

### 13.1.5 RS Market Integrity Notice – Guidance – Designation of Additional Exchange-Traded Funds

November 16, 2007

No. 2007-023

#### RS MARKET INTEGRITY NOTICE

#### GUIDANCE

#### DESIGNATION OF ADDITIONAL EXCHANGE-TRADED FUNDS

##### Summary

This Market Integrity Notice provides guidance relating to additional Exchange-traded Funds that have been designated effective as of November 16, 2007 by Market Regulation Services Inc. for the purposes of the Universal Market Integrity Rules. ***If a security has not been designated, the exemptions provided in the Universal Market Integrity Rules for such funds are unavailable to that security.***

##### Questions / Further Information

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#### DESIGNATION OF ADDITIONAL EXCHANGE-TRADED FUNDS

##### Summary

This Market Integrity Notice provides guidance relating to additional Exchange-traded Funds that have been designated effective as of November 16, 2007 by Market Regulation Services Inc. ("RS") for the purposes of the Universal Market Integrity Rules ("UMIR"). ***If a security has not been designated, the exemptions provided in UMIR for such funds are unavailable to that security.***

##### Definition of an "Exchange-traded Fund"

Rule 1.1 of UMIR defines an "Exchange-traded Fund" as a mutual fund:

- the units of which are:
  - a listed security or a quoted security, and
  - in continuous distribution in accordance with applicable securities legislation; and
- designated by the Market Regulator.

Market Integrity Notice 2007-005 – *Guidance – Designation of Additional Exchange-traded Funds* (February 28, 2007) set out a list of thirteen securities that had been designated as an "Exchange-traded Fund" as at February 28, 2007. As stated in Market Integrity Notice 2006-013 – *Guidance – Designation of Indices and Exchange-traded Funds* (May 26, 2006) and as set out in Policy 1.1 – Definitions, Part 2 – *Definition of an "Exchange-traded Fund"*, additional designations of an "Exchange-traded Fund" would be made after consultation with the Ontario Securities Commission ("OSC") or other applicable securities regulatory authorities. Acceptance of the designation by applicable securities regulatory authorities is a pre-condition to any designation of a security as an "Exchange-traded Fund". Other factors which RS takes into account are:

- the liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- whether the units are redeemable at any time for a "basket" of the underlying securities in addition to cash;

- whether a “basket” of the underlying securities may be exchanged at any time for units of the fund;
- whether the fund tracks a recognized index on which information is publicly disseminated and generally available through the financial media; and
- whether derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace.

None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits before a request is made to the applicable securities regulatory authority to concur in the designation.

### **Exemptions under UMIR**

Securities which have been designated as an “Exchange-traded Fund” are exempt from:

- the restrictions on short selling under Rule 3.1; and
- certain restrictions on activities by a Participant during certain securities transaction under Rule 7.7.

#### ***Exemptions from the Restriction on Short Selling***

Under Rule 3.1 of UMIR, a short sale of an “Exchange-traded Fund” may be made at a price less than the last sale price and such a sale may be marked as “short exempt” in accordance with the order marking requirements under Rule 6.2 of UMIR. The policy rationale for this exemption relates to the fact that the trading value of the security will track the changes in the value of the index underlying the fund or changes in the value of the structured investment portfolio which comprises the assets of the fund. Because of the relationship between trading value of the security and asset value, the security is not prone to being easily manipulated by short selling activity.

#### ***Exemptions from the Prohibitions and Restrictions on Trading During Certain Securities Transactions***

Under Rule 7.7 of UMIR, a dealer-restricted person is prohibited or restricted in dealing with certain securities while acting as:

- an underwriter in a prospectus distribution or restricted private placement;
- an agent, but not as an underwriter, in a restricted private placement that involves the distribution of more than 10% of the issued and outstanding shares and the Participant is entitled to sell more than 25% of the distribution;
- a dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange takeover bid or issuer bid if a security is offered as consideration; or
- a soliciting dealer or adviser in respect of the approval of an amalgamation, arrangement, capital reorganization or similar transaction.

