

IIROC NOTICE

Administrative Notice General

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Exemptions Granted by IIROC for the Calendar Year 2011

Summary

This Administrative Notice provides information on certain exemptions granted by the Investment Industry Regulatory Organization of Canada (“IIROC”) in 2011. It should be noted however, this Notice does not include exemptions granted by IIROC from proficiency or other registration requirements. IIROC staff is, however evaluating how they might include summary information relating to registration and proficiency exemptions in the future.

During the calendar year ending December 31, 2011, IIROC granted a total of 66 exemptions, of which:

- 62 were exemptions granted by Market Regulation Policy staff to a Participant or Access Person from a provision of the Universal Market Integrity Rules (“UMIR”);
- 3 were exemptions granted by the IIROC Board from a provision of the Dealer Member Rules; and
- 1 exemption granted by IIROC staff from a provision of the Dealer Member Rules.



Background

Authority to Grant Exemptions

Universal Market Integrity Rules

Rule 11.1 of UMIR provides that the IIROC may exempt a particular transaction¹ from the application of a provision of UMIR, provided that such exemption:

- would not be contrary to the provisions of any applicable securities legislation and the regulation and rules thereunder;
- would not be prejudicial to the public interest or to the maintenance of a fair and orderly market; and
- is warranted after due consideration of the circumstances of the particular person or transaction.

Dealer Member Rules

Under Dealer Member Rule 17.15, the IIROC Board of Directors may exempt a Dealer Member from any provision of the Rules where it is satisfied that to do so would not be prejudicial to the interests of the Dealer Members, their clients or the public and in doing so, may impose such terms and conditions as are necessary.

Specific Dealer Member Rules authorize IIROC staff to provide exemptions in specified circumstances. In the case of the exemption granted by IIROC staff in 2011 under Dealer Member Rule 2300.11, the exemption may be granted where IIROC staff are satisfied to do so would not be prejudicial to the interests of the Dealer Member, its clients or the public, and IIROC staff may impose such terms and conditions, if any, as are considered necessary in granting an exemption.

Exemptions Granted from UMIR Provisions

Off-Marketplace Transactions

Of the 62 exemptions that were granted in 2011 from a provision of UMIR, a total of 60 were in response to a request by a Participant for permission to act as principal or agent in respect of a trade that would be completed off-marketplace.

¹ IIROC may, with the approval of the applicable securities regulatory authority, exempt a marketplace or a class of transactions from the application of a provision of UMIR: UMIR 11.1(2). In accordance with UMIR 11.1(3), the consent of the applicable securities regulatory authorities would be conditional on IIROC pursuing an appropriate amendment to UMIR to reflect the effect of the exemption.



Rule 6.4 of UMIR provides that a Participant, when acting as principal or agent, may not trade or participate in a trade other than through the entry of an order on a marketplace. Rule 6.4 includes a number of exceptions to this broad requirement. In exceptional circumstances that are not among those enumerated in the rule, a regulatory exemption will be required in order to complete a transaction “off-marketplace”.

In accordance with Rule 6.4(b), IIROC will grant a regulatory exemption in order to maintain a fair or orderly market. IIROC may also grant an exemption where the execution of the trade(s) on a marketplace would make it impractical for the seller, purchaser or their agents to comply with applicable securities legislation.

The following is a breakdown of the exemptions granted in accordance with Rule 6.4(b):

Trades during a Statutory Resale Restriction

A total of 47 exemptions from Rule 6.4 were granted by IIROC in order to permit the transfer of shares that were subject to a hold period under securities laws to one or more accredited investors. In granting the exemptions, IIROC was satisfied that it was appropriate for the participants to complete the transactions off-marketplace, thereby ensuring that the securities, which were subject to a hold period, could only be transferred to “accredited investors”.. The exemptions were subject to the Participant complying with any additional requirements imposed by the listing exchange and reporting the details of the trade to a marketplace which publicly disseminates such details.

Certain Designated Trades as Principal

Where a Participant is taking on a significant block at a discount to the prevailing market price with the intention of immediately attempting to distribute the securities, IIROC may grant an exemption to allow the transaction to occur off-marketplace.² In 2011, IIROC granted 10 exemptions in accordance with Rule 6.4(b) in order to complete a principal take-on trade off-marketplace with a view to a distribution of the securities to clients.³

Exempt Take-over Bid

IIROC granted two exemptions in order to permit purchases, to be undertaken in reliance on the private agreement exemption under applicable securities legislation, to

² The “un-wind” trade is to be printed by the end of the day on which the take-on trade is executed. Any securities that remain unallocated to clients at the end of the day become proprietary positions of the Dealers and any subsequent sales must be executed on a marketplace. It is the responsibility of the Participant to submit any market corrections that may be required. The Participant is required to submit a report to IIROC post-distribution, in accordance with the guidance provided in Rules Notice 09-0224.

