

POLICY STATEMENT

Q-26

RESTRICTIONS ON TRADING DURING A DISTRIBUTION BY PROSPECTUS

1. Restrictions on Trading

(1) Commencing two business days prior to determination of the offering price of securities to be offered by a prospectus and throughout the period of distribution under such prospectus, it is inappropriate for:

- (a) the issuer;
- (b) any selling security holder on whose behalf a distribution is being made under the prospectus;
- (c) an affiliate of the issuer or selling security holder; or
- (d) any person acting in concert with the issuer, any selling security holder or with an affiliate of the issuer or any selling security holder,

to bid for or purchase, for its own account or any account in which it has a beneficial interest, or to attempt to induce or cause any person to purchase any security of the class and series being distributed, any convertible security or any underlying security if securities of the class of security which is the subject of the distribution or any underlying security are listed for trading on an entity designated by the Commission.

(2) Commencing two business days prior to determination of the offering price of securities to be offered by a prospectus, or if such decision has not yet been made, on the date on which an underwriter or dealer reaches an understanding to participate in the distribution of securities by a prospectus, whether or not the terms and conditions of such participation have been agreed upon, and throughout the period of distribution under the prospectus, it is inappropriate for:

- (a) such underwriter or dealer;
- (b) an affiliate of such underwriter or dealer; or
- (c) any person acting in concert with such underwriter or dealer or with an affiliate of such underwriter or dealer,

to bid for or purchase, for its own account or any account in which it has a beneficial interest, or to attempt to induce or cause any person to purchase any security of the class and series being distributed, any convertible security or any underlying security if securities of the class of security which is the subject of the distribution or any underlying security are listed for trading on an entity designated by the Commission.

2. Exemptions

Section 1 shall not apply to the following if not engaged in for the purpose of creating actual or apparent active trading in, or raising the price of, securities of the class and series being distributed:

(1) a bid or purchase made by a selling group member or an attempt by a selling group member to induce or cause a purchase by another person provided that the selling group member is not, other than as a dealer, subject to the prohibition contained in section 1;

(2) a bid or purchase made by an affiliate of a selling group member or an attempt by an affiliate of a selling group member to induce or cause a purchase by another person provided that the affiliate is not, other than as an affiliate of a dealer, subject to the prohibition contained in section 1;

(3) a bid or purchase made by a dealer, for and on behalf of a customer where one of the following conditions is met:

(a) the customer's order was not solicited; or

(b) if the customer's order was solicited, such solicitation occurred prior to the time the restrictions on trading prescribed by section 1 commenced in respect of the person who made the solicitation;

(4) a bid or purchase referred to in paragraph (1) of section 147.21 of the Act;

(5) the exercise of any right to purchase, convert or exchange where such right was acquired prior to the time that the restrictions on trading prescribed by section 1 commenced in respect of such person;

(6) a bid or purchase pursuant to the prospectus or pursuant to a distribution that is exempt from the prospectus requirements;

(7) a bid or purchase of non-convertible debt securities or preferred shares that have received, at the time of the bid or purchase, an approved rating on a provisional basis by a rating organization recognized by the Commission;

(8) a bid or purchase made by a mutual fund¹;

(9) a bid or purchase made by an affiliate of the following persons or an attempt by an affiliate to induce or cause a purchase by another person, provided that the affiliate is an affiliate of:

(a) the issuer;

(b) any selling security holder on whose behalf a distribution is being made under the prospectus; or

(c) an underwriter or dealer participating in the distribution;

and further provided that

(d) the affiliate is a separate and distinct organizational entity from each person referred to in (a) through (c) above with, :

(i) no common officers (other than officers who are not actively involved, for the affiliate and such person) in securities underwriting, trading or sales activities or investment analysis, investment advisory or investment management activities (any foregoing activity being referred to as a "securities activity") or in the management of these activities);

¹ A bid or purchase of a security by a mutual fund is regulated by Parts III and VII of the Act and the National Instrument 81-102, Mutual Funds.

(ii) no common employees (other than employees engaged solely in clerical, ministerial or administrative activities and where the affiliate is a financial institution, common employees that are not engaged for the affiliate in any securities activity except sales of securities at the branch level and in the ordinary course of the branch business, of the type that are referred to in sections 3 and 41 of the Act²;

(e) the affiliate has employee compensation arrangements with respect to those persons who are actively involved in securities activities or in the management of securities activities that are not affected by the performance or the profitability of any person referred to in (a) through (c) above; and

(f) the bid or purchase by the affiliate is made in the ordinary course of its business and is not made in concert with any person referred to in (a) through (c) above;

(10) a bid or purchase by any member or participant of an entity designated by the Commission where such bid or purchase is permitted under the bylaws and rules of such entity relating to market stabilization and passive market making activities.

3. Shelf Prospectus Distributions

(1) The prohibitions provided for in section 1 shall apply on a tranche-by-tranche basis in respect of the non-continuous distribution of securities by a prospectus filed under the shelf procedures of National instruments 44-102, *Shelf Distributions*, and 44-103, *Post-receipt Pricing*.

