

Chapter 5

Rules and Policies

5.1.1 Amendments to OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions

NOTICE OF AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 48-501 – *TRADING DURING DISTRIBUTIONS, FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS*

August 20, 2015

A. Introduction

The Ontario Securities Commission (OSC) has made amendments (Amendments) to OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* (Rule 48-501) and its related Companion Policy (Companion Policy) with respect to the designation requirements of an exchange-traded fund. The amendments remove the requirement that the Director designate an exchange-traded fund in order for trading in units of the fund to be exempt from the provisions of Rule 48-501.

Pursuant to paragraph 143.2(5)(b) of the *Securities Act*, publication of the Amendments for comment is not required because they remove a restriction and will not have substantial effect on the interests of persons or companies other than those who benefit under it.

The Amendments were delivered to the Minister of Finance on August 14, 2015, and provided that all necessary ministerial approvals are obtained, the amendments to Rule 48-501 and the Companion Policy will come into force on November 2, 2015.

B. Substance and Purpose

Rule 48-501 sets out the requirements related to the trading activities of dealers, issuers, and related persons 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. Rule 48-501 restricts bidding and buying activities to preclude manipulative conduct by persons with an interest in the outcome of the transactions listed above.

The restrictions on trading are designed to address concerns that dealers and others wishing to ensure the success of a prospectus offering or other transaction may manipulate the market price of the offered security upwards in the guise of performing normal course “market stabilization” or “market balancing” transactions to make the price of the offering or other transaction appear more attractive. Rule 48-501 limits the trading to bids and purchases that maintain an independently-set market price.

C. Background

Currently, section 1.1 of Rule 48-501 defines an “exchange-traded fund” as a mutual fund,

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

An exchange-traded fund may be designated where it is determined that it would be difficult to manipulate the price of units of the mutual fund.

Description of the Investment Industry Regulation Organization of Canada’s Rule

Equivalent provisions exist in the Universal Market Integrity Rules¹ (UMIR) for Participants involved in a distribution or other transaction that is subject to the Rule (dealer-restricted persons).

¹ Section 7.7 of UMIR

Until 2010, UMIR contained the same definition of “exchange-traded fund” as Rule 48-501, except that IIROC, rather than the Director, designated the fund. In 2010, UMIR was amended to remove the requirement that IIROC had to designate an exchange-traded fund. UMIR now provides that exchange-traded funds listed on an exchange are by default exempt from the restrictions unless designated by IIROC.

Description of the Amendments

Historically, Staff have consistently recommended that the Director designate an exchange-traded fund as there were no factors suggesting a particular fund was susceptible to manipulation.

Given that there have been no instances of manipulative or deceptive trading during a distribution of exchange-traded fund units, the Commission believes the burden imposed by requiring funds to apply to the Director for a Designation Order outweighs the benefits intended by the provision.

As a result, the Commission has made the Amendments that remove the requirement that the Director designate an exchange-traded fund in order for trading in units of the fund to be exempt from the provisions of Rule 48-501. Instead, Rule 48-501 provides that trading in listed exchange-traded funds is exempt unless IIROC makes a designation that trading in a particular fund is subject to UMIR. The text of the Amendments is attached at Schedule A.

As such, Rule 48-501 is consistent, in terms of the substantive application, with the equivalent provisions in IIROC’s UMIR.

The amendments to Rule 48-501 and other required materials were delivered to the Minister of Finance on August 14, 2015 and, provided all necessary approvals are obtained, the Amendments will come into force on November 2, 2015.

D. Authority for Rule 48-501

The Commission has the authority to make Rule 48-501 pursuant to the following provisions of the Act:

- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading in or advising about securities to prevent trading in or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

E. Questions

Please refer your questions to any of the following:

Timothy Baikie
Senior Legal Counsel
Ontario Securities Commission
(416) 593-8136
tbaikie@osc.gov.on.ca

Louis-Philippe Pellegrini
Legal Counsel
Ontario Securities Commission
(416) 593-8270
lpellegrini@osc.gov.on.ca

SCHEDULE A

AMENDMENTS TO OSC RULE 48-501 *TRADING DURING DISTRIBUTIONS,
FORMAL BIDS AND SHARE EXCHANGE TRANSACTIONS*

1. ***OSC Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transaction is amended by this Instrument.***
2. ***Part 1 is amended by:***
 - (a) ***replacing the definition of “exchange-traded fund” in section 1.1 with the following:***

“means a mutual fund, the units of which are

 - (a) listed securities or quoted securities, and
 - (b) in continuous distribution in accordance with applicable securities legislation;”
3. ***Part 3 is amended by:***
 - (a) ***replacing “or” with “other than an exchange-traded fund that the Investment Industry Regulatory Organization of Canada has designated as subject to section 7.7 of the Universal Market Integrity Rules, or” in subparagraph 3.1(1)(b)(ii).***
4. This Instrument comes into force on November 2, 2015.

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

1. *The changes to Companion Policy 48-501CP to are set out in this Schedule.*

2. *Part 2 is amended by*

(a) *deleting section 2.2*

3. *Part 5 is amended by*

(a) *adding the following:*

“5.2.1 Exchange-traded funds — Section 1.1 of the Rule defines an “exchange-traded fund” as an open-ended mutual fund, the units of which are listed or quoted securities. Generally trading in exchange-traded funds has not given rise to concerns of a misleading appearance of trading activity or artificial price and the Rule exempts trading in exchange-traded funds. However, if the Investment Industry Regulatory Organization of Canada makes a designation that trading in a particular fund is subject to the corresponding provisions of the Universal Market Integrity Rules because it is concerned that trading in units of the fund may be susceptible to manipulation, trading in that exchange-traded fund will be subject to the Rule.”

4. These changes will become effective on November 2, 2015.