Chapter 5

Rules and Policies

5.1.1 Notice of Commission Approval of OSC Rule 48-501 – Trading During Distributions, Formal Bids and Share Exchange Transactions and Companion Policy 48-501CP to OSC Rule 48-501 and Revocation of OSC Policy 5.1, Paragraph 26 and OSC Policy 62-601 – Securities Exchange Take-Over Bids – Trades in the Offeror's Securities

NOTICE OF COMMISSION APPROVAL
OSC RULE 48-501 –TRADING DURING DISTRIBUTIONS,
FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS AND
COMPANION POLICY 48-501CP TO OSC RULE 48-501

AND

REVOCATION OF ONTARIO SECURITIES COMMISSION
POLICY 5.1, PARAGRAPH 26 AND
ONTARIO SECURITIES COMMISSION POLICY 62-601 –
SECURITIES EXCHANGE TAKE-OVER BIDS – TRADES IN THE OFFEROR'S SECURITIES

On February 15, 2005 the Ontario Securities Commission (the Commission) made as a rule under the *Securities Act* (Act) OSC Rule 48-501 – Trading during Distributions, Formal Bids and Share Exchange Transactions (rule) and adopted Companion Policy 48-501CP to Rule 48-501 (companion policy). The Commission also revoked Ontario Securities Commission Policy 5.1, paragraph 26 and Ontario Securities Commission Policy 62-601 effective when the rule comes into force.

The rule and companion policy were delivered to the Minister on February 21, 2005. If the Minister does not reject the rule or return it for further consideration, it will come into force on May 9, 2005.

Background

The Commission published the rule for comment on August 29, 2003, (2003) 26 OSCB 6157. On September 10, 2004, the Commission published the rule for a second comment period (prior draft rule) and the proposed companion policy for comment at (2004) 27 OSCB 7766.

Concurrently, Market Regulation Services Inc. (RS) revised certain provisions of the Universal Market Integrity Rules (UMIR): Rule 7.7 (Restrictions on Trading by Participants During a Distribution) and Rule 7.8 (Restrictions on Trading During a Securities Exchange Take-over Bid) (together, the UMIR amendments). The intention of the Commission and RS was to ensure consistency between the rule and the UMIR amendments. The UMIR amendments were published for comment on August 29, 2003 at (2003) 26 OSCB 6231, and on September 10, 2004 at (2004) 27 OSCB 7881.

In response to the re-publication for comment, the Commission received 11 submissions from commenters. As a result of the comments received and the further consideration by the Commission, certain non-material revisions have been made to the rule and companion policy. Generally the comments received by the Commission were applicable to the UMIR amendments as well as the rule. A joint summary of the comments has been prepared, together with the Commission's and RS' responses to the comments, and is contained in Appendix A to this notice.

Substance and purpose of rule

The rule governs the activities of dealers, issuers and others in connection with a distribution of securities, securities exchange take-over bid, issuer bid or amalgamation, arrangement, capital reorganization or similar transaction. The rule is intended to prescribe what is acceptable activity and otherwise restricts trading activities to preclude manipulative conduct by persons with an interest in the outcome of the distribution of securities or other transactions set out above.

Harmonization with Regulation M

One of the key purposes of the reformulation of the rule was to harmonize to the extent possible with the United States Securities and Exchange Commission's (SEC) Regulation M (Reg M) as well as the UMIR amendments.

The SEC published for comment on December 9, 2004 proposed amendments to Reg M, after having proposed amendments to the provisions regarding research reports on November 3, 2004. The more significant proposed amendments to Reg M would amend the definition of restricted period for IPOs, mergers, acquisitions and exchange offers, update the dollar value thresholds for "actively-traded security" to take into account inflation since the adoption of Reg M, and, when stabilization is undertaken, require disclosure of syndicate covering transactions and penalty bids. The Commission will consider any amendments to Reg M when adopted and may revise the rule at a future date if appropriate.

Summary of Changes

The following is a summary of the substantive changes made to the prior draft rule and a discussion of the reasons for the changes.

Definitions

1. "dealer-restricted period" and "issuer-restricted period" – commencement of period for amalgamations, arrangements or capital reorganizations

In the prior draft rule, the restricted period in connection with a take-over bid, issuer bid, amalgamation, capital reorganization or similar transaction began on the date of the take-over bid circular, issuer bid circular, similar document or information circular (materials) for the transaction. Comment was received that the date of dissemination of the materials would be preferable to the date of the materials. The rule has been amended to harmonize with Reg M so that the restrictions start on the date of the commencement of the dissemination of the materials.

2. "dealer-restricted period" and "issuer-restricted period" and interpretation subsection 1.2(5) – end of distribution and end of restricted period

In the prior draft rule, the restricted period for prospectus distributions and private placements ended on the date that the selling process ended (which for a prospectus distribution meant that the receipt for the prospectus had been issued, the dealer had allocated all of its portion of the securities, and delivered to each subscriber a copy of the prospectus) and all stabilization arrangements relating to the offered security were terminated. Commenters wrote requesting more consistency with Reg M and greater clarity.

As a result of comments received, several changes have been made. Subsection 1.2(5) has been amended with respect to when the selling process shall be considered to end. The requirement that a copy of the prospectus be delivered to each subscriber has been deleted. In summary, there are three requirements for the end of the selling process: a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of securities to be distributed and all selling efforts have ceased.

The companion policy has been amended to clarify that securities allocated to a dealer in a distribution that are transferred to the dealer's inventory account at the end of the distribution would be considered to be distributed and therefore that subsequent sales of these securities will not be subject to the rule's restrictions as long as they are not otherwise considered distributions under securities legislation. Clarification has also been added to the companion policy to provide where there is a syndicate, the syndicate must be broken for the restricted period to have ended.

