

IIROC NOTICE

Administrative Notice

General

Dealer Member Rules
UMIR

Please distribute internally to:

Institutional
Legal and Compliance
Regulatory Accounting
Senior Management
Trading Desk

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UMIR Related Exemptions

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Dealer Member Rule Exemptions

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Exemptions from Proficiency Requirements

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Exemptions Granted by IIROC for the Calendar Year 2013

Summary

This Administrative Notice provides a summary of exemptions granted in 2013, by IIROC's Board of Directors, IIROC staff or IIROC District Councils, relating to both the Dealer Member and Universal Market Integrity (UMIR) rules.

In 2013, IIROC granted a total of 487 exemptions from IIROC requirements, specifically

- 94 exemptions granted by Market Regulation Policy staff to a Participant or Access Person from a provision of UMIR;
- 5 exemptions granted by the IIROC Board of Directors to a Dealer Member from a provision of the Dealer Member Rules;
- 10 exemptions granted by IIROC staff to a Dealer Member from a provision of the Dealer Member Rules, not related to proficiency requirements; and
- 378 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) stipulates that 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.

Off-Marketplace Transactions

76 of the 94 exemptions that were granted in 2013 from a provision of UMIR 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.

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(2)(b), IIROC will grant a regulatory exemption in order to maintain a fair and 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(2)(b):

Trading during a Statutory Resale Restriction

50 exemptions from Rule 6.4 were granted 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.

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. In 2013, IIROC granted 15 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.¹

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(2)(b)

¹ 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. 1 exemption was granted in order to permit a controlling shareholder to trade securities of the issuer off-marketplace.

3 exemptions were granted in respect of an exempt issuer bid pursuant to an Order of the Ontario Securities Commission under section 104(2)(b) of the Securities Act (Ontario). These exemptions were necessary to allow the transactions to proceed pursuant to the Order.

1 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.

2 exemptions were 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.

Basis Order Exemptions

18 exemptions were granted in respect of the UMIR definition of “Basis Order” where a Participant sought to execute a trade in an Exempt Exchange-traded Fund (“ETF”) as a Basis Order at a price derived from the execution of the underlying securities of the ETF. While ETFs are not specifically included in the UMIR definition of Basis Order, IIROC is of the view that the underlying principles of the Basis Order definition support the rationale that ETFs should not be prevented from trading as Basis Orders. Accordingly, the granting of these exemptions is consistent with UMIR 11.1. IIROC is currently pursuing a UMIR rule amendment to address these particular situations.

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 two 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.

IIROC's Board of Directors granted an exemption to a Dealer Member from applicable provisions of Dealer Member Rule 35.1(e)(iii), subject to certain conditions. Specifically, the relief permits the Dealer Member, as a Type 2 introducing broker, to self-clear the distribution of certain proprietary products through an insurance company intermediary.

For further information regarding the exemptions described above, please contact Louis Piergeti, Vice President, Financial and Operation Compliance (416) 865-3026.

IIROC's Board of Directors also granted exemptions to two Dealer Members from applicable provisions of Dealer Member Rule 3200A(1)(b), subject to certain conditions. Specifically, the relief provided permits the Dealer Members to allow certain of their registered representatives/investment representatives to act for an order execution-only service as well as other affiliated businesses. Each Dealer Member took steps to prevent client confusion relating to the business unit with which they are dealing.

For further information regarding the exemptions described above, please contact Joe Yassi, Vice President, Business Conduct Compliance (416) 943-6903.

Exemptions from the Dealer Member Rules Granted by IIROC Staff

Authority to Grant Exemptions

IIROC staff is 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 ten 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. Two of the exemptions granted in 2013 related to a change of carrying brokers, with the remaining eight 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 Joe Yassi, Vice President, Business Conduct Compliance, (416) 943-6903.