These prohibitions or restrictions in Rule 7.7 which govern market stabilization and market balancing activities (including the publication of research) do not apply if the security is an Exchange-traded Fund or a connected security of an Exchange-traded Fund. As with the exemption from the price restrictions on short sales, the exemption recognizes that the relationship between trading value of the security and asset value results in the security not being prone to being influenced by buying activity from dealers or other persons who may stand to benefit from the completion of the securities transactions.

### **Designation of Exchange-Traded Funds**

Since February 28, 2007, the following fifteen securities have been listed on the Toronto Stock Exchange (“TSX”):

Claymore Canadian Financial Monthly Income ETF (symbol “FIE”)  
Claymore Global Balanced Growth ETF (symbol “CBN”)  
Claymore Global Balanced Income ETF (symbol “CBD”)  
Claymore S&P Global Water ETF (symbol “CWW”)  
Claymore S&P/TSX CDN Preferred Share ETF (symbol “CPD”)  
Claymore S&P/TSX Global Mining ETF (symbol “CMW”)  
Horizons BetaPro S&P/TSX Capped Energy Bear Plus ETF (symbol “HED”)  
Horizons BetaPro S&P/TSX Capped Energy Bull Plus ETF (symbol “HEU”)  
Horizons BetaPro S&P/TSX Capped Financials Bear Plus ETF (symbol “HFD”)

Horizons BetaPro S&P/TSX Capped Financials Bull Plus ETF (symbol "HFU")  
 Horizons BetaPro S&P/TSX Global Gold Bear Plus ETF (symbol "HGD")  
 Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF (symbol "HGU")  
 iShares CDN Jantzi Social Index Fund (symbol "XEN")  
 iShares CDN Russell 2000 Index – Canadian Dollar Hedged Index Fund (symbol "XSU")  
 iShares CDN S&P/TSX Small Cap Index Fund (symbol "XCS")

After consultation with and the concurrence of the OSC in the designation, RS has designated each of these securities as an "Exchange-traded Fund" **effective as of November 16, 2007**. As of November 16, 2007, the following forty-seven securities that are listed on the TSX have been designated as an "Exchange-traded Fund":

Issuer Name	Symbol
Claymore BRIC ETF	CBQ
Claymore Canadian Financial Monthly Income ETF (previously Canadian Financial Income Fund)	FIE
Claymore Canadian Fundamental Index ETF (previously Claymore ETF FTSE RAFI Canadian Index Fund)	CRQ
Claymore CDN Dividend & Income Achievers ETF	CDZ
Claymore Global Balanced Growth ETF	CBN
Claymore Global Balanced Income ETF	CBD
Claymore International Fundamental Index ETF	CIE
Claymore Japan Fundamental Index ETF C\$ Hedged	CJP
Claymore Oil Sands Sector ETF	CLO
Claymore S&P Global Water ETF	CWW
Claymore S&P/TSX CDN Preferred Share ETF	CPD
Claymore S&P/TSX Global Mining ETF	CMW
Claymore US Fundamental Index ETF C\$ hedged	CLU
CP HOLDERS	HCH
Horizons BetaPro S&P/TSX 60 Bear Plus ETF	HXD
Horizons BetaPro S&P/TSX 60 Bull Plus ETF	HXU
Horizons BetaPro S&P/TSX Capped Energy Bear Plus ETF	HED
Horizons BetaPro S&P/TSX Capped Energy Bull Plus ETF	HEU
Horizons BetaPro S&P/TSX Capped Financials Bear Plus ETF	HFD
Horizons BetaPro S&P/TSX Capped Financials Bull Plus ETF	HFU
Horizons BetaPro S&P/TSX Global Gold Bear Plus ETF	HGD
Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF	HGU
iShares CDN Dow Jones Canada Select Dividend Index Fund (previously iUnits Dividend Index Fund)	XDV
iShares CDN Dow Jones Canada Select Growth Index Fund	XCG
iShares CDN Dow Jones Canada Select Value Index Fund	XCV
iShares CDN Jantzi Social Index Fund	XEN
iShares CDN MSCI EAFE 100% Hedged to CAD Dollars Index Fund (previously iUnits International Equity C\$ Index Fund)	XIN
iShares CDN Russell 2000 Index – Canadian Dollar Hedged Index Fund	XSU
iShares CDN S&P 500 Hedged to Canadian Dollars Index Fund (previously iUnits S&P 500 C\$ Index Fund)	XSP
iShares CDN S&P/TSX 60 Index Fund (previously iUnits S&P/TSX 60 Index Fund)	XIU
iShares CDN S&P/TSX Capped Composite Index Fund (previously iUnits Composite Canadian Equity Capped Index Fund)	XIC
iShares CDN S&P/TSX Capped Energy Index Fund (previously iUnits S&P/TSX Capped Energy Index Fund)	XEG
iShares CDN S&P/TSX Capped Financial Index Fund (previously iUnits S&P/TSX Capped Financials Index Fund)	XFN
iShares CDN S&P/TSX Capped Gold Index Fund (previously iUnits S&P/TSX Capped Gold Index Fund)	XGD
iShares CDN S&P/TSX Capped Income Trust Index Fund (previously iUnits Income Trust Sector Index Fund)	XTR
iShares CDN S&P/TSX Capped Information Technology Index Fund (previously iUnits S&P/TSX Capped Information Technology Index Fund)	XIT
iShares CDN S&P/TSX Capped Materials Index Fund (previously iUnits Materials Sector Index Fund)	XMA

