

6.1.3 Request for Comment on Changes to Proposed OSC Rule 48-501 - Trading During Distributions, Formal Bids and Share Exchange Transactions (2nd Publication) and Proposed Companion Policy 48-501CP to OSC Rule 48-501 and Proposed Rescission of OSC Policy 5.1, Paragraph 26 and OSC Policy 62-601 – Securities Exchange Take-Over Bids – Trades in the Offeror's Securities

REQUEST FOR COMMENT

**CHANGES TO PROPOSED OSC RULE 48-501 - TRADING DURING DISTRIBUTIONS,
FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS
(2ND PUBLICATION)**

AND

PROPOSED COMPANION POLICY 48-501CP TO OSC RULE 48-501

AND

**PROPOSED RESCISSION 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**

Introduction

On August 29, 2003, the Ontario Securities Commission (Commission) published for comment at (2003) 26 OSCB 6157 proposed Ontario Securities Commission Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* (rule). In the notice published with the rule (together, the 2003 materials), the Commission sought comment on all aspects of the rule and solicited comment on seven specific issues.

Concurrently, Market Regulation Services Inc. (RS) is in the process of revising 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 is to ensure consistency between the rule and the UMIR provisions. The UMIR amendments were published for comment on August 29, 2003 at (2003) 26 OSCB 6231 (UMIR 2003 materials) and are being republished for comment in Chapter 13 of this issue of the Bulletin.

The Commission received submissions on the 2003 draft of the rule from 14 commenters. In the interests of making industry aware of the rule and encouraging comments to be made, Commission staff and RS staff held consultations with groups from the Investment Dealers Association of Canada (IDA) and information sessions to which industry participants were invited. As a result of the comments received and further consideration by the Commission, we have made certain revisions to the rule and have prepared proposed Companion Policy 48-501CP (CP). The rule is being republished with the CP (together, the 2004 materials) for a comment period of 60 days.

Generally the comments received 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, a securities exchange take-over bid, an issuer bid or an 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 a distribution of securities or the other transactions set out above.

Harmonization with Regulation M

One of the key purposes of the reformulation of the rule is to harmonize to the extent possible, with the United States Securities and Exchange Commission's Regulation M (Reg M) as well as the UMIR amendments. We requested specific comment on certain issues in the 2003 materials including whether there should be multiple restricted periods depending on the size of the issuer, similar to Reg M, the different exemptions available to issuers in Reg M and whether there should be an exemption allowing a dealer-restricted person to cover short positions entered into during the restricted period and if so, whether any conditions such as those in Reg M would be appropriate. While the commenters expressed a desire to have harmonization, in some cases, such as the different restricted periods, commenters preferred the original approach of a single restricted period which they felt was more appropriate to Canada.

Summary of Changes

The following is a summary of the substantive changes made to the rule published in the 2003 materials and a discussion of the reasons for the changes.

Part 1 – Definitions

“connected security” and “offered security”

The Commission’s jurisdiction extends to all securities and, accordingly, the references to “listed security” and “quoted security” have been deleted from the definition of connected security and offered security and replaced by reference to “security” to reflect this. (The definition of those terms used in UMIR will remain unchanged as the jurisdiction of RS covers marketplaces only.)

“dealer-restricted person” - scope of definition

The Commission received considerable comment regarding the breadth of the previous proposed definition of dealer-restricted person. The commenters expressed concern that the inclusion of “related entities” of a dealer-restricted person was too sweeping. A number of commenters also reported that the costs of monitoring and ensuring that appropriate compliance systems are in place as required by the previous rule in the 2003 materials would be substantial.

The Commission agrees that the scope of the definition of dealer-restricted person should include only those persons or companies with a direct interest in the outcome of a distribution or transaction. The definition of “dealer-restricted person” has been amended to exclude related entities of a dealer and certain departments or divisions of the dealer, provided the dealer has in place policies and procedures that restrict the flow of information between the dealer and those entities. In the interests of harmonizing with Reg M, the definition of “dealer-restricted person” has been amended in the rule to provide for independence criteria that are similar to those in Reg M.

“dealer-restricted person” - addition of “agent”

RS had specifically requested comment in their notice published with the UMIR 2003 materials regarding whether it would be appropriate to restrict stabilization activities where the dealer was acting as an agent in a significant private placement or a significant public offering and, if so, what would be appropriate thresholds.

Although the agent is not obligated to take the offering there is still the incentive to manipulate for the purpose of ensuring the success of the offering to compensate for the dealer’s time and effort. The Commission has decided to expand the definition of “dealer-restricted person” by including agents in significant public offerings and private placements. In the Commission’s view, an offering is significant where the public distribution is more than 10% of the issued and outstanding offered securities.

