

# IIROC NOTICE

## Administrative Notice

### General

Dealer Member Rules  
UMIR

*Please distribute internally to:*  
Institutional  
Legal and Compliance  
Regulatory Accounting  
Senior Management  
Trading Desk

*Contact:*

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**16-0055**  
**March 11, 2016**

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## Exemptions Granted by IIROC for the Calendar Year 2015

### Summary

Each year IIROC's Board of Directors, staff and District Councils consider and, in appropriate cases, grant exemptions from specific Dealer Member Rules or Universal Market Integrity Rules (UMIR). The criteria for granting exemptive relief are specific and rigorously applied in order to ensure that investors are protected and the integrity of the capital markets is maintained.

This Administrative Notice provides a summary of the 634 exemptions granted in 2015, which were comprised of:

- 64 exemptions from specified UMIR provisions, granted by Market Regulation Policy staff to Participants or Access Persons;
- 48 exemptions from specified Dealer Member Rule provisions, granted by the IIROC Board of Directors to Dealer Members;
- 14 exemptions from specified Dealer Member Rule provisions not related to proficiency requirements, granted by IIROC staff to Dealer Members; and
- 508 exemptions from IIROC proficiency requirements, granted to individuals by IIROC staff or by Registration Sub-Committees of IIROC District Councils.

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

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

Rule 11.1 of UMIR stipulates that IIROC may exempt a particular transaction 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 related regulation and rules;
- 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.

The total number of exemptions from UMIR provisions granted in 2015 is significantly lower than the 120 exemptions from UMIR provisions granted by Market Regulation Policy staff in 2014. This decrease is largely due to UMIR amendments respecting the definition of “Basis Order” which were implemented on April 30, 2015.<sup>1</sup> These amendments broadened the definition of “Basis Order” and eliminated the need for a Participant to seek an exemption from UMIR when executing an order for an exempt exchange-traded fund (“ETF”) as a basis order. Further information regarding all exemptions from a provision of UMIR granted in 2015 is provided below.

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

Sixty of the 64 exemptions that were granted in 2015 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 is 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). All of these exemptions under Rule 6.4(2)(b) were granted to maintain fair and orderly markets or to comply with applicable securities regulation.

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<sup>1</sup> See IIROC [Notice 15-0098](#) – Rules Notice – Notice of Approval – UMIR – Amendments to the Definition of Basis Order (April 30, 2015).

### *Trading during a Statutory Resale Restriction*

Forty 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.<sup>2</sup> In 2015, IIROC granted one exemption 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.

### *Exempt Take-over Bid*

IIROC granted two exemptions in order to permit a purchase, 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.

## **1.3 Other Exemptions under UMIR 6.4(2)(b)**

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

Nine 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.

Two exemptions were 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.

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<sup>2</sup> 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 IIROC [Notice 09-0224](#), *Guidance – Procedures for Handling Certain Designated Trades as Principal* (July 30, 2009).

Two 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.

One exemption was granted where the Participant sought to trade an odd-lot of a security but, as there was no odd-lot market maker, the Participant could do so only off-marketplace. The exemption was granted after determining that this would not be prejudicial to maintenance of a fair and orderly market.

One exemption was granted with respect to a transaction that was required to be priced in compliance with OSC Rule 62-504 using a calculation based on the security's value for the prior 20 days. We determined that printing a trade on a marketplace using a price based on a security's value for the prior 20 days, rather than at a price based on the context of the market, was prejudicial to the maintenance of a fair and orderly market, and therefore granted an exemption to permit this trade to occur off-marketplace.

#### **1.4 Basis Order Exemptions**

Four exemptions were granted in respect of the UMIR definition of "Basis Order" where a Participant sought to execute a trade in an ETF as a Basis Order at a price derived from the execution of the underlying securities of the ETF.

While ETFs were not included in the UMIR definition of Basis Order before April 30, 2015, IIROC was of the view that the underlying principles of the Basis Order definition supported the rationale that ETFs should not be prevented from trading as Basis Orders.

The applicable securities regulatory authorities approved amendments to UMIR respecting the definition of "Basis Order" which were implemented on April 30, 2015. Following the implementation of these amendments and subject to compliance with the amended definition of Basis Order, Participants were no longer required to seek an exemption from UMIR to execute a Basis Order involving an ETF.

*For further information regarding the exemption types discussed in this section, please contact Sonali GuptaBhaya, Director, Market Regulation Policy (416) 646-7272.*

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

### **2.1 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 Dealer Member Rules where it is satisfied that to do so would not be prejudicial to the interests of the public, Dealer Members or their clients. In granting any exemption, the Board may impose terms and conditions as necessary.

### **2.2 Exemptions from Reporting on Client Positions**

The IIROC Board granted exemptions to 46 Dealer Members from certain aspects of Dealer Member Rule subsections 200.2(e) and 200.2(f).

