

John L. Walker, Barrister & Solicitor

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BY E-MAIL

February 16, 2007

Mr. William G. Scott
Chair, Risk Management Committee
Canadian Lawyers' Liability Assurance Society
Toronto Dominion Bank Tower
66 Wellington Street West, Suite 4700
Toronto ON M5K 1E6

Dear Bill:

Re: Restricted Securities Trading Policy

In connection with the assistance that you asked me to provide to CLLAS with respect to policies and procedures designed to ensure compliance with securities laws. I am pleased to attach the following:

1. draft CLLAS Risk Management Policy on Trading in Publicly Held Securities;
2. a memo that considers possible procedures for clearing trades in publicly held securities;
3. an example of a procedure that requires the maintenance of a restricted trading list; and
4. an example of a procedure that uses conflict searches instead of a restricted trading list.

Thank you very much for the opportunity to assist you with respect to this matter.

Yours very truly,

John L. Walker

JLW/mh

Attachments

groups:documents:cllas:risk mgmt:letter-021607-scott.doc

CLLAS

Risk Management Policy

Trading In Publicly Held Securities

To reduce the potential exposure of CLLAS firms to adverse publicity or, worse still, claims arising out of improper trades in publicly held securities by partners and employees, the Risk Management Committee recommends that each firm have a policy in place which includes at a minimum the following elements:

1. General Context

- (a) Duty of confidentiality;
- (b) Prohibition against tipping or trading with knowledge of material undisclosed information.

2. Trading Policy

- (a) A procedure for clearing all trades in
 - (i) Securities of publicly listed clients; and
 - (ii) Securities of publicly listed entities which are not clients but in respect of which a member or members of the firm have material undisclosed information due to a transaction they are working on (e.g. the take-over target of a firm client).
- (b) Persons covered by the policy
 - (i) All personnel at the firm;
 - (ii) It is strongly recommended that the policy cover spouses, children, other relatives and other persons sharing the same residence as a partner or employee. Exemptions may be considered for those persons in this category who can demonstrate that they make their own investment decisions or for other situations specifically authorized by the firm's management.

- (c) Consideration may be given to exempting the following:
 - (i) Trades in fully managed accounts;
 - (ii) Trades through automatic investment plans or in mutual funds, GIC's, government bonds or similar types of securities.
- (d) A restriction on short selling is advised.
- (e) Consider restricting or discouraging short term trading.
- (f) Consequences of failure to comply with policy.

groups:documents:ellas:risk mgmt:ellas-risk mgmt policy.doc

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Memorandum

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To: CLLAS Risk Management Committee
Date: February 16, 2007
From: John L. Walker
Re: Restricted Trading Policies

This memorandum discusses the conventional restricted trading list approach to controlling insider trading and considers what alternatives there might be to this approach. I have also discussed this issue with Donald Brayer. Don is a risk management consultant who works with the members of MPC Insurance, Ltd. ("MPC"), as well as other U.S. law firms.

1. Restricted Trading List Approach

The essence of this approach is the prohibition on trading in securities identified on a "Restricted List". The Restricted List is a list maintained by a firm of:

- (a) publicly-traded entities which are current clients of the firm or of which a member of the firm is appointed a director or a person in a similar capacity; and
- (b) other publicly-traded entities about which one or more persons in the firm currently possess material non-public information because of the firm's involvement or proposed involvement in a specific matter.

Before trading a security of a public entity, a member of the firm (lawyer or staff person) would need to check that the public entity is not on the Restricted List. Normally, firms appoint a Compliance Officer (or equivalent) through whom all trades must be cleared. The Restricted List would usually identify one or more partners (the "Responsible Partner") for each entity named on the list. The Compliance Officer (or the lawyer wishing to trade, if there is no Compliance Officer) would check with the Responsible Lawyer to determine whether the trade could proceed.

This system relies upon:

- (a) lawyers recognizing that they possess such material non-public information concerning publicly-traded entities and reporting the names of these entities to those responsible for maintaining the list;
- (b) lawyers who wish to trade securities of publicly-traded entities checking with the Compliance Officer before trading;
- (c) the Compliance Officer checking with the Responsible Partner to determine whether the blackout period for trading in that security still exists; this in turn might require the Responsible Partner to discuss this with one of more other members of the Firm; and
- (d) entities being removed from the Restricted List once the blackout period expires.

2. How Many Firm Members Trade Securities?

As a result of the professional liability risk management audits that I have conducted of CLLAS firms, I have discovered that a small minority (less than 10%) of the firms' lawyers trade in the securities of public entities.