“highly-liquid security”

The proposed definition of highly-liquid security is based on the average number of trades per day and the average trading value per day. The Commission had specifically requested comment on whether the rule should include a test based on the size of public float, similar to Reg M, rather than the number of trades and whether this information or that in the proposed definition (i.e. the number of trades per day) would be difficult to obtain or calculate on a consistent basis.

Some commenters also suggested that one entity should develop and maintain the list of highly-liquid securities. RS has agreed to maintain this list. As such, the Commission determined that the practicalities of using the public float test or the number of trades per day will not pose a problem for market participants. The Commission has decided to retain the number of trades per day test as this is more reflective of liquidity in our markets.

restricted periods - commencement of the dealer-restricted period

The Commission received comment regarding the commencement of the dealer-restricted period. Commenters noted that the restricted periods, for transactions other than distributions, in clauses (b) and (c) of these definitions commence with the public announcement of the transaction. However, in Reg M the restricted period begins on the day that the exchange offer or proxy solicitation materials are disseminated to security holders.

The Commission has considered this difference and varied the rule to reflect that the restricted periods will begin on the date of the circular. It is expected that in most cases the date of the circular will be very close to Reg M’s date of dissemination of exchange offer or proxy solicitation materials. The Commission is of the view that the date of the circular is a more precise and easily determinable date.

restricted periods - termination of dealer-restricted and issuer-restricted periods

The Commission had requested comment on whether the determination of the end of the restricted periods was sufficiently clear as proposed in the rule. All commenters on this issue sought clarity with respect to when the restricted periods ended. A number of commenters recommended adoption of the additional provisions in the UMIRs interpreting the termination of the restricted period. The Commission has added an additional provision, similar to the provision in the UMIR amendments, interpreting, for the purpose of determining the end of the restricted periods, when the selling process will be considered to end.

“public distribution”

The previous rule in the 2003 materials contained reference to special warrants. However, as a distribution of special warrants is an offering by way of a private placement, we have removed the specific references to special warrants and consider them to be included within any reference to private placements.

Part 3 – Permitted Activities and Exemptions

Market Stabilization and Market Balancing Exemption

The exemption in clause 3.1(1)(a) has been revised to specifically provide an exemption for market stabilization or market balancing activities. The clause would allow:

“a bid for or a purchase of a restricted security 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...”

Further discussion on market stabilization and market balancing has been included in the CP.

Short Position Exemption

The rule contained an exemption permitting a dealer-restricted person to cover a short position entered into prior to the dealer-restricted period subject to a maximum price of the lesser of the maximum permitted stabilization price or the highest independent bid. However, the rule did not contemplate that dealer-restricted persons be able to cover short positions entered into during the restricted period. The Commission specifically requested comment on whether there should be an exemption allowing a dealer-restricted person to cover short positions entered into during the restricted period and, if so, whether any conditions, such as those in Reg M, would be appropriate.

The Commission decided to remove the short position exemption from being tied to the ‘market stabilization’ exemption and instead, make it a separate exemption. In effect, for a short position entered into before the restricted period commenced there would be no price limit. A short position entered into during the restricted period, may be covered by a purchase made in accordance with market stabilization exemption.

Interlisted Arbitrage

In response to the Commission’s request for submissions on whether any other exemptions should be included in the rule, comment was received that there should be an exemption for interlisted arbitrage activities. RS will be incorporating the exemption into the UMIR amendments

Part 4 – Research Reports

The Commission requested comment on whether or not research activities should be specifically permitted during the restricted period and, if so, whether the proposed exemptions were sufficient and whether the conditions applicable to the use of the exemptions were appropriate.

Upon considering the comments and the potential for conflict, the Commission has decided not to allow single issuer reports to be issued as previously contemplated in section 4.2. However, the Commission will allow compilation reports to be issued that meet certain criteria as proposed in section 4.1. The conditions originally proposed paralleled those referred to in Reg M. The Commission has removed the requirement in clause (d) that had been previously proposed in section 4.1. Clause (d) provided that research could only be disseminated if in addition to meeting the first three conditions, the dealer-restricted person had made a recommendation as favourable or more favourable in the last publication of the report. Several submissions were received that “constrained ratings” would be of limited use and potentially misleading. The Commission is of the view that the three remaining conditions impose sufficient discipline on the compilation report.

Specific requests for comment

The blacklined version of the rule shows changes made to the original proposal. We are seeking comment on all aspects of the changes to the rule. We also request specific comment on the matters identified below.