These exemptions related specifically to the requirements in these Rules that certain client assets that are neither held nor controlled by the Dealer Member (“off-book client assets”) be reported on periodically to clients and be considered in the calculation of annual client portfolio performance information. The exemption order permitted each applicant Dealer Member to omit off-book client assets from consideration in the calculation and reporting of annual client portfolio performance information, subject to certain conditions.

Further details regarding these exemption requests, the exemption orders approved and the conditions imposed on the firms receiving exemption orders are set out in IIROC [Rules Notice 15-0274](#).

*For further information regarding the exemption orders discussed in this section, please contact Richard Corner, Vice-President and Chief Policy Advisor, Member Regulation (416) 943-6908.*

### **2.3 Cross-Guarantee Exemption**

IIROC’s Board granted relief to three related Dealer Members from the applicable cross-guarantee provisions under Dealer Member Rule section 6.6, subject to certain conditions.

The relief will be superseded by any IIROC rules relating to the cross-guarantee requirements applicable to Dealer Members. The Board of Directors will determine whether any rule implemented relates to the cross-guarantee requirement and supersedes this relief or necessitates voiding of this relief or application for amended relief.

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

### **2.4 Pre-Trade Disclosure of Charges Exemption**

IIROC’s Board granted relief to a Dealer Member from the applicable provisions under Dealer Member Rule section 29.9(1), as it relates to the pre-trade disclosure of charges

for retail clients, subject to certain conditions. The exemption requires, among other conditions, written acknowledgement from the client regarding the Dealer Member's fee structure, and written confirmation from the client that they do not wish to receive the pre-trade disclosure of fees prior to each trade.

*For further information regarding the exemption described above, please contact Sandra Blake, Vice-President, Business Conduct Compliance at (416) 943-6911.*

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

#### **3.1 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 doing so would not be prejudicial to the interests of the public, the Dealer Member or its clients. In these cases, IIROC staff may impose terms and conditions if necessary and appropriate.

#### **3.2 Bulk Account Transfer Exemptions**

In accordance with Dealer Member Rule 2300.11, IIROC staff granted 14 exemptions from the requirements of Dealer Member Rule 2300 relating to account transfers. These "bulk transfer" exemptions permitted each Dealer Member to transfer the accounts of a large number of clients "in bulk" without complying in advance with certain client documentation requirements for individual account transfers and were in the best interests of the clients involved. The exemptions related to the acquisition of a Dealer Member's business, a transfer of accounts after the suspension of a Dealer Member, or a change in the carrying broker of a Dealer Member. 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 Sandra Blake, Vice-President, Business Conduct Compliance (416) 943-6911.*

### **4. Exemptions from Proficiency Requirements Granted by IIROC District Councils (or their delegates)**

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

IIROC rules require anyone wishing to work at an IIROC-regulated firm in an approved role 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 the Dealer Member Rules in order to satisfy proficiency requirements.

IIROC Dealer Member Rule 2900, Part II.C(a) gives the applicable District Council (or its delegate) the authority to exempt 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>3</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 exemptive relief is being sought.

#### **4.2 Summary Report of Proficiency Exemptions Sought**

In 2015, IIROC Registration processed a total of 518 proficiency exemption applications nationally,<sup>4</sup> an increase of 15.4% from the previous year. Registration received an additional 19 applications, which were withdrawn in connection with staff's recommendation of refusal.

Of the 518 proficiency exemption applications processed, Registration staff recommended approval in 510 cases (with or without conditions) and refusal in eight cases. The applicable District Council agreed with 514 of 518 recommendations made by Registration staff.

#### **4.3 Frequently Recurring Proficiency Exemptions**

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

- Portfolio Management Techniques Course (PMT) (139 applications);
- Investment Management Techniques Course (IMT) (130 applications);
- Partners, Directors and Senior Officers Course (PDO) (33 applications); and
- Canadian Securities Course (CSC) (29 applications).

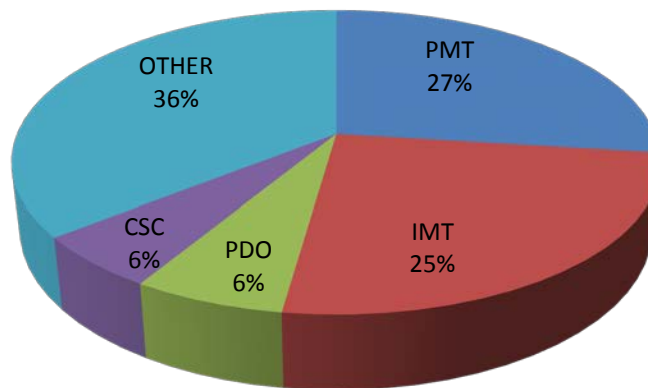
Collectively, these exemption applications accounted for just under 64% of all proficiency exemptions processed by IIROC during the reporting period.

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<sup>3</sup> 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, known as the Registration Subcommittee of District Council, and, in some cases, to IIROC Staff.