I discussed this with Don Brayer, who confirmed that this is consistent with his experience with the members of MPC and of other large U.S. law firms.

3. Issues with the Restricted List Approach

There are a number of issues or concerns with respect to the restricted trading list approach:

- (a) it is complicated, expensive and time consuming to administer;
- (b) it is difficult to maintain the accuracy of the list;
- (c) a firm may receive material non-public information concerning publicly-traded entities in a wide variety of circumstances (e.g. proposed securities offering; M&A transaction; independent committee retainer; proposed litigation; defending threatened regulatory action; preparing for a major labour negotiation); accordingly, any member of the firm (not just transaction lawyers) could receive such information;
- (d) it is difficult to ensure a timely response to requests for permission to trade;

- (e) it is difficult to ensure that members of the firm check with the Compliance Officer before trading; and
- (f) it involves a significant cost that benefits relatively few members of the firm.

4. Alternative Approaches

(a) Outright Ban on Trades

One alternative is to ban all trading by firm members in the securities of publicly-traded entities. I understand that some, if not all, of the large accounting firms have adopted this approach. A slightly less draconian approach would be to ban all trading by firm members in the securities of publicly-traded entities that are clients, adverse parties or other parties of interest, as identified in the firm's Conflicts Checking System.

To my knowledge, none of the CLLAS firms have adopted this approach. Don Brayer confirmed that he has not seen any U.S. law firm adopt this approach.

The advantages and disadvantages of this approach are as follows:

<u>Advantages</u>	<u>Disadvantages</u>
<ul style="list-style-type: none"> • inexpensive • easy to administer • simple to explain • high degree of certainty of compliance 	<ul style="list-style-type: none"> • inflexible – won't allow legitimate trades to proceed

(b) Use Conflicts Checking System

This is an idea suggested by Don Brayer. Instead of maintaining a Restricted List, firm members would order a conflicts search from the firm's Conflicts Checking System. If it identified the issuer as a client, adverse party or party with some other interest, the lawyer would be required to speak to either a Compliance Officer or the Responsible Partner identified in the conflicts search before trading. Don advised that some of the large U.S. firms have adopted this approach and that he believes this is the best approach he has seen.

The advantages and disadvantages of this approach are as follows:

<u>Advantages</u>	<u>Disadvantages</u>
<ul style="list-style-type: none">• saves the cost and time of maintaining the Restricted List• higher degree of reliability, as conflicts database would be more reliable than the Restricted List• flexible – allows legitimate trades to proceed	<ul style="list-style-type: none">• lower degree of certainty of compliance than the outright ban on trades, as depends on firm members following the system (however, no loss of certainty as compared to the Restricted List approach)

A draft example of a Restrictions on Securities Trading Policy is attached. Please note that it intentionally does not deal with Confidentiality and Insider Trading issues. These issues can be dealt with in a separate policy. Alternatively, the draft policy attached could be incorporated into a firm's existing Confidentiality and Insider Trading Policy.

Yours very truly,

John L. Walker

JLW/mh

Attachment

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[Draft example of a Restrictions on Securities Trading Policy that requires the maintenance of a Restricted Trading List. This example is provided to CLLAS Members for information purposes only to assist them in reviewing or developing their own policies on securities trading. CLLAS is not endorsing or recommending that CLLAS Members adopt the provisions of this example.]

Restrictions on Securities Trading Policy

GENERAL

Purpose:

To set out the Firm's policy relating to the purchase or sale of securities of publicly-traded entities.

Application of Policy:

This policy applies to everyone who works at the firm (that is, all partners, employees and others who work at the firm, including lawyers, articling and summer students, secretaries, law clerks, support staff and administrative staff) (collectively "Firm Personnel")) and covers all purchases and sales of securities of publicly-traded entities (other than as described below). It is designed to safeguard against the appearance of impropriety and embarrassment to the Firm, and is similar to policies adopted by other law firms. We will periodically review the effectiveness of this policy as developments occur in this area and as experience is acquired.

The Policy is to be read in conjunction with the Confidentiality and Insider Trading Policy.

POLICY

Restrictions on Securities Trading:

It is possible that Firm Personnel may innocently engage in trading activities which, although not illegal (because of the absence of confidential inside information on the part of the particular person), could give rise to the appearance of impropriety, and result in embarrassment to the Firm, because confidential inside information is known to one or more other persons in the Firm. There is also a risk that it would be argued that information known to one member of the Firm may be presumed to be known to all members of the Firm.