1. Definition of “dealer-restricted person” – carve out for related parties

The definition of “dealer-restricted person” has been amended to exclude related entities of a dealer and certain departments or divisions of a dealer provided certain conditions are met including that the dealer has in place policies and procedures that restrict the flow of information between the dealer and its related entities. In the interests of harmonizing with Reg M, the definition of “dealer-restricted person” has been amended in the rule to provide for independence criteria that are similar to those in Reg M. The provision contained in subclause (i) of the definition of dealer-restricted person in the rule provides as follows:

- (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,
 - (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,

Recognising that Canadian markets may differ from the U.S. market and that the rule addresses formal bids and other transactions that Reg M does not, we request comment on whether it is appropriate to adopt these conditions in their current form.

3. Definition of “dealer-restricted person” – addition of agents

The definition of “dealer-restricted person” has been amended to include dealers acting on an agency basis in significant public offerings and private placements. The threshold for significant offerings in the rule is where the securities being offered pursuant to the public distribution is more than 10% of the issued and outstanding offered securities.

We request comment on whether the inclusion of a dealer acting on an agency basis in significant public offerings significant private placements is appropriate and whether the threshold of 10% of the issued and outstanding offered securities is an appropriate level to determine whether an offering is significant.

3. Commencement of “dealer-restricted period”

For formal bids, the “dealer-restricted period” has been amended to commence on the date of the take-over bid or issuer-bid circular or similar document (materials). This date was chosen because, unlike the Reg M date of dissemination of the materials, it would be easier to determine.

We request comment on whether the date of the materials is preferable to the date of dissemination of the materials for establishing the commencement of the restricted period.

4. Market Stabilization and Market Balancing Activities

The exemption in clause 3.1(1)(a) of the rule has revised to specifically provide an exemption for market stabilization and market balancing activities. The concept of market stabilization and balancing is also discussed in the proposed CP.

We request comment on whether the changes to the exemption are appropriate and whether the explanatory discussion in the CP is helpful.

Comments

You are asked to provide your comments in writing and to send them on or before **November 9, 2004** to:

John Stevenson, Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

We request that you submit a diskette containing your submission. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

If you have questions, please contact:

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Text of the Rule and Companion Policy

The text of the rule and the CP follows. Also included is a blacklined version of the rule showing changes from the rule published with the 2003 materials.

APPENDIX A

**PROPOSED OSC RULE 48-501 AND AMENDMENTS TO THE
UNIVERSAL MARKET INTEGRITY RULES**

Joint Summary of Comments and Responses

On August 29, 2003, the OSC published for comment the proposed OSC Rule and RS published the Original Proposal with respect to proposed amendments to UMIR. Comments received by the OSC in respect of the proposed OSC Rule were generally addressed to RS and the amendments to UMIR as well. Accordingly, a Joint Summary of Comments and Responses has been prepared reflecting the responses of the OSC and RS. The OSC and RS received comments from the following persons:

BMO Nesbitt Burns Inc.
 CIBC World Markets Inc.
 Fasken Martineau DuMoulin LLP
 Investment Dealers Association of Canada
 National Bank Financial
 Ogilvy Renault
 Osler Hoskin & Harcourt LLP
 Scotia Capital Inc.
 TD Securities Inc.
 Torys LLP
 Torys LLP on behalf of certain investment managers
 TSX Group Inc.
 UBS Securities Canada Inc.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
General Comments			
1.	Consistency between rules	One commenter stated that there should be absolute consistency between the rule and the UMIR amendments both in terms of their substantive application and in the use of terminology. There should also be the utmost uniformity between these rules and Reg. M.	<p>The Commission and RS are attempting to achieve the greatest degree of harmonisation between the rule and the UMIR amendments. However, there are several reasons for differences between the rules: while RS has jurisdiction over dealers that trade in marketplaces to which RS provides regulation services, the Commission's jurisdiction extends to all market participants including issuers and selling securityholders and their associates and affiliates. The Commission also has jurisdiction over all securities, whereas, RS's jurisdiction is restricted to listed and quoted securities. There are also differences that arise as a result of differences in defined terms and drafting conventions for provisions of UMIR and Commission rules. Further, there are certain exemptions contained in the UMIR amendments, such as those relating to basket trades and rebalancing of portfolios which are only intended for use by dealers subject to UMIR and hence are not included in the rule.</p> <p>The Commission and RS are cognizant of the benefits of ensuring as much harmonisation with Reg. M as possible. Differences may exist as a result of feedback from participants, as for example, the decision not to adopt the three tiered approach to the commencement of the restricted period.</p>