3. "dealer-restricted person" – agents

Comments were received regarding the scope of the definition of "dealer-restricted person" as it relates to agents, and in particular, submissions were made that including agent was unnecessary since dealers acting as agents, who would not be considered to be underwriters pursuant to securities legislation, would not generally have the same incentive to manipulate. The Commission and RS believe that where a distribution takes place by way of a private placement, there is still sufficient incentive for a dealer to engage in manipulation where the offering is of sufficient size and the dealer's allocation is significant enough. To capture when an agent's involvement is significant, and hence there is a greater incentive to manipulate, the definition now provides that when a dealer is acting as an agent but not as an underwriter in a "restricted private placement" of securities, the dealer will be considered to be a "dealer-restricted person" only if the number of securities issued under the restricted private placement would constitute more than 10% of the total issued and outstanding securities and the dealer has been allotted or is entitled to sell more than 25% of the securities to be issued.

4. "issuer-restricted person" – carve out for insiders without material knowledge

The definition of "issuer-restricted person" includes insiders of the issuer and selling securityholders. Concern was expressed that certain institutions, such as, for example, firms that manage discretionary accounts, could become insiders under clause (c) of the definition of insider under the Act by virtue of owning or having control or discretion over more than 10% of the voting securities of an issuer but do not necessarily have an interest in the outcome of a distribution or transaction nor any knowledge

which is any different from a securityholder who is not an insider. The definition of "issuer-restricted person" has been amended in the rule to exclude a person who is an insider of an issuer only by virtue of clause (c) of the definition of "insider" under the Act if that person has not had within the preceding 12 months any board or management representation in respect of the issuer or selling securityholder and has no knowledge of any material information concerning the issuer or its securities that has not been generally disclosed.

5. "marketplace"

In response to comments regarding the term "marketplace" in the companion policy, clarification has been added to the companion policy that trading activity on all marketplaces in Canada as defined in National Instrument 21-101 – *Marketplace Operation* would be considered when determining whether a security is a "highly-liquid security".

6. "offered security" and "connected security"

The change in the prior draft rule to the definition of "offered security" and "connected security" to delete the reference to "listed security or quoted security" was only intended to capture markets where there is mandated transparency of trade information, such as, for example, any marketplace as defined in NI 21-101 – *Marketplace Operation*. The definitions of "offered security" and "connected security" have been revised to reflect this requirement.

7. "public distribution"

In the prior draft rule, the term "public distribution" was defined as a distribution of a security pursuant to a prospectus or private placement. From the comments received, we saw that there was some confusion and the term has been removed and replaced with the terms "prospectus distribution" and "restricted private placement". The term "restricted private placement" has been defined as a distribution pursuant to subsection 72(1)(b) of the Act or section 2.3 of Ontario Securities Commission Rule 45-501 – Exempt Distributions.

Permitted Activities and Exemptions

8. Exemption for market stabilization and market balancing activities

The Commission requested specific comment on the revised provisions relating to the exemption for market stabilization and market balancing. Comments were received expressing concern that the exemption would limit the market stabilization price to the lesser of the distribution price (or if not determined, the last independent sale price) and the best independent bid price at the time of the bid and may, in certain circumstances, be more restrictive than the current exemption which restricts the bid to the lesser of the issue price (if determined) and the last independent sale price. The Commission believes that the price of the last independent sale is the fairest indicator of where market is since it represents an actual transaction. Use of the last independent sale price is also consistent with the initial stabilizing price in Reg M. Further, the maximum price at which stabilization activities may take place has been revised in the rule. In the case of an offered security, the bid or purchase must not exceed the lesser of the distribution price and the last independent sale price. In the case of a connected security, the bid or purchase must not exceed the lesser of the last independent sale price at the commencement of the restricted period and at the time of the bid or purchase.

Research Reports

9. Research on single-issuers – Exemption for highly-liquid securities

Considerable comment was received regarding the removal of the exemption for the issuance of single-issuer research reports in the first publication of the proposed rule. In particular, commenters noted that Ontario dealers would be significantly disadvantaged compared to their U.S. counter-parts in a cross-border offering. Reg M permits single-issuer reports to be issued, provided certain conditions are met including that the research is contained in a publication which is distributed with reasonable regularity in the normal course of business. In order to facilitate cross-border offerings by harmonizing regulatory requirements in the rule and Reg M, and to provide a level playing field between interlisted issuers and non-interlisted issuers in Ontario, the rule has been amended to include an exemption for research reports in respect of issuers of securities which meet the definition of "highly-liquid security".

If you have questions, please contact:

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Text of the Rule and Companion Policy

The text of the rule and the companion policy follows. Also included is a blacklined version of the rule and companion policy showing changes from the rule and companion policy published with the prior materials.

APPENDIX A

PROPOSED OSC RULE 48-501
AND
AMENDMENTS TO THE UNIVERSAL MARKET INTEGRITY RULES (UMIR)

Joint Summary of Comments and Responses

On September 10, 2004, the Ontario Securities Commission ("OSC") published for comment the proposed OSC Rule 48-501 (the "OSC rule") and Market Regulation Services Inc. ("RS") issued Market Integrity Notice 2004-024 requesting comments on proposed amendments to the Universal Market Integrity Rules ("UMIR") respecting restrictions and prohibitions on trading during certain securities transactions, including distributions, amalgamations, issuer bids and takeover bids. Comments received by the OSC in respect of the OSC rule were generally addressed to RS and concerned amendments to UMIR as well. Accordingly, a Joint Summary of Comments and Responses has been prepared reflecting the responses of the OSC and RS on their respective proposed rules (collectively, the "rules"). The OSC and RS received comments from the following persons:

BMO Nesbitt Burns
Canaccord Capital Inc.
CIBC World Markets Inc.
Dorsey & Whitney LLP
National Bank Financial Inc.
Ontario Teachers' Pension Plan
Osler, Hoskin & Harcourt
RBC Financial Group
Scotia Capital Inc.
UBS Securities Inc.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
General Comments			
1.	Price References in Rules	The commenter noted that all references to price variables in the rules should be modified to give effect to prices on the principal market. The principal market should be defined to include any of the Canadian or US exchanges or NASDAQ which has the largest aggregate reported trading volume for the class of securities in the previous 12 months.	The concept of a "principal market" was deleted, effective December 31, 2003, from National Instrument 21-101 – Marketplace Operation. Price references in the rules are intended to refer to trading on any marketplace in Canada. Price variables do not reference foreign markets for a variety of reasons including difficulties in determining appropriate and consistent foreign exchange rates and lack of general access to comprehensive trade data.
2.	Extraterritorial Application of Rules	A comment was received that the rules did not clearly indicate whether they were to apply to trading outside of Canada and noted that if they were not to apply to such trading, they could be easily circumvented by trading conducted on a US or other foreign market. Further, if the intention is to have the rules applied to all dealers worldwide for a Canadian distribution the concept has not been sufficiently articulated. The commenter questions whether the OSC could enforce such restrictions where they involved trading or persons outside of Ontario. The commenter suggested that an offeror and managing underwriter could jointly elect to be subject to Regulation M under the *Securities and Exchange Act of 1934* ("Reg M") rather than the rules if the distribution	The OSC rule applies to all trading activity conducted by an Ontario resident or in Ontario but does not purport to regulate the trading activity of a foreign resident outside of Ontario. However, an Ontario resident would not be permitted to carry out prohibited activities indirectly through a related entity, affiliate or associate that is a foreign resident. The UMIR provision will apply to trading by a Participant regardless of the jurisdiction in which the trade or activity occurs. To the extent that a security is inter-listed with a US market, the security will be exempt from the prohibitions and restrictions under the rules if the security meets the criteria for an "actively-traded security" under Reg M. If the bulk of the trading activity in an inter-listed security occurs outside of Canada and trading in the security is