³ IIROC has previously issued guidance on the procedures for the execution by a Participant as principal of certain pre-arranged trades or intentional crosses that qualify as a “designated trade” under UMIR and which involve a distribution to clients of a significant block of stock: See Rules Notice 09-0224, *Guidance – Procedures for Handling Certain Designated Trades as Principal* (July 30, 2009).



take place off-marketplace. The transactions were to take place outside of the market price for the security and the bid was not to be made generally to holders of the security.

Exempt Distribution from Control

National Instrument 45-102 provides an exemption from prospectus requirements for a distribution from control that satisfies certain conditions. In 2011, one exemption was granted in order to permit a controlling shareholder to trade securities of the issuer off-marketplace.

Other UMIR Exemptions

Subject to certain exemptions that are enumerated in Rule 7.7 (4), a Participant that is a “dealer-restricted person” is prohibited, under Rule 7.7(1) from trading in a restricted security during the “restricted period”.

Similarly, a “dealer-restricted person” may not bid for or purchase a restricted security for the account of an issuer-restricted person during the restricted period. This general prohibition under Rule 7.7(2) is subject to the exemptions enumerated in subsection (5).

In circumstances that are not among those enumerated in Rule 7.7, an exemption would have to be sought and obtained in order for a Participant that is a “dealer-restricted person” to trade in restricted securities during the restricted period or act for an “issuer-restricted person”.

In 2011, IIROC granted an exemption from the restrictions under Rule 7.7(1) and (2) and from both the short sale price restrictions under UMIR Rule 3.1 and the short sale marking requirements under Rule 6.2. This exemption was granted in order to:

1. permit certain “dealer restricted persons” to bid for, or purchase, exchange-traded, index-linked notes for:
 - their own account;
 - an account over which the dealer restricted person exercised control or direction; or
 - an account of an issuer-restricted person, including an account over which an issuer-restricted person exercised direction or control; and
2. to solicit purchases.

Parallel exemptions were granted to permit “dealer restricted persons” to participate in the distribution of notes.



IIROC also granted an exemption from the restrictions in Rule 7.7(2) to permit a Participant to purchase shares on behalf of certain other issuer-restricted persons (insiders and affiliated entities of the issuer) during a restricted period related to the acquisition by the issuer of a U.S. entity. The shares were “highly liquid securities” as defined in UMIR and the exemption sought by the Participant would not jeopardize a fair and orderly market. A parallel exemption was also granted by the relevant securities regulatory authority in favour of other issuer-restricted applicants (insiders and affiliated entities of the issuer).

Exemptions Granted from the Dealer Member Rules

The IIROC Board exercised its discretion twice, in accordance with subsection 6.6(2) of the Dealer Member Rules, to determine that cross-guarantees⁴ were not required. In each case, one or more of the applicants was a Dealer Member that was an alternative trading system that did not have client accounts. The applicants provided undertakings that they would:

- not handle, or hold as custodian, customer cash or securities;
- not act as a principal or agent in connection with trades in securities or futures/commodities with retail or institutional customers of subscribers; and
- notify IIROC in writing in advance of any change in their operations that might conflict with the undertakings.

The IIROC Board also granted an exemption under Dealer Member Rule 17.15 from the minimum requirements for Dealer Members offering solely an order-execution service, as set out in Dealer Member Rule 3200. This exemption related specifically to the requirement that an order-execution only service that is operated as a separate business unit of the Dealer Member must have letterhead, account documentation, accounts, registered representatives and investment representatives that are separate from the Dealer Member’s full-service business unit(s). The exemption permitted an order-execution only business unit and a full-service business unit to share a call centre based on representations by the Dealer Member as to the measures that would be in place to ensure that there was no client confusion as between the two business units.

IIROC staff granted an exemption under Dealer Member Rule 2300.11 from the requirements of Dealer Member Rule 2300 relating to account transfers. This “bulk transfer” exemption permitted a Dealer Member to transfer the accounts of clients “in bulk” in connection with the acquisition of another Dealer Member, without complying in advance with certain client

⁴ Dealer Member Rule 6.6 provides that each Dealer Member shall be responsible for and shall guarantee the obligations to clients incurred by each of its related companies and that each related company shall be responsible for and shall guarantee the obligations of the Dealer Member to its clients.



documentation requirements for account transfers. The Dealer Member was required to complete the client documentation within a reasonable time following the transfer.