Exemptions from Proficiency Requirements Granted by IIROC District Councils (or their delegates)

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 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 within two years of completing² the course, the validity of the course(s) will lapse. Similarly, if an

² The only exception to the two year stale dating period is for the Canadian Securities Course, which lapses after three years.

individual was approved by IIROC in a particular category but surrenders that approval, the validity of the course(s) the individual completed in order to qualify for registration will expire three years from the date the individual's approval was terminated.³

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 at a Dealer Member) 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.⁴ 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 2013 Calendar year, IIROC Registration received a total of 380 proficiency exemption applications across its four offices.⁵ 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 and experience requirements;
- minimum entry-level proficiency requirements for Registered Representatives or Investment Representatives;

³ Dealer Member Rule 2900 Part II contains a number of auto-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.

⁴ 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.

⁵ Of the 380 proficiency exemption applications filed, 171 were filed in IIROC's Toronto office, 73 were filed in IIROC's Pacific office, 42 were filed in IIROC's Prairie office, and 94 were filed in IIROC's Québec office.

- post-licensing requirements for Registered Representatives or Supervisors of retail Approved Persons;
- recognition of alternative work experiences for Supervisors of retail Approval Persons; and
- exemptions from prescribed education requirements for Investors, Executives and Directors.

Of the 380 proficiency exemption applications received, IIROC Registration staff recommended:

- approval of the exemption in 377 of the cases (with or without conditions); and
- refusal of the exemption in 3 of the cases.

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

The 380 exemption applications received can be segmented into the following categories:

- 97 requests from writing a prescribed course;
- 252 requests from rewriting a prescribed course;
- 10 requests for an extension to complete a post-licensing requirement;⁶
- 20 requests to accept alternative work experiences, in connection with the particular IIROC approval sought;⁷ and
- 1 request for relief from the full-time employment requirement while completing the 90 Day Training Program.

Frequently recurring proficiency exemptions

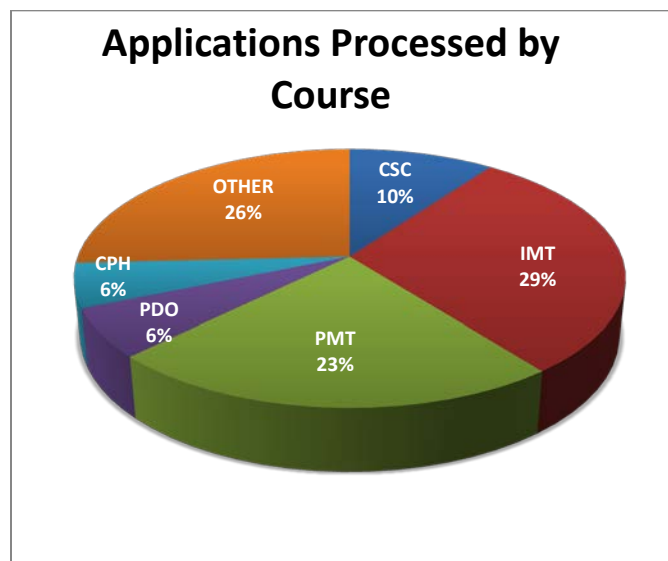
The most commonly recurring exemptions sought were in connection with the requirement to write or rewrite the:

⁶ 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.

⁷ 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”) (112 applications);
- Portfolio Management Techniques Course (“PMT”) (88 applications);
- Canadian Securities Course (“CSC”) (38 applications); and
- Partners, Directors and Senior Officers Course (“PDO”) (23 applications)
- Conduct and Practices Handbook Course (“CPH”) (21 applications)

Collectively, these exemption applications accounted for approximately three-quarters of all proficiency exemptions 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. 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.⁸ In the vast majority of applications under review, the individuals had successfully completed the IMT 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[®]) 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*.
- Virtually all individuals in the cases reviewed exceeded IIROC’s minimum 3-year Registered Representative experience requirement, with the majority of individual applicants having between 9 to 17 years continuous registration in that category. Further, the individuals had assets under management ranging from \$4 million to \$600 million with the majority having assets under management ranging between \$40 and \$200 million.
- The individuals were able to demonstrate to IIROC Registration staff’s satisfaction that they had gained relevant investment management experience in the following ways:
 - I. while registered as a Registered Representative
 - II. research and analysis experience
 - III. previous registration as an advising representative or associate advising representative with a CSA registrant firm

In many of these exemption applications, IIROC Registration staff also received and considered submissions from the sponsoring firm itself regarding the firm’s internal

⁸ 72% 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.