(2) The prohibition provided for in paragraph (1) of section 1 shall apply to the following persons:

(a) a selling security holder distributing securities on a non-continuous basis pursuant to a prospectus filed under the shelf procedures of National instruments 44-102, *Shelf Distributions*, and 44-103, *Post-receipt Pricing* ;

(b) an affiliate of such selling security holder; and

(c) any person acting in concert with such selling security holder or with such affiliate,

on a tranche-by-tranche basis to each tranche where the securities being distributed in the tranche include securities of such selling security holder.

(3) For the purposes of paragraph (1) of section 1, the period of distribution shall be deemed to end on the date that the distribution of securities of the selling security holder under the prospectus has ended, with respect to:

(a) a selling security holder distributing securities pursuant to a prospectus filed under the shelf procedures of National instruments 44-102, *Shelf Distributions*, and 44-103, *Post-receipt Pricing* , insofar only as the prohibition applies as a result of such person being a selling security holder;

(b) a person that is an affiliate of such selling security holder insofar only as the prohibition applies as a result of such person being so affiliated; and

² Where a person referred to in (a) though (c) or an affiliate does not have officers, the persons who perform functions for such person or affiliate that are comparable to the functions performed by the officers of an incorporated entity shall be considered to be officers of such person or affiliate.

(c) any person acting in concert with such selling security holder or such affiliate, insofar only as the prohibition applies as a result of such person acting in concert with such selling security holder or affiliate.

4. Special Warrant Transactions

(1) Where a prospectus is to be filed for the distribution of securities to be issued upon the exercise of special warrants, the prohibition provided for in paragraph (1) of section 1, shall apply during the period commencing two business days prior to the determination of the offering price of the special warrants and ending on the day that all underwriters and dealers which purchased special warrants from the issuer have completed distribution of all special warrants not exercised by them and all securities issued to them on the exercise of any such special warrants (including all special warrants and securities acquired by them in connection with the distribution) and all stabilization arrangements to which any underwriter or dealer is a party have been terminated.

(2) Where a prospectus is to be filed for the distribution of securities to be issued upon the exercise of special warrants, the prohibition provided for in paragraph (2) of section 1 shall apply two business days prior to determining the offering price, or if said decision has not yet been made, on the date on which the underwriter or dealer reaches an understanding to participate in the distribution of securities by a prospectus, whether or not the terms and conditions of such participation have been agreed upon, and shall end on the day on which the underwriter or dealer has completed distribution of all special warrants not exercised by it and all securities issued to it on the exercise of special warrants (including any special warrants or securities acquired by it in connection with the distribution) and any stabilization arrangements to which such underwriter or dealer is a party have been terminated.

5. Deemed End of Distribution

(1) For the purposes of paragraph (2) of section 1, the period of distribution shall be deemed to end with respect to an underwriter and its affiliates and any person acting in concert with such underwriter or with any affiliate of such underwriter, when such underwriter has distributed its participation (including all securities acquired by it in connection with the distribution) and any stabilization arrangements to which it is a party have been terminated.

(2) For the purposes of paragraph (2) of section 1, the period of distribution shall be deemed to end with respect to a dealer and its affiliates and any person acting in concert with such dealer or with any affiliate of such dealer, when such dealer has distributed its participation (including all securities acquired by it in connection with the distribution) and any stabilization arrangements to which it is a party have been terminated.

6. Interpretation and Definitions

(1) For the purposes of this Policy Statement,

(a) "special warrant" means a security that is issued in reliance upon an exemption from prospectus requirements, that carries the right to purchase, convert or exchange the security, without payment of any additional consideration, into another security and in respect of which the issuer has agreed to file a prospectus for the distribution of the security issued upon the exercise of the right;

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(c) "selling group member" means a person whose sole interest in the distribution is to receive the usual commission from the underwriter or the issuer;

(d) "convertible security" means a security that by its term is, at the option of the holder thereof, immediately convertible into or exercisable or exchangeable for a security of the class and series being distributed;

(e) "underlying security" means a security into which a security of the class and series being distributed, by its terms, is, at the option of the holder thereof, immediately convertible, a security for which a security of the class and series being distributed, by its terms, is, at the option of the holder thereof, immediately exercisable or exchangeable and a security with substantially the same characteristics as a security of the class and series being distributed or as another underlying security;

(2) For the purposes of this Policy Statement, the following rules shall apply:

(a) it is a question of fact whether a person is acting in concert with an issuer, a selling security holder, an underwriter or a dealer (a "distribution participant") or an affiliate of a distribution participant, and every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a distribution participant or an affiliate of a distribution participant, bids for or purchases any security which is the subject of distribution, any security of the same class and series or a convertible or underlying security, shall be presumed to be acting in concert with such distribution participant or affiliate; and

(b) a security shall not be deemed to be immediately convertible, exercisable or exchangeable into another security if the relevant exercise or conversion price is equal to, or exceeds, 110% of the market price of such other security determined in accordance with section 189 of the Regulation.