~~ a connected security of a security referred to in ~~paragraphs~~subclause (i), or (ii) or (iii);
 - (~~dc~~) a bid or purchase by a dealer-restricted person on behalf of a client ~~if, 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, ~~or 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;
 - (~~ed~~) 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;
 - (~~fe~~) 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; ~~or~~
 - (~~f~~) ~~the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid;~~
 - (~~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.~~
 - (~~g~~) a subscription for or purchase of an offered security pursuant to a public distribution;
 - (~~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
 - (~~si~~) a bid for or purchase of securities 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 section 4.1 continue to be available to the dealer-restricted person.

3.33.2 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 ~~in~~ 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; ~~or~~
- (d) ~~if the prohibition is due~~ the solicitation of the tender of securities to a securities exchange take-over bid or ~~an issuer bid, the solicitation of acceptances of that bid by the offeror~~ issuer bid; or
- (e) a subscription for or purchase of an offered security pursuant to a public distribution.

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; such information, opinion or recommendation,

- (a) ~~such information, opinion or recommendation~~ 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) ~~(b) such 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 or contains a comprehensive list of securities currently recommended by each such the dealer-restricted person; and~~
- ~~(b) (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.

**COMPANION POLICY 48-501CP – TO RULE 48-501
TRADING DURING DISTRIBUTIONS,
FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS**

PART 1 – INTRODUCTION

- 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

- 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 **"exchange-traded fund"** – Section 1.1 of the Rule defines an "exchange-traded fund", in part, as a mutual fund designated by the Director as an exchange-traded fund for the purposes of the Rule. As guidance, an exchange-traded fund may be designated by the Director where it is determined that it would be difficult to manipulate the price of units or shares of the mutual fund. The following factors would be considered in determining whether a mutual fund would be difficult to manipulate: (a) the redemption features and whether they cause the market price to be tied to the net asset value; and (b) the transparency of the fund or underlying assets of the fund. Application for such designation should be made to the Commission prior to or at the time of filing the prospectus.

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, 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-restricted person 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

- 4.1 **Meaning of "marketplace"** – In this Rule, marketplace means a recognized marketplace as ascribed to that term 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 **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 a restricted security.

The Commission considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where 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.

- 5.3 **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** – Section 4.1 of the Rule provides an exemption 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 section 4.1 does not permit dealers to disseminate research reports where the dealer or the analyst covering the issuer of the offered security or any other representative of the dealer is in possession of material information regarding the issuer that has not been publicly disclosed.
- 6.2 **Meaning of “reasonable regularity”** – Section 4.1 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. Subclause 4.1(a)(i) requires 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”** – Subclause 4.1(a)(ii) 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.