<sup>4</sup> Of the 518 proficiency exemption applications filed, 275 were handled in IIROC's Toronto office, 115 were handled in IIROC's Pacific office, 72 were handled in IIROC's Prairie office, and 56 were handled in IIROC's Québec office. These counts do not include applications that were filed but subsequently withdrawn by the Dealer Member or applicant.

### Applications for Proficiency Exemptions by Course



#### 4.4 IMT and PMT Proficiency Exemptions

With respect to the 269 IMT and PMT proficiency exemption applications<sup>5</sup>, these exemptions were sought in connection with a Registered Representative (“RR”) seeking to add portfolio management services to his/her IIROC approval or, in a small number of cases, an individual applying for new registration to be an RR conducting portfolio management services. In the vast majority of applications, the individuals had successfully completed the IMT and/or PMT while continuously approved as an RR with IIROC but the course had been completed more than two years prior to seeking approval and the proficiency was, therefore, stale dated under Dealer Member Rule 2900. In a few cases the individual had completed predecessor courses to the IMT and/or PMT while being continuously approved as an RR.

Registration staff notes the following in connection with relief granted for the IMT and/or PMT:

- In the vast majority of cases, the individual held the Canadian Investment Manager (CIM) designation or the relatively newer Chartered Investment Manager (CIM<sup>®</sup>) designation 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*.

<sup>5</sup> 64% of individuals seeking relief from having to write or rewrite the IMT also sought relief from having to write or rewrite the PMT. That is, the vast majority of individuals sought relief from writing or rewriting the IMT and PMT concurrently.

- Virtually all individuals in the cases reviewed exceeded IIROC’s minimum experience requirement to conduct discretionary portfolio management activities, with the majority of individual applicants having an average of 13 years of registration as an RR dealing in securities for retail customers.
- The individuals were able to demonstrate to Registration staff’s satisfaction that they had gained relevant investment management experience in the following ways:
  - i. while registered as an RR,
  - ii. through research and analysis experience, and/or
  - iii. while registered as an Advisor with a CSA registrant firm.

In many of these exemption applications, 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.

#### **4.5 PDO Proficiency Exemptions**

Of the 33 PDO proficiency exemption submissions processed, 27 sought relief from rewriting and six<sup>6</sup> sought relief from writing the PDO. All of the 33 proficiency exemptions considered by IIROC were sought in connection with applications seeking IIROC approval as an Executive and/or Director.

Staff notes that all applicants exempted from writing or rewriting the PDO demonstrated one or more 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;
- the individual was able to demonstrate how his/her intervening work experiences (albeit in a non-registered senior role) kept his/her knowledge and understanding of the PDO course material current;
- the individual had 20 or more years of experience in progressively senior roles in the securities industry and, in most cases, had relevant foreign registrations and proficiencies.

#### **4.6 CSC Proficiency Exemptions**

The majority of the 29 CSC proficiency exemptions considered by IIROC were sought in connection with applications seeking IIROC approval as either an RR or Investment Representative. Other CSC proficiency exemptions considered were sought in

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<sup>6</sup> Two of the submissions from writing the PDO were filed in respect of the same relief for the same person. The second submission requested extension of the original time limited relief.

connection with applications as an RR dealing in Mutual Funds only, Supervisor, and RR intending to conduct portfolio management activity.

All 29 exemption applications sought relief from rewriting the CSC because the validity of the course had expired under IIROC Dealer Member Rule 2900.

Staff notes that most of the applicants exempted from rewriting the CSC presented with one of the following circumstances:

- Since completion of the CSC, the individual had recently completed a more advanced 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; or the individual obtained an advanced designation from the CSI, such as the CIM or Chartered Strategic Wealth Professional (“CSWP”); or earned the CFA charter<sup>7</sup>.
- The individual’s CSC expired for purposes of IIROC’s rules while the individual was continuously registered in Canada with a non-IIROC registered firm, such as a portfolio manager, mutual fund dealer or exempt market dealer, and the individual was able to demonstrate that his/her registration history had contributed to keeping the individual’s knowledge and understanding of the course material covered in the CSC current.

#### **4.7 Refusal of Exemption Requests**

Registration staff recommended refusal in 27 cases resulting in 19 submissions being withdrawn by the filing firm. The remaining eight applications were sent to the applicable District Council which, in all cases, agreed with staff’s recommendation to refuse the proficiency exemptions sought. The unsuccessful applications sought exemptions from having to write or rewrite the Conduct and Practices Handbook, Wealth Management Essentials Course, Options Licensing Course, Futures Licensing Course, Derivatives Fundamentals Course, Options Supervisors Course, and from meeting the experience requirements for portfolio management registration.

In all of these cases, the individual applicants were not able to demonstrate that their education or experience was equivalent or relevant to the proficiency requirement for which the exemption was requested.

*For further information regarding the exemption types discussed in this section, please contact Sonia Keshwar, Director, Proficiency, (416) 646-7251.*

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<sup>7</sup> The CFA® Program is administered by the CFA Institute