

# IIROC NOTICE

## **Administrative General**

*Please distribute internally to:*

Institutional  
Legal and Compliance  
Regulatory Accounting  
Senior Management  
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**13-0149**  
**June 4, 2013**

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## **Exemptions Granted by IIROC for the Calendar Year 2012**

### **Summary**

In May of 2012, the Investment industry Regulatory Organization of Canada (IIROC) issued its first ever Administrative Notice summarizing the details regarding exemptions from certain Dealer Member and Universal Market Integrity (UMIR) rules (UMIR). While that Notice covered a variety of exemptions, it did not contain information relating to exemptions from IIROC proficiency requirements. At that time we indicated that this information would be included in our next annual exemption notice.

In keeping with that commitment, as well as our ongoing effort to operate in a transparent manner, this Administrative Notice provides a breakdown of exemptions

granted by IIROC in 2012, including detailed information concerning the most commonly granted proficiency related exemptions.

In 2012, IIROC granted a total of 257 exemptions from IIROC requirements, specifically

- 62 exemptions granted by Market Regulation Policy staff to a Participant or Access Person from a provision of UMIR;
- 12 exemptions granted by the IIROC Board of Directors to a Dealer Member from a provision of the Dealer Member Rules;
- 26 exemptions granted by IIROC staff to a Dealer Member from a provision of the Dealer Member Rules, not related to proficiency requirements; and
- 157 exemptions granted by IIROC staff or the Registration Sub-Committee of the applicable District Counsel to individuals seeking IIROC approval from IIROC proficiency requirements.

## **Exemptions from UMIR Provisions Granted by IIROC Staff**

### ***Authority to Grant Exemptions***

Rule 11.1 of the Universal Market Integrity Rules (UMIR) provides that IIROC may exempt a particular transaction<sup>1</sup> 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.

### ***Off-Marketplace Transactions***

Each of the 62 exemptions that were granted in 2012 from a provision of UMIR was 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.

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 36 exemptions from Rule 6.4 were granted by IIROC in order to permit the transfer, to one or more accredited investors, of shares that were subject to a hold period under securities laws. In granting the exemptions, IIROC was satisfied that it was appropriate for the participants to complete the transactions off-marketplace. 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.<sup>1</sup> In 2012, IIROC granted 16 exemptions in accordance with Rule 6.4(b) in order to complete a principal take-on trade off-marketplace where the Participant would undertake a distribution of the securities to its clients.<sup>2</sup>

### ***Exempt Take-over Bid***

IIROC granted 4 exemptions in order to permit purchases, to be undertaken in reliance on the private agreement exemption under applicable securities legislation, to take place off-marketplace. Securities legislation requires that the purchases made by the offeror are completed by means other than the entry of orders on a marketplace.

### ***Other Exemptions under UMIR 6.4 (b)***

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1. 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 Participant 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.
  2. 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).

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

Two exemptions were granted where a Participant sought to transfer odd-lot inventory positions to another Participant as part of an acquisition transaction.

One exemption was granted in respect to an exempt issuer bid pursuant to an Order of the Ontario Securities Commission under section 104(2)(b) of the Securities Act (Ontario). The exemption was necessary to allow the transaction to proceed pursuant to the Order.

One exemption was granted where the Participant sought to complete a transaction off-marketplace while the stock was subject to a non-regulatory trading halt and was not available for trading on the listing Exchange or any other Canadian marketplace. The transaction was necessary to allow the issuer to meet the continued listing requirements of the Exchange.

One exemption was granted where the Participant sought to trade in an illiquid security at a nominal value when there was no current bid for the security. The exemption was granted after considering the volume of the transaction, the nominal value and the potential for the disruption of a fair and orderly market.

*For further information regarding the exemption types discussed in this section, please contact Kevin McCoy, Director, Market Regulation Policy (416) 943-4659.*

## **Exemptions from the Dealer Member Rules Granted by the IIROC Board of Directors**

### ***Authority to Grant Exemptions***

Dealer Member Rule 17.15 permits the IIROC Board of Directors to 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.

### ***Exemptions Granted***

IIROC's Board of Directors granted exemptions to 11 Dealer Members from applicable provisions of Dealer Member Rule 200, subject to certain conditions. Specifically, the relief provided exempts the Dealer Members from the requirement to deliver customer trade confirmations and month-end customer statements with

respect to trades in equity and index options and futures as well as commodity trades in which the Dealer Members acted as executing broker under a trade “give up” arrangement. These trade “give-up” arrangements are restricted to Institutional Customers, as defined in IIROC Dealer Member Rule 1. Each Dealer Member had obtained corresponding exemptions from applicable securities commissions.