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		involved an inter-listed security. The commenter stated that this would reduce confusion regarding regulation.	subject to the restrictions under Reg M, RS may grant an exemption from compliance with the UMIR provision on the condition that there is compliance with Reg M. In the view of RS, it is appropriate to grant such exemptions on a case by case basis taking into account the circumstances of the distribution or transaction. The OSC and RS are of the view that allowing a dealer to elect to be subject to Reg M rather than the OSC rule or UMIR is not practical from the perspective of monitoring and enforcement.
3.	Publication of Final Amendment Prior to Implementation	A commenter wrote that it would be helpful to publish the final form of the rules some period (two weeks) before implementation to allow dealers and other regulated persons an opportunity to amend procedures and policies to ensure compliance.	The OSC rule will become effective on May 9, 2005 unless the Minister responsible for the administration of the *Securities Act* (Ontario) rejects the OSC rule or returns it to the Commission for further consideration. The amendments to UMIR will become effective on the implementation date of the OSC rule.
4.	Definition of "marketplace"	A commenter noted that the definition of "marketplace" in the Companion Policy to 48-501 references the term "recognized marketplace" and National Instrument 21-101 – Marketplace Operation. The commenter expressed a concern that this reference may exclude trading activity on ATSs from being counted when a security is a "highly-liquid security". The commenter expressed a belief that trading activity on an ATS should be counted when determining whether a security is a "highly-liquid security" and suggested that the reference to "recognized" be deleted in the Companion Policy.	The intention was that the trading activity on all marketplaces in Canada as defined in National Instrument 21-101 – *Marketplace Operation* be considered when determining whether a security is a "highly-liquid security". Appropriate changes to the Companion Policy have been made to clarify this point.
Definitions			
5.	"connected security" 48-501 s.1.1 UMIR s.1.1	One commenter noted that the definition of "reference security" in Reg M does not include a requirement that the connected security must be a security into which the offered security is immediately convertible nor does it include a threshold price for conversion, exchange or exercise. The commenter urged that the definition in the rules be conformed to Reg M and expressed a belief that dealer activity in "connected securities" would be suspect even if the conditions excluding it from restrictions applied.	The OSC and RS considered adopting a definition similar to the definition of "reference security" in Reg M but, in our view, the restrictions that would be imposed by the adoption of such a definition were unnecessary. The definition of "connected security" was intended to include securities into which the offered security could be converted during the course of the relevant securities transaction. The OSC and RS believe that if a security is not immediately convertible or if the conversion, exchange or exercise price exceeds the ask price for the security by 110%, there is a reduced likelihood that changes in the price of that security will have a substantial impact on the price of the offered security. As such, the risk of manipulation of the price of the offered security is also greatly reduced.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
6.	"dealer-restricted period" – commencement – public distribution 48-501 s.1.1 UMIR s.1.1	It was submitted that the rules indicate that the commencement of the dealer-restricted period (commencing the later of two business days prior to the date the offering price is determined and the date that the dealer has been retained to participate in the offering) is different from the restricted period currently set out in Reg M. The commenter also indicated that the Securities and Exchange Commission ("SEC") intends to amend the section and urged that the proposed amendment be evaluated.	The OSC and RS have decided to maintain the two-day period. Comment was specifically requested on this issue previously and no commenter expressed support for Reg M's tiered approach for the commencement of the restricted period. Comments provided were supportive of maintaining a single, two-day period. However, the OSC and RS will monitor proposed amendments to Reg M and will revise the rules at a future date, if appropriate.
7.	"dealer-restricted period" – commencement of the restricted period 48-501 s.1.1 UMIR s.1.1	A commenter stated that knowledge of an agreement, entered into by the dealer, relating to the dealer's involvement in a distribution will be limited to a small group of persons who may be behind an "information wall" to ensure the limited distribution of non-public information. The commenter requested additional direction on how the restrictions are to be implemented without broadly disclosing the distribution within the organization.	The restricted period for prospectus distribution or a restricted private placement commences on the later of two day prior to pricing of the offering and the date the dealer enters into an agreement to participate in the distribution. As such, the earliest that the restricted period can commence is two days prior to pricing when knowledge of the distribution would be public. While the OSC and RS are aware that the imposition of trading restrictions within a dealer firm will signal to all those made aware of the restrictions that a transaction is pending, they believe that the imposition of restrictions is necessary. If certain information has not been made public, it is necessary to minimize the effect of information leakage, dealers are currently expected to have policies in place which ensure that restrictions are imposed immediately upon the commencement of a restricted period even though the particulars of the distribution or other transaction are not disclosed.
8.	"dealer-restricted period" – commencement of restricted period for amalgamation, arrangement, capital reorganization 48-501 s.1.1 UMIR s.1.1	One submission was received supporting the change in the commencement of the restricted period for amalgamations, arrangements, etc from the date of the announcement of the transaction to the date of the information circular (circular). Another commenter suggested that the date of dissemination of circular may be a preferable date for the commencement of restrictions as the date of the circular may be an arbitrary date fixed by the person drafting the circular. The commenter noted that the ability to pre-date or post-date the circular may result in difficulties in determining when the restrictions should be applied. The commenter suggested that the commencement of restrictions commence on the date of commencement of distribution of the circular in harmonization with Reg M.	The Commission and RS agree with the comment and have made the appropriate changes so that the restrictions will start on the date of the commencement of the distribution of the circular. The Commission and RS staff will monitor proposed amendments to Reg M and respond as considered appropriate.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
9.	"dealer-restricted period" – conclusion of restricted period for distribution 48-501 ss.1.1 and 1.2 UMIR s.1.1	A commenter was of the view that the rules provide that the dealer-restricted period ends on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated and that this is inconsistent with Reg M which provides that restrictions are to be complete upon conclusion of the dealer's participation in the distribution. In addition the commenter indicated that the termination provision lacks sufficient clarity. The commenter recommended that the restriction period end upon the issuance of a receipt for a final prospectus and the completion of all selling efforts by the dealer. Two commenters indicated that the requirement that a receipt for the final prospectus be issued and that the final prospectus be delivered to each subscriber before the restricted period end will unnecessarily extend the restricted period. The commenter indicated that traditionally final prospectuses are only considered to have been received after two business days have passed. One of these commenters expressed a concern that the proposed regulation considers stabilization arrangements to be operative until purchases or sales of restricted securities by a participating dealer are no longer being made jointly for the underwriting syndicate. The commenter noted that where an over-allotment option has been granted to the syndicate these restrictions will continue to apply as long as the syndicate retains an over-allotment short position. The commenter noted that this has the potential of extending the restricted period for as many as 30 days following the closing of the offering. The commenter suggested that the existing rules and practices be retained.	Amendments to the rules have been made to clarify that the conclusion of the restricted period under the rules will be substantially similar to the conclusion of period under Reg M. The rules now reference the completion of the distribution which, for a prospectus distribution will be considered to have ended when a receipt has been issued for the final prospectus, the Participant has allocated its portion of the securities to be distributed provided and all selling efforts have ceased. While Reg M uses the language "completion of participation in a distribution", that expression is defined in Rule 100 of Reg M by reference to essentially the same components as are included in the determination of the restricted period for the purpose of the rules. The conclusion of the restricted period under the rules will only require that a receipt for a final prospectus be issued but not that the prospectus be delivered.
10.	"dealer-restricted period" – conclusion of restricted period 48-501 s.1.1 UMIR s.1.1	A commenter urged that a provision (like Reg M) be added acknowledging that an underwriter who holds securities in their inventory account at the end of distribution will not be subject to restrictions upon resale of the securities unless the subsequent resale qualifies as a distribution.	The OSC and RS agree that securities retained by a dealer at the end of the distribution are to be considered "distributed". Subsequent sales of such securities are secondary market transactions and should occur on a marketplace (unless the subsequent sale transaction is a further distribution). 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. Changes have been made to the Companion Policy and to Policy 1.2 of UMIR to clarify this point.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
11.	"dealer-restricted period" – termination of restricted period for amalgamation, arrangement, capital reorganization 48-501 s.1.1 UMIR s.1.1	One commenter indicated that the termination of the restricted period on the approval of the transaction was inappropriate and that the more appropriate time for termination of the restricted period was on the date of mailing of the information circular. The commenter indicated that the period of time between the distribution of information circulars and the closing can be considerable, particularly where regulatory approval of the transaction is required. The commenter noted that the information circular will provide full disclosure of the particulars of the transaction including all material confidential information in the dealer's possession and that regulators and dealers have processes in place to monitor sales and trading to ensure that no manipulative trading takes place.	The OSC and RS believe that the relevant period, where an incentive exists to manipulate the price of the offered security, is the period leading up to the securityholders' vote on approval of the transaction. As there is an increased incentive to manipulate during this period, the OSC and RS believe that the application of restrictions is appropriate.
12.	"dealer-restricted period" – Soliciting Dealer Manager 48-501 s.1.1 UMIR s.1.1	A comment was received that the restricted period for the dealer acting as Soliciting Dealer Manager (who is subject to OSC Policy 33-601) should last only during the last ten days of the bid. The commenter indicated a belief that a Soliciting Dealer Manager has no pecuniary interest in the outcome of the vote and therefore little incentive to affect a specific stock price. The commenter indicated that the Soliciting Dealer Manager will have access to certain information relating to the outcome of the vote during the final 10 days which would make the restrictions appropriate.	The provisions in the rules are consistent with the requirements of Reg M. The OSC and RS recognize that a soliciting dealer-manager does not have pecuniary interest in the outcome of the vote but also note that a soliciting dealer-manager may have a "reputational" interest in the outcome. It is the opinion of the OSC and RS that the imposition of restrictions on soliciting dealer-managers is appropriate.
13.	"dealer-restricted person" – scope – agents 48-501 s.1.1 UMIR s.1.1	A commenter noted that the definition of underwriter in the *Securities Act* (Ontario) (the "Act") already would include a dealer acting as selling agent and indicated a concern that the clause has no purpose unless it is to include selling group participants as restricted parties. The commenter expressed a view that selling group participants should not be restricted parties as they would have little incentive to manipulate. Another commenter expressed a concern that inclusion of transactions involving dealers acting as agent in a public distribution of securities which would constitute more than 10% of the issued and outstanding offered securities would be excessive as there is little real incentive on the part of a dealer to manipulate the price of the security. The restrictions would then be applied to issuers with a relatively small market capitalization which should not be a cause of concern as there would be little	The OSC and RS have amended the definition of "dealer-restricted person" to clarify the application of restrictions. When a Participant is acting as an underwriter, as that term is defined under appropriate securities legislation, for either a prospectus distribution or a restricted private placement, the Participant will be considered to be a "dealer-restricted person". The term "restricted private placement" has been defined in the rules as a distribution of securities pursuant to clause 72(1)(b) of the Act or section 2.3 of OSC Rule 45-501 or similar provisions in applicable securities legislation. When a Participant is acting as an agent, but not as an underwriter, in a restricted private placement of securities, the Participant will be considered to be a "dealer-restricted person" if the size of the private placement and the agent's portion of the offering each reaches a minimum threshold. In particular:

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		incentive to manipulate.	• the number of securities issued under the restricted private placement must constitute more than 10% of the total issued and outstanding securities; and • the Participant has been allotted or is entitled to sell not less than 25% of the securities to be issued pursuant to the restricted private placement.
14.	"dealer-restricted person" – scope - advisers 48-501 s.1.1 UMIR s.1.1	A commenter stated that the requirement that the advisers be provided with compensation which "depends on the outcome of the transaction" provides a broad exemption to the rules which does not exist in Reg M. The commenter noted that an adviser's desire to enhance its reputation is sufficient motivation for it to engage in manipulative trading and that restrictions should be applied. It was noted that soliciting dealer groups for transactions are not common in the US. In recognizing the different Canadian practice it was suggested that the restriction should be recast to provide a more limited exemption for members of a soliciting dealer group whose compensation is limited to a customary fee for each security tendered.	It is the intention of the OSC and RS that restrictions will apply to an adviser in respect of a securities exchange take-over bid or issuer bid or in respect of obtaining securityholder approval for an amalgamation, arrangement, capital reorganization or similar transaction. In the view of the OSC and RS, it is appropriate to impose restrictions only when the party has a specific financial interest in the outcome of the transaction and that such restrictions are not necessary when a party is merely providing advice for a flat or specified fee. The OSC and RS intend that the rules impose restrictions only on members of the soliciting dealer group who are providing the offeror or issuer with services as an adviser or are playing a key role in soliciting the deposit of securities pursuant to a take-over bid or soliciting support for a specified transaction. If a dealer is only a member of the soliciting dealer group as a result of making themselves available for the deposit of securities for a fee, the restrictions should not apply.
15.	"dealer-restricted person" – 10% threshold 48-501 s.1.1 UMIR s.1.1	One commenter pointed out that Reg M does not provide a threshold under which best efforts offering will not be considered distributions and suggests that the 10% threshold set out in subclause (a)(ii) of the definition be eliminated. The commenter indicated that the 10% threshold does not have any relation to the potential market impact of trading activity conducted by dealer-restricted persons and suggests that the more subjective test relied upon in Reg M of applying the restrictions to distributions which involve the use of special selling efforts.	The OSC and RS believe that the "special selling efforts" test set out in Reg M creates a subjective test which is difficult to apply. It should be noted that the amended version of the rules has deleted the 10% threshold except when a dealer is acting as an agent in a restricted private placement and has been allotted more than 25% of the distribution. The OSC and RS believe that, in relation to the restricted private placement, these thresholds create an objective test which is easy to apply. By setting these thresholds, only dealers with a significant interest in a significant restricted private placement that may have an impact on the market, and in which a dealer-restricted person might have sufficient incentive to manipulate, will be caught.
16.	"dealer-restricted person" – Exception for	Two commenters expressly supported the narrowing of the scope of the definition of dealer-restricted person provided for in the clause 1.1(b) exception where adequate	It should be noted that the carve-out for "related entities" is consistent with Reg M It should also be noted that "related entity" is defined in UMIR and in s. 1.2(4) of the OSC