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 38 CSC proficiency exemptions considered by IIROC, 31 were sought in connection with applications seeking IIROC approval as either a Registered Representative or Investment Representative, 4 in connection with applications as Supervisor, 2 in connection with applications as RR and Supervisor, and 1 in connection with an application as RR intending to conduct portfolio management. Out of the 38 exemption applications received, 35 sought relief from rewriting the CSC because the validity of the course had expired under IIROC Dealer Member Rule 2900 and 3 sought relief from writing the course.

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

- 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, Chartered Strategic Wealth Manager Professional (“CSWP”) or CFA Charter.
- 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.

PDO related proficiency exemptions

With respect to the 23 PDO proficiency exemptions considered by IIROC, 21 exemptions were sought in connection with applications seeking IIROC approval as either an Executive or Director, 1 was sought in connection with approval as an investor (owning greater than 10%), and 1 was sought in connection with approval as a Supervisor. Of the 23 exemption applications received, 22 sought relief from rewriting the PDO because the validity of the course had expired under IIROC Dealer Member Rule 2900 and 1 sought relief from writing the course.

The individual exempted from writing the PDO attained the CFA charter in 2003 and completed firm sponsored courses that demonstrated equivalence to PDO content. In addition, this individual acquired extensive experience (16 years) working at an executive level and was registered with CSA firms affiliated with the IIROC Member.

The majority of successful applications seeking an exemption from having to rewrite the PDO were decided on one of the following:

- the individual was de-registered as an Officer due to changes introduced with Registration Reform but remained employed with an IIROC Member in a senior role; and
- the individual was able to demonstrate how his/her intervening work experiences (albeit in a non-registered senior role) kept their knowledge and understanding of the PDO course material current.

CPH related proficiency exemptions

With respect to the 21 CPH proficiency exemptions considered by IIROC, 14 exemptions were sought in connection with applications seeking IIROC approval as an RR, 6 in connection with approval as a Supervisor, and 1 in connection with approval as a PM. Of the 21 exemptions considered, 16 sought an exemption from rewriting the CPH, as the validity of the course had expired under IIROC Dealer Member Rule 2900, 4 sought an exemption from writing the CPH and 1 sought a 3-month extension to the CPH post licensing requirement for RRMFs.

The majority of successful applications seeking an exemption from having to write or rewrite the CPH were decided on of the following:

- 14 of the exemptions received involved individuals who had been previously approved with IIROC. The vast majority of these individuals continued to work in the securities industry in various unregistered capacities (i.e. compliance, managerial, mutual funds, banking & administrative) that kept them current with the topics and content covered in the CPH and many had completed successor courses to the CPH that built and expanded on the course content.
- 4 individuals seeking exemptions from writing the CPH demonstrated equivalent knowledge to the course through registered or relevant experience as follows:
 - I. Employment as a Business Conduct Compliance Examiner with an SRO;
 - II. Senior Executive and UDP of an IIROC Dealer Member;

- III. Registration as an Advising Representative on the CSA platform ⁹
- IV. Registration as a broker in the United Kingdom ¹⁰

- A 3-month extension from writing the CPH was granted due to hardship circumstances for one individual.
- 2 exemptions from rewriting were denied as equivalency to the CPH was not demonstrated.

Refusal of exemption requests

As noted previously, IIROC Registration staff recommended refusal in the case of 3 proficiency exemptions sought. In each case, the relevant District Council agreed with IIROC Staff. The unsuccessful applications sought exemptions from having to:

- write the Wealth Management Essentials (one exemption) course in connection with an application for registration as a Registered Representative
- rewrite the Conduct and Practices Handbook Course (two exemptions) in connection with an application for registration as a Registered Representative.

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 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 Levi Sankar, Senior Counsel, Registration, (416) 865-2936.

⁹ Practical experience of the rules that govern the activities of a registered person

¹⁰ Practical experience of the rules that govern the activities of a registered person