*For further information regarding the exemption type discussed in this section, please contact Louis Piergeti, Vice President, Financial and Operation Compliance (416) 865-3026.*

The IIROC Board granted a specific exemption under Dealer Member Rule 17.15 from certain aspects of Dealer Member Rules 1300.1 and 2500. This exemption related specifically to the requirements in these rules that “know your client” information must be collected and assessed and suitability assessments performed, for each client, and that the performance of these assessments is primarily the responsibility of the Registered Representative. The exemption order issued permitted the applicant Dealer Member to introduce an on-line automated advisory account service offering from within a separate business unit, subject to certain conditions. Further details regarding this exemption request, the new account service offering, the exemption conditions imposed on the firm and the exemption approval provisos are set out in the exemption order included as part of IIROC Rules Notice 12-0246.

*For further information regarding the exemption types discussed in this section, please contact Rosemary Chan, Senior Vice President Member Compliance & General Counsel, Member Regulation Policy (416) 646-7272.*

## **Exemptions from the Dealer Member Rules Granted by IIROC Staff**

### ***Authority to Grant Exemptions***

IIROC staff is similarly permitted, under specific Dealer Member Rules, to provide exemptions in specified circumstances where IIROC staff is satisfied that to do so would not be prejudicial to the interests of the Dealer Member, its clients or the public. In these cases, IIROC staff may impose such terms and conditions, if any, as are considered necessary and appropriate.

## ***Exemptions Granted***

In accordance with Dealer Member Rule 2300.11, IIROC staff granted 26 exemptions from the requirements of Dealer Member Rule 2300 relating to account transfers. These “bulk transfer” exemptions permitted the Dealer Member to transfer the accounts of a large number of clients “in bulk” without complying in advance with certain client documentation requirements for account transfers and were in the best interests of the clients involved. Seventeen of the exemptions granted in 2012 related to the closure of Penson Financial Services Canada Inc., with the remaining nine exemptions being granted in connection with the acquisition of a Dealer Member’s business. Each Dealer Member was required to complete the client documentation within a reasonable time following the transfer.

*For further information regarding the exemption type discussed in this section, please contact Louis Piergeti, Vice President, Financial and Operation Compliance (416) 865-3026.*

## **Exemptions from Proficiency Requirements Granted by IIROC District Councils**

### ***Background and Authority to Grant Exemptions***

IIROC rules require anyone wishing to work at an IIROC regulated firm in an “approved” role, including a client facing advisory or sales role, a supervisory role or as an executives of the firm, to first obtain IIROC approval/registration. One of the three criteria IIROC uses to assess whether an individual is, or remains, “fit and proper” for IIROC approval is that of proficiency, the other two being integrity and solvency. Individual applicants must meet IIROC’s minimum education, training and experience requirements prescribed under Dealer Member Rule 2900 in order to satisfy the proficiency criteria.

Under IIROC’s proficiency regime, if an individual completes a required course(s) but does not apply for and become an IIROC approved person, the validity of the course(s) will lapse two years after course completion.<sup>3</sup> Similarly, if an individual was approved by IIROC in a particular category but surrenders that approval, the

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3. The only exception to the two year stale dating period is for the Canadian Securities Course, which lapses after three years.

validity of the course(s) the individual took to qualify for registration will expire three years from the date the individual's approval was terminated.<sup>4</sup>

IIROC Dealer Member Rule 2900, Part II.C(a) gives the applicable District Council (or its delegate) the authority to exempt an individual (or class of individuals) from the requirement to write or rewrite any required course or examination, in whole or in part, subject to such terms and conditions as the District Council considers appropriate.<sup>5</sup> In any proficiency application, the onus is on the applicant to demonstrate that he/she has adequate alternative experience and/or education demonstrating equivalency to the course for which an exemption is being sought.

### ***Summary report of proficiency exemptions sought***

For the period August 15, 2012 to December 31, 2012,<sup>6</sup> IIROC Registration received a total of 164 proficiency exemption applications across its four offices.<sup>7</sup> For purposes of this report we have counted each request to be exempted from writing or re-writing a particular course as a separate exemption application, even in cases where a particular individual may have sought multiple course exemptions.

The proficiency exemption applications filed over the aforementioned reporting period covered a variety of proficiency requirements, including:

- exemptions from prescribed portfolio management education requirements;
- minimum entry-level proficiency requirements for Registered Representatives or Investment Representatives;

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4. Dealer Member Rule 2900 Part II contains a number of exemptions from the requirement to write or rewrite a particular course on the condition the individual has completed alternative courses specified in that section. Similarly, Dealer Member Rule 2900 Part III sets out a "voluntary participation" program which enables an individual who is not currently approved to extend the validity of the Canadian Securities Course or the Conduct and Practices Handbook Course by completing prescribed professional development and compliance courses within prescribed time periods.