Issuer Name	Symbol
iShares CDN S&P/TSX Capped REIT Index Fund (previously iUnits S&P/TSX Capped REIT Index Fund)	XRE
iShares S&P/TSX Midcap Index Fund (previously iUnits S&P/TSX Midcap Index Fund)	XMD
iShares CDN S&P/TSX SmallCap Index Fund	XCS
iShares CDN Scotia Capital All Corporate Bond Index Fund	XCB
iShares CDN Scotia Capital All Government Bond Index Fund	XGB
iShares CDN Scotia Capital Long Term Bond Index Fund	XLB
iShares CDN Scotia Capital Real Return Bond Index Fund (previously iUnits Real Return Bond Index Fund)	XRБ
iShares CDN Scotia Capital Short Term Bond Index Fund (previously iUnits Short Bond Index Fund)	XSB
iShares CDN Scotia Capital Universe Bond Index Fund (previously iUnits Canadian Bond Broad Market Index Fund)	XBB
iShares COMEX Gold Trust	IGT

### Listing of Designated “Exchange-traded Funds”

A current list of the securities which have been designated by RS as an “Exchange-traded Fund” (“ETF List”) is available on the RS website (at [www.rs.ca](http://www.rs.ca)) and may be accessed through the “Quick Links” on the homepage or under the heading “Timely Disclosure” on the “Surveillance” page. **As of November 16, 2007, RS will no longer issue a Market Integrity Notice to announce changes to the ETF List.** In the future, RS will provide a separate e-mail notification of a change to the ETF List to each person that subscribes to receive electronic notification of Market Integrity Notices/Market Policy Notices. A Participant or Access Person that has not subscribed to the RS email notification system is encouraged to do so by accessing the “RS Login” link on the RS website homepage.

Each security designated by RS as an “Exchange-traded Fund” has also been designated by the OSC to be an “exchange-traded fund” for the purposes of OSC Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions*. OSC Rule 48-501 contains prohibitions and restrictions governing the trading activities of dealers and parties connected to the issuer. While OSC Rule 48-501 is similar to Rule 7.7 of UMIR, there are differences in the application of the rules. Reference should be made to OSC Rule 48-501 and to Market Integrity Notice 2005-007 – *Notice of Amendment Approval – Amendments Respecting Trading During Certain Securities Transactions* (March 4, 2005).

### Securities Not Designated as an “Exchange-traded Fund”

***If a security has not been designated by RS as an “Exchange-traded Fund”, the exemptions provided in UMIR for such funds are unavailable to that security. Not every security which is known as an “exchange-traded fund” or “ETF” may necessarily be designated by RS. A Participant or Access Person may be subject to disciplinary proceedings if it attempts to rely on an exemption for an “Exchange-traded Fund” if, at the time of activity, the security has not been designated by RS.***

A Participant that intends to act as the “designated broker” of a security that will be listed on an exchange as an ETF is urged to apply to RS to have the security designated as an “Exchange-traded Fund” for the purposes of UMIR at the time application is made to list the security on the exchange. A timely application to RS will help to ensure that the security can be designated concurrent with the listing of the security on the exchange.

### Questions / Further Information

For further information or questions concerning this notice contact:

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