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
Definitions			
2.	<p>“acting jointly or in concert”</p> <p>definitions of “dealer-restricted person” and “issuer-restricted person”</p> <p>48-501 s.1.1 UMIR s.1.1</p>	Two commenters suggested that it would be useful to have further clarification of what is meant by “acting jointly and in concert”.	Commentary has been included in the proposed Companion Policy 48-501 CP (CP) as to what is meant by “acting jointly and in concert”.
3.	<p>“basket trade”</p> <p>UMIR s.1.1</p>	Two commenters suggested that the proposed definition of “basket trade” is too restrictive and that the requirements for a “basket trade” include fewer securities, baskets with a greater proportion of one security, and baskets of securities which substantially represent a recognized index.	The UMIR amendment definition of “basket trade” will be amended to indicate that such a trade will include the simultaneous purchase of at least 10 listed or quoted securities provided that the restricted security comprises not more than 20% of the total value of the transaction or the simultaneous purchase of a basket of securities which represent a recognized index.
4.	<p>“connected security”</p> <p>48-501 s.1.1 UMIR s.1.1</p>	<p>One comment made in respect of clause (a) of the definition of “connected security” was that the wording should refer to “a listed or quoted security which is immediately convertible, exchangeable or exercisable into the offered security...”.</p> <p>A comment was also made that the phrase “may significantly determine the value of the offered security” in clause (b) of the definition is vague. Another commenter recommended that an exclusion be built into paragraph (b) when the price at which the security is being offered was greater than 110% of the best ask price of the underlying listed or quoted security at the commencement of the restricted period.</p>	<p>Clause (a) is intended to capture securities into which the offered security can be converted and not securities that can be converted into the offered security. It is unlikely that a change in the price of a convertible security will have any impact on the offered security and has therefore not been included in the definition.</p> <p>Clarification has been included in the CP regarding the meaning of what may significantly determine the value of the offered security. Due to the variety of circumstances in which paragraph (b) may be applicable, it would not be practical to set out the terms of a price exception that would be appropriate in all cases. Where warranted, exemptive relief tailored to the specific fact situation may be sought.</p>
5.	<p>“dealer-restricted period” – commencement – public distribution</p> <p>48-501 s.1.1 UMIR s.1.1</p>	The rule and UMIR amendments would not impose trading restrictions on the largest issuers – those whose securities would qualify as highly-liquid securities – and for all other issuers the restricted period would commence two days prior to pricing. The Commission had requested specific comment on whether the commencement of the restricted period should adopt a three-tiered approach similar that that used in Reg. M. Three commenters responded to this request and concurred that there was no apparent benefit to adopting the more complicated approach used in Reg. M and that they preferred the method as presented in the rule and UMIR amendments.	The method of determining the commencement of the restricted period as originally proposed in the rule and UMIR amendments will be retained.
6.	<p>“dealer-restricted period” – commencement – formal bids</p> <p>48-501 s.1.1</p>	Three commenters noted that the proposed commencement of the restricted period for take-over bids, issuer bids and capital reorganizations from the date of the first public announcement of the transaction could result in an unnecessarily long restricted period. It is	The rule and UMIR amendments have been amended to provide that the commencement of the restricted period begins on the date of the information circular, take-over bid circular, issuer bid circular or similar document (circular). The date of the circular is a more precise date and

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	UMIR s.1.1	also different from the requirements of Reg. M where the restrictions commence when the proxy and solicitation materials are first disseminated to shareholders. One of the commenters suggested that the restriction on trading should only be for the period of solicitation which is effectively the seven day period prior to the shareholder vote.	more easily determined; it is expected that in most cases, the date of the circular will be very close to Reg. M's date of dissemination of materials.
7.	"dealer-restricted period" – commencement – wide distributions 48-501 s.1.1 UMIR s.1.1	A commenter has indicated that the notice requirement is inconsistent with industry practices and that the time horizon for such trades is often less than two days.	Wide distributions are currently contemplated only under UMIR and not securities legislation. The references to "wide distributions" in the rule and UMIR amendments have been removed.
8.	"dealer-restricted period" – termination – public distribution 48-501 s.1.1 UMIR s.1.1 and 1.2(6)	<p>The Commission had requested specific comment on whether the determination of the end of the restricted period was sufficiently clear as proposed in the rule or whether further clarification such as that proposed in the amendments to the UMIR provisions would be helpful. Commenters sought clarity with respect to when the restricted period ended in the rule and some thought that the language proposed in the interpretation section of the UMIR amendments would be helpful in providing clarification.</p> <p>A couple of commenters suggested that reference to the end of the selling process should require only a final receipt to be issued and not also a final prospectus delivered to each subscriber. Another commenter noted that it may be problematic in cross-border public offerings of securities of inter-listed issuers if the proposed amendment was inconsistent with Reg. M where the restricted period ends solely on a dealer by dealer basis.</p>	<p>The rule has been amended to make the definition consistent with the proposed interpretation provision of the UMIR amendments.</p> <p>The Commission takes the view that it is appropriate that stabilization arrangements terminate for all dealers on the termination of the syndication agreement. Cross-border public offerings will not be prejudiced by the requirements in the rule as these securities, if subject to Reg. M and considered to be an "actively-traded security", are exempt from the restrictions in the rule. As such, the Commission has decided to make no amendments to the rule.</p>
9.	"dealer-restricted period" – termination – formal bids 48-501 s.1.1 UMIR s.1.1	One commenter wrote that paragraph (c) of the definitions of "dealer-restricted period" and "issuer-restricted period" in the rule and UMIR amendments should be amended to clarify that the relevant securityholder vote or votes is by the securityholders who will receive the offered security. Another commenter noted that the length of the restricted- period from the date of the announcement to the date of approval/deposit of securities was unnecessarily broad and recommended that the period should only be the solicitation period, the seven day period before the scheduled shareholder vote.	The suggested amendment clarifying that the vote is by the securityholders who will receive the offered security has been made to the rule and UMIR amendments. Paragraph (c) has been amended so that the restricted period will commence on the date of the circular. The restricted period will continue to the date of approval.
10.	"dealer-restricted person" – scope – related parties 48-501 s.1.1 UMIR s.1.1	The Commission received considerable comment regarding the breadth of the previous proposed definitions of "dealer-restricted person". These commenters expressed concern that the inclusion of "related entities" of a dealer-restricted person was too sweeping.	<p>The Commission and RS agree that the scope of this provision should include only those persons or companies with a direct interest in the outcome of a distribution or transaction.</p> <p>The definition in the previously proposed rule</p>