In order to avoid such any event, Firm Personnel must not either buy or sell securities (other than securities of mutual funds, guaranteed investment certificates, Canada Savings Bonds or other Canadian government bonds or treasury bill investments) of any publicly traded entity (whether in Canada, the U.S. or elsewhere) that is identified on the "Restricted List" (see below) without written clearance from one of the persons

designated by the Chief Executive Officer to administer this policy from time to time (each a "Compliance Officer").

It is intended that these trading restrictions will extend to cover any situation where Firm Personnel participate in investment decisions of other persons (such as a spouse, other relative or friend or a trust, estate or charitable organization), but not any securities transactions effected by such persons where Firm Personnel does not participate in the investment decision.

In some cases, Firm Personnel may give an investment counsel discretion to trade in securities on their behalf without prior consultation as to specific transactions. Trades under such arrangements are not subject to this policy although Firm Personnel should be aware they may be required to establish in the case of any particular trade that the investment counsel did not in fact consult them in advance of making the trade.

Restricted List:

A "Restricted List" of publicly-traded entities is maintained by the Firm, but will not be made available to lawyers generally. The Restricted List has essentially two categories:

- (1) Publicly-traded entities which are current clients of the Firm or of which a member of the Firm is appointed a director or a person in a similar capacity; and
- (2) Other publicly-traded entities about which one or more persons in the Firm currently possess material non-public information because of the Firm's involvement or proposed involvement in a specific transaction. This category would include entities which, although not current clients, are known by one or more persons in the Firm to be involved in a transaction that is likely to affect the market price of the entity's securities or could affect the decision of a reasonable investor to purchase or sell securities of the entity (for example, a target in a take-over bid).

The Restricted List will identify one or more partners (the "Responsible Partner") for each entity named on the list.

In either case, the Responsible Partner(s) or the lawyer who becomes aware of the information described in (2) above is responsible for ensuring that in the appropriate circumstances the entity is included on or removed from the Restricted List.

Clearance Procedure:

A request for clearance to purchase or sell securities of a publicly-traded entity may be made to a Compliance Officer by telephone, e-mail or in person.

Upon receiving such a request, the Compliance Officer will:

- (a) If necessary, confirm the appropriate details of the proposed trade with the lawyer who has made the request;

- (b) Record in writing in a log maintained for that purpose the date and time of the request and the identity of the person making the request;
- (c) If the entity is not on the Restricted List, promptly give written clearance for the proposed trade to the person making the request;
- (d) If the entity is on the Restricted List, request the Responsible Partner for instructions whether the proposed trade may take place and, upon receiving such instructions, promptly notify the person making the request in writing whether clearance for the proposed trade is given; and
- (e) Record in the log each step taken to address the request.

If the Responsible Partner is in any doubt about the appropriateness of the proposed trade, the Responsible Partner will consult with a senior securities partner in the Firm before instructing the Compliance Officer whether clearance is given.

Unless and until clearance is given, the trade may not be take place. If clearance is given, the trade order must be given within [3] business days after the person is notified thereof. If for any reason the trade order is not given within that time frame, the trade may not be made without a further clearance.

Acknowledgement:

To ensure that each of us is familiar with this policy, all Firm Personnel are asked to review and to sign and send to •, a written acknowledgement thereof.

Consultation:

While compliance with this policy and the law is an individual responsibility, interpretive questions may arise such as whether certain information is material. A member of management should be consulted on such questions.

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[Draft example of a Restrictions on Securities Trading Policy that does not require the maintenance of a Restricted Trading List and, instead, relies on conflicts searches. This example is provided to CLLAS Members for information purposes only to assist them in reviewing or developing their own policies on securities trading. CLLAS is not endorsing or recommending that CLLAS Members adopt the provisions of this example.]

Restrictions on Securities Trading Policy

GENERAL

Purpose:

To set out the Firm's policy relating to the purchase or sale of securities of publicly-traded entities.

Application of Policy:

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The Policy is to be read in conjunction with the Confidentiality and Insider Trading Policy.

POLICY

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It is possible that Firm Personnel may innocently engage in trading activities which, although not illegal (because of the absence of confidential inside information on the part of the particular person), could give rise to the appearance of impropriety, and result in embarrassment to the Firm, because confidential inside information is known to one or more other persons in the Firm. There is also a risk that it would be argued that information known to one member of the Firm may be presumed to be known to all members of the Firm.

