

## 1.2 Interpretation

- (1) Unless otherwise defined or interpreted, every term used in UMIR that is:
  - (a) defined in subsection 1.1(3) of National Instrument 14-101 – Definitions has the meaning ascribed to it in that subsection;
  - (b) defined or interpreted in the Marketplace Operation Instrument has the meaning ascribed to it in that National Instrument; and
  - (c) a reference to a requirement of an Exchange or a QTRS shall have the meaning ascribed to it in the applicable Marketplace Rule.
  
- (2) For the purposes of UMIR, the following terms shall be as defined by applicable securities legislation except that:

“**person**” includes any corporation, incorporated association, incorporated syndicate or other incorporated organization.

“**trade**” includes a purchase or acquisition of a security for valuable consideration in addition to any sale or disposition of a security for valuable consideration.
  
- (3) In determining the value of an order for the purposes of Rule 6.3 and 8.1, the value shall be calculated as of the time of the receipt or origination of the order and shall be calculated by multiplying the number of units of the security to be bought or sold under the order by:
  - (a) in the case of a limit order for the purchase of a security, the lesser of:
    - (i) the specified maximum price in the order, and
    - (ii) the best ask price;
  - (b) in the case of a limit order for the sale of a security, the greater of:
    - (i) the specified minimum price in the order, and
    - (ii) the best bid price;
  - (c) in the case of a market order for the purchase of a security, the best ask price; and
  - (d) in the case of a market order for the sale of a security, the best bid price.
  
- (4) For the purposes of determining the “last sale price”, if a sale of at least a standard trading unit of a particular security has not been previously displayed in a consolidated market display the last sale price shall be deemed to be the price:
  - (a) of the last sale of the security on an Exchange, if the security is a listed security;
  - (b) of the last sale of the security on a QTRS, if the security is a quoted security;

- (c) at which the security has been issued or distributed to the public, if the security has not previously traded on a marketplace; and
  - (d) that has been accepted by a Market Regulator, in any other circumstance.
- (5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a “standard trading unit”, the price shall be the last sale price of the particular security on the immediately preceding trading day.
- (6) For the purposes of the definition of “restricted period”:
  - (a) the selling process shall be considered to end:
    - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
    - (ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering;
  - (b) stabilization arrangements shall be considered to have terminated on the date that is the earlier of when:
    - (i) in the case of a syndicate of underwriters or agents, the lead underwriter or agent determines, in accordance with the syndication agreement, that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements, or
    - (ii) the offered securities, exclusive of any securities that may be issued pursuant to the exercise of an option granted to a dealer-restricted person to cover over-allotment of securities in the distribution, are issued and all statutory rights of withdrawal in connection with such issuance have expired; and
  - (c) if the offering price is determined by a formula involving trading activity in the offered security or a connected security on one or more marketplaces for a period of time, the offering price shall be considered to be determined on the first trading day included in the calculation for the purposes of the formula.
- (7) Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term "associate" in applicable securities legislation and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person.

- (8) For the purposes of determining the “best ask price” or the “best bid price” at any particular time reference is made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:
- (a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or
  - (b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.

## **POLICY 1.2 - INTERPRETATION**

### **Part 1 – Meaning of “acting jointly or in concert”**

*The definitions of a “dealer-restricted person” and “issuer-restricted person” include a person acting jointly or in concert with a person that is also a dealer-restricted person or an issuer-restricted person, as applicable, for a particular transaction. For the purposes of these definitions, “acting jointly or in concert” has a similar meaning to that phrase as defined in section 91 of the Securities Act (Ontario) or similar provisions of applicable securities legislation, with necessary modifications. In the context of these definitions only, it is a question of fact whether a person is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases any restricted security will be presumed to be acting jointly or in concert with such dealer- or issuer-restricted person.*

### **Part 2 – Meaning of “selling process has ended”**

*The definition of “restricted period”, with respect to a prospectus distribution and a “restricted private placement”, refers to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Rule 1.2(6)(a) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the Participant has distributed all securities allocated to it and, is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the Participant is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate’s short position. If the Participant or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a Participant that are held and transferred to the inventory account of the Participant at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the inventory account of the Participant.*

### **Part 3 – “Ought Reasonably to Know”**

Rule 2.2 prohibits a Participant or Access Person from doing various acts if the Participant or Access Person “knows or ought reasonably to know” that a particular method, act or practice was manipulative or deceptive or that the effect of entering an order or executing a trade would create or could reasonably be expected to create a false or misleading appearance of trading activity or interest or an artificial price. Rule 2.3 prohibits a Participant or Access Person from entering an order on a marketplace or executing a trade if the Participant or Access Person “knows or ought reasonably to know” that the entry of the order or the execution of the trade would result in the violation of various securities or regulatory requirements.