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		<p>One commenter noted that 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. Another commenter wrote that the proposed definition would capture portfolio management companies that are related to the participating dealer and any of the investment funds or accounts managed by them. A number of commenters also reported that the costs of monitoring and ensuring that appropriate compliance systems are in place as would be required by the previously proposed rule would be substantial.</p> <p>Several commenters recommended that, in certain circumstances, related entities should be excluded from the definition by using the same factors as in Policy 5.1 or Reg. M. Reg. M has the following conditions: (i) the dealer maintains, enforces and obtains an annual assessment of written policies which are reasonably designed to prevent the flow of information that might result in a violation of Reg. M; (ii) the affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support staff) in common with the dealer that direct, effect or recommend transactions in securities; and (iii) the affiliate does not, during the applicable restricted period, act as a market maker (other than as a specialist in compliance with the rules of a national securities exchange), or act as a broker in solicited transactions or proprietary trading of restricted securities. Another commenter submitted a proposal to create information walls around related entities.</p>	<p>would not capture employees of a bank but would capture all related entities (i.e. those affiliates of the dealer registered under the Securities Act). The definition of "dealer-restricted person" has been amended in the rule and the UMIR amendments to exclude related entities of a dealer provided the dealer has in place policies and procedures that restrict the flow of information between the dealer and its related entities. The conditions in the rule are substantially similar to those in Reg. M.</p>
11.	<p>"dealer-restricted person" – managed accounts</p> <p>48-501 s.1.1 UMIR s.1.1</p>	<p>In the rule the definitions of a "dealer-restricted person" and an "issuer-restricted person" included an investment fund or account managed by a dealer-restricted person or issuer-restricted person. The comment was made that incorporating the concept of "direction or control" over an account, similar to the equivalent UMIR provision, would be clearer.</p>	<p>The Commission has adopted similar wording to the UMIR amendments.</p>
12.	<p>"dealer-restricted person" – scope - agents</p> <p>48-501 s.1.1 UMIR s.1.1</p>	<p>One commenter submits that imposing trading restrictions on dealers acting as agents on a best efforts basis in private placements and public offerings is not necessary and could inhibit smaller companies in their efforts to raise capital. Financings that are structured on a best efforts basis would not give rise to any incentive to manipulate the market as the dealer could extricate itself from the financing if it is not acceptable to the dealer. Another commenter agreed with the proposal to extend</p>	<p>The Commission and RS are of the view that, although dealers/participants involved in a financing on a best efforts basis are not subject to the same degree of economic risk that accompanies a committed financing, there is, nonetheless, sufficient interest to make manipulation a concern. A failed agency offering would not only result in no compensation for time and effort committed by the dealer/participant to the effort but also entails significant reputational risk to the entity. The Commission has decided</p>