5. In practice each of IIROC's regional District Councils have delegated their authority to grant an exemption from the requirements of Dealer Member Rule 2900 to a subcommittee comprised of 3 to 5 members of that District Council called the Registration Sub-Committee of District Council or, in limited cases, to IIROC Registration.

6. This notice only addresses the period between August 15, 2012 to December 31, 2012 as tracking and reporting mechanisms were put in place in August to facilitate generation of this report. We anticipate that future reports of this nature will reflect the full calendar year.

7. Of the 164 proficiency exemption applications filed, 67 were filed in IIROC's Toronto office, 37 were filed in IIROC's Pacific office, 33 were filed in IIROC's Prairie office, and 27 were filed in IIROC's Québec office.

- post-licensing requirements for Registered Representatives or Supervisors of retail Approved Persons; and
- recognition of alternative work experiences to be approved as a Supervisor over retail Approval Persons.

Of the 164 proficiency exemption applications received, IIROC Registration staff recommended:

- approval of the exemption in 157 of the cases (with or without conditions); and
- refusal of the exemption in 7 of the cases.

The applicable District Council agreed with each of the recommendations of IIROC Registration staff.

The 164 exemption applications received can be segmented into the following categories:

- 35 requests from writing a prescribed course;
- 114 requests from rewriting a prescribed course;
- 8 requests for an extension to complete a post-licensing requirement;<sup>8</sup> and
- 7 requests to accept alternative work experiences, in connection with the particular IIROC approval sought.<sup>9</sup>

### ***Frequently recurring proficiency exemptions***

The most commonly recurring exemptions sought were in connection with the requirement to write or rewrite the:

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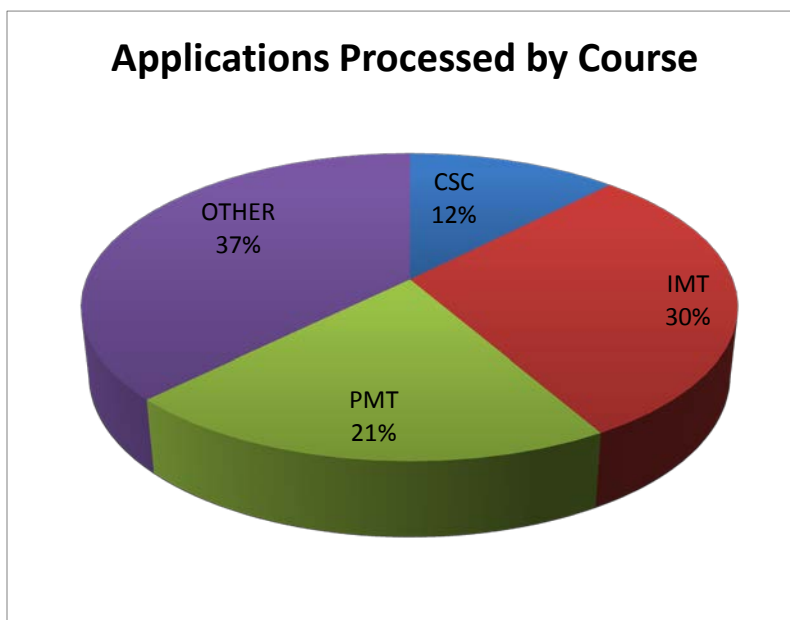
8. Post-licensing requirements include the requirement on a Registered Representative to complete the Wealth Management Essentials Course within 30 months of IIROC registration; the requirement on Supervisors (retail) to complete the Effective Management Seminar within 18 months of IIROC registration; and mandatory course upgrade requirements for individuals whose IIROC license was restricted to mutual fund sales only. These extension requests generally related to situations where the next available seminar offering extended beyond the individual's due date, hardship situations, or administrative error by the sponsoring firm in tracking the post-licensing requirement. In cases where the post-licensing extension was sought by an individual who was a Registered Representative, IIROC Registration will often simultaneously seek that the applicable District Council impose a period of close supervision by the sponsoring firm pending completion of the course.

9. These applications sought to have alternative work experiences accepted in lieu of minimum experience requirements prescribed for individuals seeking to: (i) add portfolio management services to their IIROC approval; and (ii) act as a Supervisor over retail Approved Persons.



- Investment Management Techniques Course (“IMT”) (48 applications);
- Portfolio Management Techniques Course (“PMT”) (34 applications); and
- Canadian Securities Course (“CSC”) (20 applications).

Collectively, these exemption applications accounted for nearly two-thirds (63%) of all proficiency exemption applications processed by IIROC during the reporting period.