In determining what a person “ought reasonably to know” reference would be made to what a Participant or Access Person would know, acting honestly and in good faith, and exercising the care, diligence and skill that a reasonably prudent Participant or Access Person would exercise in comparable circumstances. In essence, the test becomes what could a Participant or Access Person have been expected to know if the Participant or Access Person had:

- adopted various policies and procedures as required by applicable securities legislation, self-regulatory entities, UMIR and the Policies; and
- conscientiously followed or observed the policies and procedures.

### **Part 4 - Applicable Regulatory Standards**

Rule 7.1 requires each Participant prior to the entry of an order on a marketplace to comply with applicable regulatory standards with respect to the review, acceptance and approval of orders. Each Participant that is a dealer must be a member of a self-regulatory entity. Each Participant will be subject to the by-laws, regulations and policies as adopted from time to time by the applicable self-regulatory entity. These requirements may include an obligation on the member to “use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.” While knowledge by a Participant of “essential facts” of every customer and order is necessary to determine the suitability of any investment for a client, such requirement is not limited to that single application. The exercise of due diligence to learn essential facts “relative to every customer and to every order” is a central component of the “Gatekeeper Obligation” embodied within the trading supervision obligation under Rule 7.1 and 10.16. In addition, securities legislation applicable in a jurisdiction may impose review standards on Participants respecting orders and accounts. The regulatory standards that may apply to a particular order may vary depending upon a number of circumstances including:

- the requirements of any self-regulatory entity of which the Participant is a member;
- the type of account from which the order is received or originated; and
- the securities legislation in the jurisdiction applicable to the order.

<p><b>Defined Terms:</b> NI 14-101 section 1.1(3) – “jurisdiction”, “securities legislation” and “securities regulatory authority” NI 21-101 section 1.1 – “order” and “self-regulatory entity” UMIR section 1.1 – “Access Person”, “best ask price”, “best bid price”, “consolidated market display”, “Exchange”, “limit order”, “listed security”, “Market Operation Instrument”, “market order”, “Marketplace Rule”, “offered security”, “Participant”, “QTRS”, “quoted security”, “restricted period”, “restricted private placement”, “restricted security”, “standard trading unit” and “UMIR” UMIR section 1.2(2) – “person” and “trade”</p>
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**Related Provisions:** UMIR section 1.1 – definitions of “last sale price” and “standard trading unit”

UMIR section 6.3 – Exposure of Client Orders

UMIR section 7.7 – Trading During Certain Securities Transactions

UMIR section 8.1 – Client-Principal Trading

**Regulatory History:** Effective February 25, 2005, the applicable securities commissions approved amendments that came into force on May 9, 2005 to add subsections (6) and (7) to section 1.2 and to add Parts 1 and 2 of Policy 1.2.

Effective April 1, 2005, the applicable securities commissions approved amendments to add Part 3 and 4 of Policy 1.2.

In connection with the recognition of IIROC and its adoption of UMIR, the applicable securities commissions approved an amendment to section 1.2 that came into force on June 1, 2008 to replace the phrase “these Rules” with “UMIR” and to Part 3 of Policy 1.2 to replace the phrase “and the Rules and” with “, UMIR and the”.

Effective January 8, 2010, the applicable securities commissions approved amendments to subsection (6) of section 1.2 to remove the word “and” at the end of clause (a), repeal and replace clause (b) and add clause (c). Prior to that date, clause (b) provided:

(b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements.

Effective January 8, 2010, the applicable securities commissions approved amendments to add subsection (8) to section 1.2.

**Guidance:** The following is the relevant text of Market Integrity Notice 2005-026 issued on July 28, 2005 under the heading “**Guidance – Securities Trading on Marketplaces in U.S. and Canadian Currencies**”:

### **Summary**

This Market Integrity Notice provides guidance on the obligations of a Participant or Access Person under the Universal Market Integrity Rules (“UMIR”) with respect to trading activity in a security that trades in both Canadian and U.S. currency on a marketplace. Generally, trades in a security denominated in Canadian currency will be treated as if the trades were made in a distinct security from trades denominated in U.S. currency for the purpose of determining acceptable arbitrage activity, the last sale price, best ask price and best bid price. However, trading activities in both currencies may be aggregated to determine whether the security qualifies as a “highly-liquid security”.

UMIR defines a marketplace as a recognized exchange (“Exchange”), a recognized quotation and trade reporting system (“QTRS”) or an alternative trading system (“ATS”) that carries on business in Canada.

### **Background**

In February, 2004, the Toronto Stock Exchange (“TSX”) began to allow issuers with a listed security that traded in Canadian currency to also trade that security in U.S. currency. The trading symbol used for a security trading in U.S. currency is the standard TSX trading symbol followed by the suffix “.U”. Generally, the same trading options and features are available from the TSX for securities trading in U.S. currency as are available to securities trading in Canadian currency.