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		the trading restrictions to public offerings but suggested that further study should be undertaken before also extending the restrictions to private placements.	to include in the definition of “dealer-restricted person” agents in significant public offerings and private placements. The threshold for significant offerings in the rule is where the number of securities being offered pursuant to the public distribution is more than 10% of the number of issued and outstanding offered securities.
13.	“highly-liquid security” 48-501 s.1.1 UMIR s.1.1	<p>The Commission received considerable response on its request for specific comment on whether the definition of highly-liquid security should include criteria based on the size of public float, similar to Reg. M, and whether this information or that in the proposed definition would be difficult to obtain or calculate on a consistent basis. Some felt that the average number of trades per day test was a less accurate reflection of truly highly-liquid securities because some securities may experience an unusual trading volume due to public disclosure of unanticipated information by an issuer, or inappropriate market conduct. The public float test was preferred by most commenters over the average number of trades test. It was suggested that a threshold of \$150 million would be appropriate. Clarification was also sought on how average daily trading volume would be calculated, and in particular, whether trading volume is to be measured on a world wide basis.</p> <p>One commenter suggested a principle based approach to the definition and submitted that the tests for determination of a highly-liquid security should be applied only as guidelines. However, most of the commenters suggested that one entity should develop and maintain the list of highly-liquid securities citing that it was important to have certainty as to what would qualify as a highly-liquid security and to avoid inconsistent application of the exemption from one dealer to the next.</p>	<p>A security will be considered a highly-liquid security provided that 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, with an average daily trading value of \$1 million and a minimum average over of 100 trades a day on Canadian marketplaces. The Commission and RS are of the view that this test is most reflective of liquidity.</p> <p>RS will maintain and distribute a list of securities which will be considered to be “highly-liquid securities”. Market participants may rely on the list but market participants would be entitled to rely on information contained in a consolidated market display of trades executed on Canadian marketplaces. (In part, RS prefers the “trade” test to the “public float” used in Reg. M. as RS is considering proposing an amendment to the short sale rules to provide an exemption for “highly-liquid securities” from the requirement that short sales be done at a price not less than the last trade. A liquidity test based on trades rather than float is most appropriate in those circumstances.)</p> <p>Inter-listed securities which meet the “float” test under Reg. M. will be considered “highly-liquid securities”.</p>
14.	“issuer-restricted period” 48-501 s.1.1 UMIR s.1.1	One commenter requested clarification on the definition of issuer-restricted period, and in particular, whether the restricted period begins on the earlier of the days described in subparagraphs (i), (ii) or (iii).	Clause (a) of the definition of “issuer-restricted period” has been amended to start two trading days prior to the day the offering price is determined.
15.	“marketplace” and “marketplace rules” 48-501 s.1.1 UMIR s.1.1	One commenter requested clarification of the term “marketplace” and “marketplace rules” as used in the rule.	Commentary has been included in the CP as to what is meant by “marketplace” and “marketplace rules”. The reference to “marketplace rules” has been removed from the definition of “public distribution”.
16.	“offered security” 48-501 s.1.1 UMIR s.1.1	One commenter felt that the definition of “offered security” should be subject to a test of materiality of the merger or acquisition to the offeror. Clarification was also requested to specify that the proxies were those of the shareholders that would acquire the offered security.	A materiality test from the perspective of the offeror is not appropriate. The transaction will always be material to the shareholders that will acquire the offered security. The definition has been revised to clarify that the proxies refer to those solicited from securityholders that will receive the offered security.