In order to avoid such an event, Firm Personnel must not either buy or sell securities (other than securities of mutual funds, guaranteed investment certificates, Canada Savings Bonds or other Canadian government bonds or treasury bill investments) of any

publicly traded entity (whether in Canada, the U.S. or elsewhere) without first following the clearance procedure described below.

It is intended that these trading restrictions will extend to cover any situation where Firm Personnel participate in investment decisions of other persons (such as a spouse, other relative or friend or a trust, estate or charitable organization), but not any securities transactions effected by such persons where Firm Personnel does not participate in the investment decision.

In some cases, Firm Personnel may give an investment counsel discretion to trade in securities on their behalf without prior consultation as to specific transactions. Trades under such arrangements are not subject to this policy although Firm Personnel should be aware they may be required to establish in the case of any particular trade that the investment counsel did not in fact consult them in advance of making the trade.

Clearance Procedure:

[Option A: each lawyer or staff member is responsible for clearing his or her proposed trades.]

Before trading (i.e. buying or selling) any security of a publicly traded entity, you must order a Conflicts Search from Records Management against the name of the publicly traded entity. **[You must identify this as a Securities Trading Search.]**

You may receive a call or email from **[x]** (the Confidential Matter Partner) advising you that the trade cannot proceed.

Upon receiving the Conflicts Search, check to see if the entity is listed as either a client, an adverse party, or a party with some other interest.

If the entity is not listed on the Conflicts Search and you have not received a call or email from **[x]** advising you that the trade cannot proceed, you may trade in the securities of the entity; provided that the trade order is given within **[3]** business days from the date of the Conflicts Search.

If the entity is listed on the Conflicts Search and you have not received a call or email from **[x]** advising you that the trade cannot proceed, you must contact the Responsible Lawyer shown beside the name of the entity on the Conflicts Search for instructions as to whether or not the proposed trade may take place. Unless and until clearance is given, the trade may not be take place. If the Responsible Lawyer is in any doubt about the appropriateness of the proposed trade, the Responsible Lawyer will consult with a senior securities partner in the Firm before instructing you whether clearance is given. The Responsible Lawyer will send an email to you stating whether or not the proposed trade may take place.

If clearance is given, the trade order must be given within **[3]** business days from the date of the Conflicts Search. If for any reason the trade order is not given within that time frame, the trade may not be made without a further clearance.

A copy of the Conflicts Search and any emails from Responsible Lawyers will be **[retained by the lawyer/staff member] [send to [x] – e.g. the Compliance Officer].**

[Option B: Compliance Officer is responsible for clearing proposed trades.]

Before trading (i.e. buying or selling) any security of a publicly traded entity, you must request clearance from the Compliance Officer. Unless and until clearance is given, the trade may not be take place.

Upon receiving such a request, the Compliance Officer will order a Conflicts Search from Records Management against the name of the publicly traded entity.

The Compliance Officer may receive a call or email from [x] (the Confidential Matter Partner) advising that the proposed trade cannot proceed.

Upon receiving the Conflicts Search, the Compliance Officer will check to see if the entity is listed as either a client, an adverse party, or a party with some other interest.

If the entity is not listed on the Conflicts Search and the Compliance Officer has not received a call or email from [x] advising that the trade cannot proceed, the Compliance Officer will advise you by email that you may trade in the securities of the entity; provided that the trade order is given within [3] business days from the date of the clearance email.

If the entity is listed on the Conflicts Search and the Compliance Officer has not received a call or email from [x] advising that the trade cannot proceed, the Compliance Officer will contact the Responsible Lawyer shown beside the name of the entity on the Conflicts Search for instructions as to whether or not the proposed trade may take place. If the Responsible Lawyer or Compliance Officer are in any doubt about the appropriateness of the proposed trade, the Responsible Lawyer and the Compliance Officer will consult with a senior securities partner in the Firm before instructing the requesting lawyer or staff member whether clearance is given. The Responsible Lawyer will send an email to the Compliance Officer stating whether or not the proposed trade may take place.

The Compliance Officer will advise the lawyer or staff member by email whether or not clearance has been given. If clearance is given, the trade order must be given within [3] business days from the date of the clearance email. If for any reason the trade order is not given within that time frame, the trade may not be made without a further clearance.

A copy of the Conflicts Search and any emails from Responsible Lawyers will be retained by the Compliance Officer.

Acknowledgement:

To ensure that each of us is familiar with this policy, all Firm Personnel are asked to review and to sign and send to •, a written acknowledgement thereof.

Consultation:

While compliance with this policy and the law is an individual responsibility, interpretive questions may arise such as whether certain information is material. A member of management should be consulted on such questions.

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