### **UMIR Obligations**

#### **Arbitrage Activity**

An “arbitrage account” is defined in UMIR as including an account in which the holder makes a usual practice of buying and selling securities “in different markets” to take advantage of differences in prices available “in each market”.

Legitimate arbitrage activity occurs where one seeks to profit from differences in price where the same security is traded on two or more markets and, at a particular moment, the price on the two markets is different after currency conversion is taken into account. If a security trades on a Canadian marketplace in both Canadian and U.S. currencies, IIROC will consider a Participant or Access Person to be engaging in legitimate arbitrage activity where the Participant or Access Person treats the Canadian dollar book and the U.S. dollar book of the marketplace as “different markets” for the purposes of arbitrage activity.

In accordance with an exemption from Rule 3.1 of UMIR, an arbitrage account is able to undertake a short sale below the last sale price if the “seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available and the seller intends to accept such offer immediately”.

#### **Highly-Liquid Securities and Trading During Certain Securities Transactions**

Rule 7.7 of UMIR governs the activities of dealers, issuers and others in connection with trading activity in a security during the period of time that certain transactions involving the issuance of that security or a related security are being undertaken including: a distribution of securities; a securities exchange take-over bid; an issuer bid; an amalgamation; an arrangement; a capital reorganization or similar transaction. Rule 7.7 prescribes acceptable activities and otherwise restricts trading activities to preclude manipulative conduct by persons with an interest in the outcome of the distribution of securities or other transactions.

Under Rule 7.7, a “highly-liquid security” is exempt from certain of the restrictions and prohibitions governing trading activity during securities transactions. A “highly-liquid security” is defined as a listed security or quoted security that:

- has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the “restricted period”:
  - an average of at least 100 times per trading day, and
  - with an average trading value of at least \$1,000,000 per trading day; or
- is subject to Regulation M under the Securities Act of 1934 (United States) (“Reg M”) and is considered to be an “actively-traded security” under that regulation.

IIROC maintains a list of securities which, based on data available to IIROC, meet the definition of a “highly-liquid security” as a result of achieving the required number of average daily trades and average daily trading value on Canadian marketplaces. The list maintained by IIROC does not contain listed securities or quoted securities that are inter-listed with a market in the United States and that are considered to be “actively-traded” under Reg M but which fail to meet the tests for average daily trades and average daily trading value on Canadian marketplaces. A separate list of highly-liquid securities is prepared for each trading day. For convenience, a summary identifies the securities which have been added or deleted from the list of highly-liquid securities on a particular trading day. Persons may rely on the list and summary prepared by IIROC or they may independently verify if a security meets the requirements of a “highly-liquid security” so long as they retain a record of the data they rely upon in verifying the requirements. The list of highly-liquid securities and the daily summary of changes is available on the IIROC website (at [www.iiroc.ca](http://www.iiroc.ca)) and may be accessed through the “Quick Links” on the homepage.

If a security is traded on marketplaces in both Canadian and U.S. currencies, the trading activity in both currencies may be aggregated to determine whether the security meets the definition of a “highly-liquid security” for the purpose of the exemption from the requirements in Rule 7.7. If a security is traded on Canadian marketplaces in both Cdn\$ and US\$ and the security is on the list of “highly-liquid securities” maintained by IIROC, that status applies to the security regardless of the currency in which the trade is made.

#### **“Last Sale Price”, “Best Ask Price”, and “Best Bid Price”**

UMIR contains a number of rules which require that trading be conducted at the “last sale price” or at a price that is the same as or better than the “best ask price” or “best bid price”. In each case, this price is determined by reference to order or trade information contained in “a consolidated market display”, which is made up of order and trade information from those marketplaces to which the Participant or Access Person has access.

If a security is traded in both Canadian and U.S. currencies on a marketplace to which a Participant or Access Person has access, the Participant or Access Person must, in effect, treat the security in each currency as a distinct security for the purposes of determining the “last sale price”, “best ask price” or “best bid price”. For example, if issuer ABC trades on a marketplace with orders and trades reported in Canadian currency under the symbol “ABC” and with orders and trades reported in U.S. currency under the symbol “ABC.U”, then the “last sale price”, “best ask price” or “best bid price” of:

- security “ABC” is determined by reference only to the sales, asks and bids of “ABC” in Canadian currency; and
- security “ABC.U” is determined by reference only to the sales, asks and bids of “ABC.U” in U.S. currency.

**Proposed Amendments:** For information on the current proposed amendments for Rule 1.2, refer to Rules Notice 09-0328 – Request for Comments – UMIR – Provisions Respecting Implementation of the Order Protection Rule (November 13, 2009) which includes the following proposed amendment:

1. Subsection (3) of Rule 1.2 is amended by deleting the word “and” and inserting the phrase “, Rule 6.4 and Rule” after the phrase “Rule 6.3”.