Item	Topic and Section Reference	Summary of Comments	OSC and RS Response
		A comment was also made that as paragraphs (b) and (c) would extend the application of trading restrictions to take-over bids and issuer bids that would otherwise be exempt from applicable securities law requirements, consideration should be given to further exempting these transactions from the rule.	Paragraphs (b) and (c) of the rule and UMIR amendments have been amended so that paragraph (b) refers to a security which 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 and paragraph (c) refers to a security which 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. These materials are not required to be filed, under securities legislation, for exempt bids.
17.	"public distribution" 48-501 s.1.1 UMIR s.1.1	The suggestion was made by one commenter that listed or quoted securities being distributed by way of a private placement should also be subject to a restricted period, and accordingly the definitions of "offered security", "connected security" and "restricted security" be amended to include private placement transactions.	Private placements are subject to trading restrictions as the definition of "public distribution" includes offerings by way of prospectus, or private placements.
18.	"dealer-restricted period"/"restricted period" 48-501 s.1.1 UMIR s.1.1	One commenter noted the different definitions of "dealer-restricted period" and "restricted period" in the rule and the UMIR amendments but acknowledged the need for the rule to accommodate both dealer-restricted persons and issuer-restricted persons. Another commenter expressed concern that the different definitions in the two rules might result in situations where a dealer-restricted person might be subject to trading restrictions but that an issuer-restricted person might not be similarly restricted.	The restricted period for dealers and issuers in the rule and UMIR amendments are intended to be identical in substance. Changes have now been made to conform the respective provisions. As presently proposed, the issuer-restricted period will commence at or before, but never later than, a dealer-restricted period will commence (although it is possible for a dealer's restricted period to commence later than that the issuer-restricted period.) Therefore it is not possible for a dealer to be subject to trading restrictions while an issuer-restricted person is not so restricted.
19.	"restricted security" 48-501 s.1.1 UMIR s.1.1	One commenter suggested that the definition of "restricted security" to be included in UMIR be consistent with the definition of "restricted security" in the rule. The commenter believes that securities which comprise the public distribution be exempt from being a "restricted security" in the definition rather than within the exemptions from the restrictions in UMIR s.7.7(4).	The definition of restricted security in the rule as originally proposed would have excluded those securities comprising the public distribution with the effect that subsequent trades in those securities would not have been subject to the prohibitions in the rule. The equivalent UMIR provisions would include all offered securities as restricted securities but would provide an exemption for the primary distribution of securities pursuant to the public distribution. It was not the intention of the Commission to exempt the subsequent secondary market trades of the securities under the public distribution. The definition in the rule has been amended to adopt the same approach as that taken in the UMIR amendments.
Restrictions			
20.	Restriction on Trading 48-501 s.2.1 UMIR s.7.7	The onus placed on a dealer-restricted person to ensure that they do not bid for or purchase a restricted security for an issuer-restricted person is exceedingly difficult to monitor.	The Commission and RS agree that it would be very difficult and expensive to monitor all issuer-restricted persons to ensure compliance with the rules. The requirement to not bid for or purchase on behalf of an issuer-restricted person has been amended to state that the dealer-restricted

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			person shall not carry out such a transaction if it “knows or ought reasonably to know” that the person was an issuer-restricted person.
Permitted Activities and Exemptions			
21.	Prohibited Use of Exemptions from Trading Restrictions 48-501, s.3.1	One commenter felt that section 3.1 of the rule was unnecessary.	Section 3.1 of the rule was intended to clarify that notwithstanding the exemptions available in Part 3, reliance upon those exemptions continues to be subject to prohibitions against manipulation and fraud. However, since anti-manipulation and anti-fraud provisions are found in Part 3 of NI 23-101 (and s.126.1 of the Securities Act, when it becomes effective) the Commission has decided to remove s. 3.1 from the rule and include clarification in the CP that anti-manipulation and anti-fraud provisions found in securities legislation continue to apply.
22.	Determination of Maximum Permitted Stabilization Price 48-501, s.3.1(a) UMIR s.7.7(4)(a)	One commenter requested guidance as to how the maximum stabilization price is determined and suggested that Reg. M was instructive where it refers to pricing in the principal market or the market where stabilization will be initiated.	Since there is no concept in Ontario of a “principal market” as referred to in Reg. M, there is no distinction to be drawn between a price on a consolidated display and the price on the principal market. No change, therefore, has been made.
23.	Market Stabilization 48-501 s.3.1(a) UMIR s.7.7(4)(a)	One commenter stated that if the underwriter enters a bid on a marketplace equal to the highest independent bid then entered on a marketplace and the independent bid is subsequently withdrawn, the underwriter should be permitted to keep its bid open and to complete a purchase if the underwriter’s bid is accepted on the marketplace.	These provisions have been amended. A dealer is permitted to purchase or bid for a connected security for the purpose of market stabilization at a price that is the lesser of the best independent bid price at the time of commencement of the restricted period and the highest independent bid at the time of the bid or purchase. If an independent bid is withdrawn this may be indicative of a movement in the market price of the security and the dealer should be limited to the prevailing highest independent bid.
24.	Short Sales 48-501 s. 3.1(1)(h) UMIR s.7.7(4)(h)	The Commission specifically requested comment on whether there should be an exemption allowing a dealer-restricted person to cover short sales entered into during the restricted period and, if so, whether any conditions, such as those in Reg. M, would be appropriate. The Commission received a number of comments on this issue. A couple of commenters recommended that dealer-restricted persons be able to cover short sales entered into during the restricted period. One commenter recommended adopting the Reg. M prohibition and felt that it would constitute an appropriate and sufficient restriction. Reg. M prohibits the covering of short sales during certain periods of time if the purchase of offered securities was from an underwriter, broker or dealer participating in the offering. Another commenter wrote that short covering should not be considered part of market	The Commission and RS decided to remove the short sale exemption from being tied to the ‘market stabilization’ exemption and instead, make it a separate exemption. In effect, for a short position entered into before the restricted period commenced there would be no price limit but if it was entered into during the restricted period, it can still be covered subject to certain price limitations. Covering of short positions from unsolicited client orders would be addressed by the exemption for unsolicited client orders.