The basis for IIROC Registration recommending relief in these recurring exemption applications is discussed in more detail below. In connection with our review of these files, IIROC Registration is studying possible rule amendments that will codify these recurring exemption decisions. It should also be emphasized for purposes of the discussion below that each exemption application sought is examined on a case by case basis and the guidance provided below is not intended to provide an exhaustive discussion of all the factors that were considered in granting the applicable exemption.

***PMT and IMT proficiency exemption related requests***

With respect to the IMT and PMT related exemption applications, these exemptions were sought in connection with a Registered Representative seeking to add portfolio management services to their IIROC registration.<sup>10</sup> In the vast majority of applications under review, the individuals had successfully completed the IMT

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10. 70.8% of individuals seeking relief from having to write or re-write the IMT also sought relief from having to write or re-write the PMT. That is, the vast majority of individuals sought relief from writing or re-writing the IMT and PMT concurrently.

and/or PMT while continuously approved as a Registered Representative with IIROC but outside the prescribed 2 year validity period. In a few cases the individual had completed predecessor courses to the IMT and/or PMT while being continuously approved as a Registered Representative. IIROC Registration staff was prepared to recommend relief in these cases on the basis of the following recurring factors/considerations:

- In the vast majority of cases, the individual held a valid Canadian Investment Manager designation (CIM) or the relatively newer Chartered Investment Manager designation (CIM<sup>®</sup>) issued by the Canadian Securities Institute (CSI). Attaining either of these designations qualifies an individual for registration as an “advising” or “associate advising representative” with a firm registered as an adviser (portfolio manager) under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
- The individuals in the cases under review exceeded IIROC’s minimum 3-year Registered Representative experience requirement, with the majority of individual applicants having between 5 to 10 years continuous registration in that category. Further, the individuals had assets under management ranging from \$11 million to \$500 million with the majority having assets under management ranging between \$40 and \$85 million.
- The individuals were able to demonstrate to IIROC Registration staff’s satisfaction that they had gained relevant investment management experience while registered as a Registered Representative, including securities research and analysis experience, as well as demonstrating an ability in, and understanding of, portfolio analysis or portfolio security selection.

In many of these exemption applications, IIROC Registration staff also received and considered submissions from the sponsoring firm itself regarding the firm’s internal portfolio management selection process, including the firm’s own review process to evaluate the individual’s investment management experience and competencies.

### ***CSC related proficiency exemptions***

With respect to the 20 CSC proficiency exemptions considered by IIROC, these exemptions were sought in connection with pending registration applications seeking IIROC approval as either a Registered Representative or Investment Representative. Out of the 20 exemption applications received, 19 sought relief from rewriting the CSC because the validity of the course had expired under IIROC Dealer Member Rule 2900 and 1 sought relief from writing the course.

Most of the successful applications, seeking an exemption from having to rewrite the CSC, were decided on one of the following basis:

- Since completion of the CSC, the individual completed a course that built upon the content of the CSC, such as the Professional Financial Planning Course or the Wealth Management Essentials course offered by the CSI; the individual obtained a higher level designation, such as the CIM or CFA Charter; or the individual obtained a relevant graduate university degree, such as a Masters in Business Administration.<sup>11</sup>
- The individual's CSC expired for purposes of IIROC's rules while the individual was continuously registered in Canada with another non-IIROC registered firm, such as a portfolio manager, mutual fund dealer or exempt market dealer and the individual was able to demonstrate that their past registration history had contributed to keeping the individual's knowledge and understanding of the course material covered in the CSC current.
- The individual was able to demonstrate how his/her intervening work experiences (albeit in a non-registered capacity) kept their knowledge and understanding of the course material covered in the CSC current.

### ***Refusal of exemption requests***

As noted previously, IIROC Registration staff recommended refusal in the case of 7 proficiency exemptions sought. In each case, the relevant District Council agreed with IIROC Staff. The unsuccessful applications sought exemptions from having to:

- complete the 90 day training program requirement in connection with an application for registration as a Registered Representative (retail);
- rewrite the Options Supervisors Course and the Branch Managers Course in connection with an application for registration as a Supervisor; and
- rewrite the Conduct and Practices Handbook Course

In all of these cases, the individual applicants were not able to demonstrate that their education or experience was equivalent to the course material that was the subject matter of the exemption request. In most of these cases the individuals sought to rely on historical non-IIROC related registration or work history (such as registration as a dealing representative with a mutual fund dealer) that did not sufficiently address the

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11. In the case of the individual who obtained an MBA, it should be emphasized that the individual's CSC was only 6 months stale dated and the individual had prior industry experience as well.

core content of the required course. In other cases the applicant failed to provide any meaningful and substantive submissions in support of the exemption sought.

*For further information regarding the exemption type discussed in this section, please contact Rossana Di Lieto, Vice President, Registration and Complaints & Inquiries (416) 943-6911.*