CIBC World Markets

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Mr. John Stevenson, Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, ON
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Dear Mr. Stevenson

Re: <u>Proposed Amendments Respecting Restrictions on Trading/Research Activities by a Participant during a Distribution and During a Securities Exchange Take-Over Bid</u>

Over the past several weeks, we have reviewed the amendments to UMIR 7.7 proposed by Regulation Services Inc. ("RS") and Rule 48-51 proposed by The Ontario Securities Commission (the "OSC") and are pleased to provide our comments and concerns relating thereto. While we are generally supportive of the proposed amendments relating to "market stabilization" activities, we do have some concerns relating to i) the proposed amendments dealing with the publication of research during distributions; ii) the definition of a "dealer restricted person" as well as iii) some aspects of the proposed trading rules.

Publication of Research During a Distribution

With respect to the relaxation of research publication guidelines, we favour the current regime under which a dealer's publication of research, while involved in a distribution, is prohibited. We believe that liberalizing the research rules, to allow for publication of research during a distribution, will lead to uncertainty and inconsistency in application between dealers, and most importantly will undermine the current and ongoing efforts to bolster the autonomy of research analysts vis a vis investment banking, an issue which continues to be at the forefront of regulatory reform in both Canada and the U.S.

Although incongruent with the proposed trading rules, we believe that prohibiting the publication of research reports while involved in a distribution will serve to minimize both the actual and perceived conflict between a firm's research and investment banking activities. Furthermore, the limitations set out in the proposed amendments would significantly limit the content and therefore, the utility of the report to investors. For instance, as the proceeds of a debt or equity offering may significantly improve the financial health of the issuer a rating upgrade may be warranted. Under the proposed amendments, this information could not be included in the report. As result, one must question the benefits of allowing this research to be published at all.

Defining a "dealer-restricted person"

We are concerned with defining a "dealer restricted person" as:

> *"a dealer, a partner, director, or employee of the Participant or a related entity of the Participant;…"*

Under this proposed definition, every employee of a major Canadian bank would be considered to be a "dealer restricted person" even though, in reality, only a small fraction of that group would have any involvement in the activities of the bank's affiliated dealer. Furthermore, the costs involved in building and operating systems to ensure pre-trade approvals and post-trade surveillance would be substantial and of little practical value in terms of protecting the investing public. In light of these factors, we recommend that the proposed definition be drafted more narrowly to capture only those employees of dealer-affiliated firms who, in the course of normal business, are involved in the affiliated dealer's operations.

Market Stabilization Rules

We support the proposed market stabilization amendments in principle but would recommend that:

- the proposed amendments allude to a single party who will be responsible for determining which issuers qualify as "highly-liquid". We believe that in order to ensure the consistent application of the concept, it will be best if RS made and made accessible these determinations.

- the proposed amendments expand the definition of exempted securities (i.e. non-convertible preferred shares, non-convertible debt securities and asset-backed securities, collectively "exempt securities"). In light of the fact that the values of these exempt securities are not directly tied to an equity offering, but rather to a variety of economic and non-issuer related market factors, the proposed restrictions on these exempt securities are unnecessary. While we agree that some exempt securities can be less liquid, and therefore, are more susceptible to market manipulation, this risk is not materially increased by an equity distribution. We therefore, recommend that exempt securities of an issuer be restricted only when the issuer's distributed equity shares do not qualify as "highly-liquid".

- in addition to Basket Trading, Program Trading, and rebalancing activities we recommend that other trading strategies be exempted based on the same logic. We recommend that the test be whether a dealer can demonstrate that the trading strategy is:
    1. pre-articulated;
    2. market neutral;
    3. not intended to be manipulative and/or to deceive the market; and
    4. a part of the dealer's regular and on-going trading program.

  In such circumstances, trading restrictions are not warranted. We believe that this added flexibility will better serve the market and is consistent with the exemptions already contained within the proposed amendments.

- In regards to the commencement of the "restricted period" in connection with a public distribution of any offered security, RS has proposed the current standard where the restriction commences two days prior to pricing. The OSC has suggested an approach similar to Regulation "M" in the U.S. where multiple options exist based on the size of the issuer. The Regulation "M" approach seems difficult to manage, with little added benefit. By contrast, the RS proposal of maintaining the current two day approach would be sufficient for the Canadian capital markets and would simplify the application of the rule. (i.e. either an

issuer is exempt under the provisions of a "Highly Liquid" security, or it is subject to a restriction being applied two days before pricing) With respect to research publication restrictions, we believe that the current IDA approach of quiet periods of 10 day for a secondary offering and 40 day for an IPO is the correct one, and is an effective tool in deterring potential conflict.

We thank you for the opportunity to comment on these important proposed amendments and hope that you will find our submission useful in your deliberations.

Please feel free to contact us should you have any question or comments in regards to the above.

Sincerely,

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