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
	Related Entities 48-501 s.1.1(b) UMIR s.1.1(b)	information barriers are in place, noted its consistency with Reg M and urged that the provision be adopted as proposed. A commenter expressed a concern that the carve-out of the definition of "dealer-restricted person" in part (b) would be unlikely to exempt affiliated dealers in the US as it is typical to share information relating to a public distribution with such affiliates.	rule as an affiliated entity of as a person carrying on business in Canada registered as a dealer or adviser. Dealers operating in the US, which are not registered in Canada would not be subject to restrictions. As discussed in Item # 2 above, an Ontario resident would face sanctions if it was found to be carrying out prohibited activities indirectly through a related entity that is a foreign resident.
17.	"dealer-restricted person" – Exception for Related Entities 48-501 s.1.1(b) UMIR s.1.1(b)	A commenter stated that clause b(ii) of the definition of "dealer-restricted person" would be difficult to apply as typically employees of a department or division are also employees of the dealer as well and, as a result, may not enjoy the benefit of the carve-out. The commenter suggested that additional clarification on the application of the carve-out could be included in the companion policy.	Under the requirements in clause b(ii) of the definition of "dealer-restricted person", a related entity, department or division that has employees or officers that solicit client orders or recommend transactions in common with the restricted Participant would not fall within the "carve-out" and would, therefore, be subject to the restrictions and prohibitions under the rules.
18.	"highly-liquid security" 48-501 s.1.1 UMIR s.1.1	A commenter expressed support for the proposal, particularly the exemption from restrictions relating to highly-liquid securities. The commenter also indicated support for the proposal that RS would maintain and distribute a list of securities which would be considered to be highly-liquid.	It should be noted that RS will maintain and distribute a list of securities which, based on data available to RS, fall within the definition of a "highly-liquid security" as a result of achieving the required number of average daily trades and average daily trading value on Canadian marketplaces. RS will not maintain a list of securities considered to be "actively-traded" under Reg M. Persons may rely on this list or they may independently verify if a security meets the requirements of a "highly-liquid security" so long as they retain a record of the data they rely upon in verifying the requirements.
19.	"highly-liquid security" – measurement of trading activity 48-501 s.1.1 UMIR s.1.1	A commenter noted that the definition only considers trading on Canadian marketplaces in determining whether a security would qualify as a "highly-liquid security" and does not consider trading volume on other markets around the world. The commenter noted that Reg M takes into account world-wide trading in determining whether a security is an "actively-traded security". Although the definition of highly-liquid security includes any security that is considered an "actively traded security" under Reg M, the commenter is of the view that it is unfair to treat an issuer differently because it is inter-listed and a portion of its public float is traded in a non-Canadian marketplace.	See the response to Item #1. The OSC and RS recognize that there are practical concerns which arise when there are restrictions on trading on Canadian marketplaces where such trades can occur on a foreign market. The OSC and RS do, however, believe that the test utilized in the definition of the term "highly-liquid security" is more appropriate for securities traded on Canadian marketplaces than the test established in the definition of "actively-traded security" in Reg M.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
20.	"issuer-restricted person" – Insider of an Issuer 48-501 s.1.1 UMIR s.1.1	A commenter expressed a concern that insiders of the issuer or a selling securityholder are included as "issuer restricted persons". The commenter indicated that an insider does not necessarily have an interest in the outcome of a distribution or transaction which is different than a person which is not an insider. The commenter further indicated that an insider does not necessarily have knowledge regarding a distribution that ordinary investors do not possess. In addition, the commenter noted that compliance with rules will be difficult for an insider as the insider may not have sufficient knowledge to determine when an "issuer restricted period" will begin or end. The commenter indicated that they believed that the imposition of trading restrictions in the rules unnecessarily restricted the ability of insiders to conduct trading activity for an extended duration. The commenter also suggested that the definition of "associated entity" should be revised to eliminate the inclusion in the definition of situations where an investor owns more than 10% of the voting securities of the issuer.	The OSC and RS agree that it may not be appropriate to impose restrictions on an insider of a issuer or selling securityholder solely because they may own in excess of 10% of the voting rights of an issuer. The rules have been amended to provide that an "issuer-restricted person" does not include a person who is an insider of an issuer only by virtue of clause (c) of the definition of "insider" under the Act and provided that person has not had within the preceding 12 months any board or management representation in respect of the issuer and has no knowledge of any material information concerning the issuer or its securities which has not generally been disclosed. . This 12 month "cooling-off period" is consistent with a similar provision for an insider to be exempt from the formal valuation requirements on an insider bid under paragraph 2 of section 2.4 of Ontario Securities Commission Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions.* An "associated entity" is defined to include an entity in which the issuer of the offered security owns 10% of that entity's voting securities thereby making that entity an issuer-restricted person. The OSC and RS believe that this requirement is appropriate and no change has been made.
21.	"offered security" – scope of definition and "public distribution" – scope of definition 48-501 s.1.1 UMIR s.1.1	A commenter expressed a concern that the definition of the term "offered security" is too broad and will apply to distributions of securities which will be outside of present regulation. The commenter noted that the definition, when considered together with the recommended definition of "public offering", will result in restrictions applying to all offerings of debt or equity, whether by prospectus or by way of private placement, and situations where a dealer is an underwriter or a selling agent. The commenter suggests that the rules' application be restricted to securities which are listed or quoted for trading in Canada. The commenter further suggested that "private placement" be defined as an exempt offering comprised of more than 10% of the issued and outstanding securities of a class, to help define the scope of the rules.	The change to the OSC rule was only intended capture markets where there is mandated transparency of trade information, such as, for example, any marketplace as defined in National Instrument 21-101 – *Marketplace Operation.* The definitions of offered security and connected security have been revised to reflect this requirement. RS has amended the definition of "offered security" under UMIR to clarify in all circumstances that the security must be a listed or quoted security. A definition of "restricted private placement" has been added in each of the rules. See the response to Item # 13.