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		stabilization activities.	
25.	Exempted Securities 48-501, s.3.2(b)(iii)	The rule and UMIR amendments differed on the inclusion of non-convertible debt, non-convertible preferred shares and asset-backed securities as exempted securities. One commenter supported their inclusion and another advocated against their inclusion.	This exemption has been removed from the rule.
26.	Specific Exemptions UMIR 7.7(4)(g) and (h)	Commenters have indicated their support for the exemptions in UMIR s.7.7(4)(g) and (h) but have indicated that certain additional exemptions should be provided where trading is an element of an on-going program that will have little chance of manipulating the market for a security.	The UMIR definition of “basket trade” will be amended to make it broader. In addition, general exemptions will be included in the rule. It should also be noted that RS staff will consider granting specific exemptions for transactions on a case-by-case basis.
27.	Exemptions for the Exercise of conversion and purchase rights 48-501 s. 3.2(e) & 3.3(a) UMIR 7.7(4)(e) and (5)(a)	It was submitted that the exemption for the exercise of options, rights, warrants and other similar contractual arrangements should not be restricted only to those held prior to the commencement of the restricted period.	The Commission and RS do not believe that extending the exemption would be appropriate. Generally, the exemptions from the general prohibition on any trading activity in a restricted security are designed to minimize any interference with the on-going business or pre-existing positions of the dealer. If a dealer acquires options, rights or warrants during a restricted period, they do so with the knowledge that their exercise during the restricted period is prohibited. Furthermore, if the dealer-restricted person or issuer-restricted person is prohibited from purchasing a restricted security at the time, they should not be able to do so indirectly through the purchase and exercise of an option, right or warrant during the restricted period.
28.	Inter-listed arbitrage Exemption UMIR 7.7(4)(k)	One commenter suggested that inter-listed arbitrage activity should be exempted.	RS has decided to add to the UMIR amendments a limited exemption for bona fide arbitrage activity where the dealer-restricted person reasonably believes that they can immediately sell the security and intend to do so.
29.	Inadvertent Violation Exemption	One commenter wrote that the rule should contain an exemption to deal with inadvertent violations of the rule.	The Commission and RS have considered the comment and concluded that it would not be appropriate to add such an exemption. A violation, even if inadvertent, may be dealt with in the context of an investigation and/or prosecution by the Commission and RS. In such a case, the adequacy of the dealer’s policies and procedures would be considered.
30.	Exemption for Dealer- Restricted Person affiliated with an issuer 48-501, s. 3.1(2) UMIR 7.7(9)	One commenter noted that under the rule a dealer-restricted person affiliated with an issuer is subject to the issuer and dealer restrictions and suggested adding a clause, similar to Reg. M, which allows a dealer-restricted person affiliated with an issuer or selling securityholder to use the exemptions available to dealer-restricted persons.	Subsection 3.1(2) has been added to the rule to clarify that the exemptions available to dealer-restricted persons continue to be available even where the dealer is an issuer-restricted person.
Research Reports			
31.	Research Reports – Compilations and Industry Research	The Commission received considerable comment on the issues of compilations and industry research and research on issuers of	Upon considering the comments and the potential for conflict, the Commission has decided not to allow single issuer reports to be

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	<p>and Issuers of Exempt Securities</p> <p>48-501, s. 4.1 and 4.2</p> <p>UMIR 7.7(6)</p>	<p>exempt securities. There was a divergence of opinion. On the one hand, some commenters supported the proposal to allow publication of research for certain securities during a distribution or take-over bid. It was argued that when only a limited number of dealers are permitted to publish, clients are detrimentally affected by a reduction in the information available to these clients.</p> <p>On the other hand, some commenters were concerned about the potential conflicts that may arise if any type of research is permitted during a distribution. The potential conflict, it was argued, may arise because there is a possibility that information contained in the research report may vary from that in a prospectus. Further, it was suggested that permitting research during a distribution allows a firm to act in a self-serving manner.</p> <p>Several submissions were made that paragraph (d) in section 4.1 was too restrictive and the constrained ratings would be of limited use and potentially be misleading.</p>	<p>issued as previously contemplated in section 4.2 but to allow compilation reports to be issued that meet certain criteria. The Commission has removed the requirement in paragraph (d) in proposed section 4.1. Paragraph (d) provided that research could only be disseminated if in addition to meeting the first three conditions, the dealer-restricted person had made a recommendation as favourable or more favourable in the last publication of the report. Several submissions were received that “constrained ratings” would be of limited use and potentially misleading. The Commission is of the view that the three remaining conditions impose sufficient discipline on the compilation report.</p> <p>Similar changes have been made to UMIR 7.7(6).</p>