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Permitted Activities and Exemptions			
22.	Exemptions from Trading Restrictions – Private Placements 48-501, s.3.1(1) UMIR s.7.7(4)(a)	One commenter indicated that Reg M does not provide an exemption from restrictions for private placements but only for Rule 144A offerings to Qualified Institutional Investors of securities not listed on a stock exchange. The commenter wrote that the broad exemption for private placements that is being proposed is not appropriate.	The amendments to the rules impose similar restrictions on both prospectus distributions and restricted private placements. The OSC and RS believe, particularly in the context of the Canadian market, that similar restrictions should be imposed on both private placement and prospectus distributions. The rules have been amended to clarify that a Participant acting as an underwriter in private placement is subject to the restrictions and a Participant acting as a selling agent in a private placement may be subject to the restrictions under the rules if the distribution is of a material size (more than 10% of the issued and outstanding offered securities) and the Participant's participation in the private placement is substantial (the Participant has been allotted more than 25% of the distribution).
23.	Exemptions from Trading Restrictions – Additional Exemptions 48-501, s.3.1(1) UMIR s.7.7(4)	A commenter noted that the rules did not include an exemption from the prohibition on attempting to induce a person to purchase a restricted security issued pursuant to a private placement for marketing activity to induce subscriptions for the private placement. The commenter suggested that an exemption, similar to the exemption in clause 3.1(g) of 48-501 be included for the solicitation of subscriptions pursuant to the private placement.	The solicitation of purchases of an offered security by private placement is exempt under clause 3.1(g) of 48-501, as well as s.7.7(4)(g) of UMIR. In order to clarify the drafting in the rules, the definition of "public distribution" has been replaced by references to "prospectus distribution" and "restricted private placement". See the response to Item # 22.
24.	Exemptions from Trading Restrictions 48-501, s.3.1(1) UMIR s.7.7(4)	One commenter expressed their concern that an exemption has not been included to allow dealers to purchase shares to offset positions entered into in error. The commenter indicated that such activity should not be considered to be manipulative.	The OSC and RS do not believe that a specific exemption allowing dealers to cover positions entered into in error is necessary. A Participant who wishes to make a purchase to offset a short position entered into in error should request an exemption on a case-by-case basis based on the circumstances that gave rise to the error and the need to cover that error by a purchase during the restricted period.
25.	Market Stabilization 48-501, s.3.1(1)(a) UMIR s.7.7(4)(a)	A commenter was concerned that the provisions of the rules do not allow a trade to be exempted from the restrictions where the purchase price exceeds the lesser of the last independent sale price or the best independent bid price unduly restricts a dealer's ability to participate in stabilization activities. The commenter suggested that the existing rule allowing a restricted party to purchase below the "last independent sale price" be retained. Another commenter expressed a concern that the proposal to provide an exception to restrictions for purchases at a price which	The OSC and RS have harmonized to a certain extent with Reg M, and have modified the rules so that for purposes of market stabilization, bids or purchases may be made at the lesser of the distribution price and the last independent sale price determined at the time the bid or purchase is entered on a marketplace. In the case of a connected security, the bid or purchase must not exceed the lesser of the last independent sale price at the commencement of the restricted period and the last independent sale price during determined at the time the bid or purchase is entered on a marketplace.

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		does not exceed the lesser of the issue price (or if not determined the last independent sale price) and the best independent bid price, at the time of the bid may, in certain circumstances may be more restrictive then the current exemption which provides the exemption where the bid is below the lesser of the issue price (if determined) and the last independent sale price. The commenter believes that the last independent sale price is the fairest indicator of the market for a security and should be the appropriate reference for the application of the exemption.	Currently under UMIR, a Participant who is not short the security must bid or purchase the restricted security below the last sale price or at the last sale price if that price is below the immediately preceding different-priced trade. In the view of the OSC and RS, limiting the price of a bid to the last independent transaction price determined at the time the bid or purchase is entered on a marketplace provides the best independent reflection of the market.
26.	Exemptions from Trading Restrictions – Additional Exemptions 48-501, s.3.1(1) UMIR s.7.7(4)	A commenter wrote that the proposal includes exemptions from the general trading restriction for a transaction which would have the effect of unwinding an existing hedge position to allow the position to be unwound or rebalanced to maintain market neutrality. An exemption was also sought to permit the dealer to satisfy an unsolicited client order to enter into a swap transaction and enter into the associated hedge, as long as the trade position is market neutral.	While the OSC and RS agree that an exemption for the unwinding of a perfect hedge position is desirable, they do not think that a general exemption to unwind any hedge position is appropriate. The unwinding of an imperfect hedge will have an impact on the market which must be considered before an exemption should be granted. Requests for specific exemptions to unwind a hedge, where such an unwinding would be market neutral, will be considered on a case-by-case basis. While the OSC and RS are of the opinion that most client orders or their accompanying hedges can be satisfied in the market, they will consider granting exemptions from the restrictions of the rules on a case-by-case basis, as appropriate, particularly where a client's request cannot be satisfied in the market.
Research Reports			
27.	Research Reports – Restrictions on the Distribution of Research Reports 48-501, s. 4.1 and 4.2 UMIR, s.7.7(6)	A commenter stressed the importance of maximizing consistency between the proposed regulations and Reg M to limit the burden imposed on dealers and other financial institutions. They are concerned that the rules in markedly different from Rule 138 and 139 of the United States *Securities Act, 1933* ("1933 Act"). In particular a concern was expressed that the rules restricts research report dissemination during the course of a distribution, take-over bid, issuer bid or similar transaction where the US rules only apply to offerings. In addition, the proposal would prohibit single issuer research reports relating to offered securities, allowing only compilation reports. The US rules allow single issuer and compilation reports to be issued during an offering in certain circumstances, in the	The OSC and RS agree that consistency between the rules and Reg M is desirable and important. Every effort was made to ensure that the rules were consistent with Reg M where appropriate. The OSC and RS believe that the differences between Rule 138 and 139 of the *1933 Act* and the rules are justified given the nature of the Canadian market. The application of restrictions on the distribution of research for transactions such as take-over bid or issuer bids in addition to restrictions during a distribution recognizes that transactions other than distributions also provide an incentive to manipulate and the OSC and RS believe that restrictions on the publication of research are justified during such transactions. The OSC and RS also believe that the same incentive to manipulate a security's price exists where a distribution is a public offering or a

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		ordinary course of business. The commenter stressed that more strict restrictions on the publication of research reports could make Canadian capital markets less competitive. The commenter also indicated that the proposed provisions restricting the publication of research reports should not be applied to private placements. The commenter recommended that the rules should be amended to be consistent with the US rules by exempting single issuer reports in respect of certain connected securities from section 2.1 of the OSC rule and section 53 of the Act and by exempting research reports relating to highly-liquid securities from the requirements of section 53 of the Act.	restricted private placement and that similar restrictions should apply in either case. The OSC and RS have made amendments to the proposed restrictions on distribution of research to exempt research reports relating to issuers of restricted securities that meet the definition of a "highly-liquid security".
28.	Research Reports – Restrictions of the Distribution of Research Reports 48-501, s. 4.1 and 4.2 UMIR, s.7.7(6)	A commenter wrote that the restrictions on distribution of research reports was unnecessary, particularly where the security distributed was a highly-liquid security. The commenter noted that Policy 11 of the Investment Dealers Association of Canada ("IDA") ensures that the research function is independent from other business activities. The commenter further noted that many dealers provide a monthly summary of reports created in relation to securities on which they provide research. Such summaries do not include detailed analysis explaining the reasons for the conclusions provided and investors who wish to obtain such information must rely on specific research reports. The commenter noted that restrictions on the delivery of specific reports would limit an investor's ability to make investment decisions and the ability of analysts to respond to investor questions. Another commenter stated that the proposed restrictions relating to the distribution of research reports would conflict with the obligations of an analyst to provide investors with timely, meaningful and useful research, including current financial estimates and recommendations following the release of material information, as required in IDA Policy 11, Guideline 3. The commenter indicated that the exemption from such restrictions only for a compilation report will not provide analysts with a practical method for distributing such information. A third commenter expressed a concern that restrictions on a dealer's ability to issue	The OSC and RS did consider the requirements of the IDA's Policy 11. Policy 11 is a policy of general application and obliges analysts to provide investors with timely research. The rules provide specific restrictions regarding the provisions regarding the analyst's ability to distribute reports where the dealer has an interest in the success of a distribution or other transaction. It should be noted that the rules should be considered to apply during the course of the distribution and analysts should not distribute research material, unless permitted by the rules, until the restrictions have been lifted. The OSC and RS are aware that the restrictions may reduce the information available to investors, however, believe that this is justified in circumstances where there is an incentive to manipulate a security's price.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		research reports which do not provide for the analysis of a single issuer or which limits the ability to change a rating allocated to issued securities would potentially mislead investors and certainly be of limited value. The commenter suggested that dealers should be able to give added prominence to opinion changes relating to the issued security to ensure that the changes are communicated clearly.	
29.	Research Reports – Restrictions of the Distribution of Research Reports 48-501, s. 4.1 UMIR, s.7.7(6)	A commenter urged that the OSC consider avoiding regulating dealer communications in the context of a public offering in a rule dealing with market stabilization and that it would be preferable for the CSA to consider taking a wholesale approach to reforming issuer and dealer communications in the context of a public offering. The commenter noted that the SEC has recently proposed reforms to public offering rules, including reforms regulating dealer communications.	The OSC and RS wish to harmonize the regulation of the distribution of research reports with US regulation, to the extent possible given the differences in the US and Canadian markets. The restrictions on research have been modified to permit the distribution of single issuer research in the case of highly-liquid securities as described in Item # 27 above. The OSC and RS will monitor any change to the SEC rules regulating dealer communication, and may harmonize the rules at a future date, if appropriate. Section 53 of the Act does prohibit the distribution of research material during a distribution as such material is considered to be a solicitation to purchase or an effort to induce the purchase of a security. As such, the reference to Section 53 is required in s.4.1 of the OSC rule.
30.	Research Reports – Compilations and Industry Research and Issuers of Exempt Securities 48-501, s. 4.1 and 4.2 UMIR, s.7.7(6)	A commenter recommended that an exemption to the restriction on distribution of research reports be included for research distributed with reasonable regularity in the normal course of business involving "seasoned issuers" similar to provisions in SEC Rule 139(a) and Reg M. The commenter expressed a belief that the failure to provide such an exemption would place Canadian dealers at a disadvantage in cross-border transactions. The commenter expressed a belief that dealers would review all research issued to ensure that it provided impartial analysis rather than promote the success of an offering.	The OSC and RS believe that an incentive to manipulate the price of a security may exist in many situations even when the issuer is a "seasoned issuer" and do not believe that a "seasoned issuer" exemption is appropriate. It should be noted that the OSC and RS have made amendments to the proposed restrictions on distribution of research by agreeing to exempt research reports relating to issuers of "highly-liquid securities" from the restrictions.
31.	Research Reports – Restrictions of the Distribution of Research Reports 48-501, s. 4.1 UMIR, s.7.7(6)	A commenter inquired whether dealer-restricted persons would be free to distribute single-issuer research during the distribution of a security that would qualify as a "highly-liquid security". The commenter also sought clarification as to what communications would be precluded under section 2.1. The commenter inquired, for example, whether a dealer could issue a single-issuer report relating to a significant development if the report did not have the	As noted above, the OSC and RS have made amendments to the proposed restrictions on distribution of research by exempting research reports relating to "highly-liquid securities" from the restrictions. The OSC and RS did consider the requirements of the IDA's Policy 11. The rules provide specific restrictions regarding the analyst's ability to distribute reports where the dealer has an interest in the success of a distribution or other transaction. It should be

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		effect of inducing an investor to purchase a restricted security. The commenter further noted that the application of the rules must be consistent with IDA's Policy 11.	noted that the rules should be considered to apply during the course of restrictions and analysts should not distribute research material, unless permitted to do so in the rules, until the restrictions have been lifted.
32.	Research 48-501, s. 4.1 Policy 7.7 – Part 4	A comment was received noting that Part 4 of Policy 7.7 of UMIR states that the OSC rule does not permit dealers to distribute research reports where the dealer, the analyst covering the security or any other person representing the dealer has possession of non-disclosed material information. The commenter agreed that a research analyst in possession of non-disclosed material information should not be used in a research report but noted that dealers maintain information walls to ensure that information does not flow between working groups and that possession of such information by the dealer or its representative should not automatically prevent the publication of research reports. The commenter urged that the policy be amended to reflect dealer practices.	The OSC and RS understand that the commenter's concern, but are of the belief that no research material should be distributed when a dealer has possession of non-disclosed material information. However, it should be noted that when there is sufficient independence between functions and the "carve-out" contained in clause (b) of the definition of "dealer-restricted person" applies, the person issuing the research would not be subject to s.2.1 of the OSC rule and s.53 of the Act.