

PART 2 – ABUSIVE TRADING

2.1 Just and Equitable Principles

- (1) A Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when:
 - (a) trading on a marketplace; or
 - (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

- (2) An Access Person shall transact business openly and fairly when:
 - (a) trading on a marketplace; or
 - (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

POLICY 2.1 – JUST AND EQUITABLE PRINCIPLES

Part 1 – Examples of Unacceptable Activity

Rule 2.1 provides that a Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities that are eligible to be traded on a marketplace. The Rule also provides that an Access Person shall transact business openly and fairly. As such, the Rule operates as a general anti-avoidance provision.

Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is contrary to the just and equitable principles of trade. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who “uses” another person to make a trade off of a marketplace (in circumstances where an “off-market exemption” is not available) to be violating just and equitable principles of trade.

Certain patterns of activity that can be undertaken that affect the marketplace but do not reach the level of manipulative and deceptive trading practices are nonetheless unavailable to Participant and Access Persons. For example, Rule 4.1 dealing with frontrunning is specifically tied to misuse of information when a Participant knows a client order will be entered. Somewhere between the Participant who acts on certain knowledge of a client order and the Participant who acts despite a single, uncertain expression of interest are the Participants that repeatedly take advantage of expressions of interest in particular securities. Such Participants are not conducting business openly and fairly and in accordance with just and equitable principles of trade.

The “just and equitable principles” clause and the requirement to transact business openly and fairly prevent such activity.

Without limiting the generality of the Rule, the following are examples of activities that would be considered to be in violation of requirements to conduct business openly and fairly or in accordance with just and equitable principles of trade:

- (a) without the specific consent of the client, entering client and principal orders in such a manner as to attempt to obtain execution of a principal order in priority to the client order; (See Part 2 of Policy 5.3 – Client Priority for examples of the prohibition on “intentional trading ahead”.)*
- (b) without the specific consent of the client, to vary the instructions of the client to indicate that securities held by the client are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the client for the dividend in cash;*
- (c) without the specific consent of the lender of securities, to vary the arrangements in respect of securities borrowed by the Participant to indicate that the borrowed securities are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the lender for the dividend in cash; and*
- (d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:
 - (i) execute with one or more of the orders, or*
 - (ii) purchase at a higher price or sell at a lower price with one or more of the orders**

in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.

Part 2 – Executing a Pre-arranged Trade or Intentional Cross

A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps, in accordance with the “best price” obligations under Rule 5.2, prior to or on the execution of the pre-arranged trade or intentional cross to ensure that any “better-priced” order on any protected marketplace is filled. In filling the “better-priced” orders, the Participant or Access Person is expected to move the market in an orderly manner to the price which will permit the trade to be executed on a marketplace. The prior approval of a Market Regulator is required if a Participant or Access Person wants to undertake a pre-arranged trade or intentional cross at a price that:

- will be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; or
- will be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments.

As a condition for granting approval of the trade, the Market Regulator may require the Participant or Access Person to enter a series of orders on one or more protected marketplaces over a period of time considered reasonable by the Market Regulator in order to move the market price to the price at which the pre-arranged trade or intentional cross will occur. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is 10% or more.

If the price at which the pre-arranged trade or the intentional cross is to be made:

- will **not** be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and
- will **not** be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,

the orders will be considered to be part of a “designated trade” and on entry may be marked as a “bypass order”. As a designated trade, the trade may execute on a marketplace if:

- orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
- subject to any qualification of the “best price” obligation in accordance with Part 1 of Policy 5.2, the Participant enters orders on each protected marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade.

If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an “off-marketplace” trade and to report the trade to a marketplace.

The prior approval of the Market Regulator is not required for the entry of a “designated trade”.

<p>Defined Terms: NI 21-101 section 1.1 – “order” NI 21-101 section 9.1 – “protected market” UMIR section 1.1 – “Access Person”, “best ask price”, “best bid price”, “bypass order”, “client order”, “designated trade”, “disclosed volume”, “Exchange”, “intentional cross”, “Market Maker Obligation”, “Market Regulator”, “marketplace”, “Participant”, “pre-arranged trade”, “principal order”, “Requirements”, “trading day” and “trading increment” UMIR section 1.2(2) – “person” and “trade”</p> <p>Related Provisions: UMIR Part 1 of Policy 5.2 and Part 2 of Policy 5.3</p>

Regulatory History: Effective March 9, 2007, the applicable securities commissions approved an amendment to replace clause (d) at the end of Part 1 of Policy 2.1. Prior to that date, the clause provided:

- (d) when trading a combined board lot/odd lot order for a listed security on an Exchange, entering the odd lot portion of the order prior to executing the board lot portion of the order as such order entry exposes the Registered Trader on the TSE or the Odd Lot Dealer on the CDNX to automatic odd lot trades at unreasonable prices.

Effective May 16, 2008, the applicable securities commissions approved amendments to Policy 2.1 to:

1. replace the opening sentence of the last paragraph of Part 1 of Policy 2.1 which, prior to that date, provided:

Without limiting the generality of the Rule, the following are examples of activities by a Participant that would be considered to be in violation of just and equitable principles of trade:

2. replace Part 2 of Policy 2.1 which, prior to that date, provided:

Part 2 – Moving Markets to Execute a Trade

A Participant or Access Person intending to execute a trade or a cross that will cause, during the course of a single trading day, a change in the price that is above the prevailing offer or below the prevailing bid by an amount greater than \$1 in a security selling below \$20, or greater than \$2 in a security selling at or above \$20, shall obtain the prior approval of the Market Regulator. The Participant or Access Person shall move the market to the price of the cross or the final trade of a one-sided order (the "clean-up price") in an orderly manner over a time period as directed by the Market Regulator. The length of time required to move the market will depend on the circumstances and the particular security involved. As a guideline, 10 to 15 minutes will be required for each movement of \$1 in price. Particular securities may require a longer period of time.

If the Market Regulator is given notice of a proposed trade or cross under this Policy shortly before the close of trading on marketplaces or the principal market for the security, the Market Regulator may disallow the trade if, in the opinion of the Market Regulator, there is not sufficient time to move the market to the clean-up price in an orderly manner before the close.

Market Integrity Notice: The following is the relevant text of Market Integrity Notice 2005-027 issued on July 29, 2005 under the heading "Guidance – "Advantages" to the Purchaser of a Security":

Summary

This Market Integrity Notice provides guidance on the application of the general principle that all advantages attached to a security go to the purchaser of the security on the execution of a trade.

General Principle – All Advantages to the Purchaser

In the ordinary course, all advantages attached to a security pass to the purchaser upon the execution of a trade. For this purpose, an advantage includes:

- a dividend or other distribution, including rights, to which holders of the same class of security as the purchased security become legally entitled after the date of the trade; and
- any security or securities into which the purchased security has been transformed by operation of law after the date of the trade (including as a result of: an amalgamation; an arrangement; a fundamental change; a take-over bid or issuer bid; a corporate reorganization or a similar transaction).

At the time of settlement of the trade, these advantages must be provided to the purchaser. If the intention of the vendor of a security is to withhold on the sale of the security certain of the advantages that may accrue to ownership of that security, the sale must be conducted either:

- in accordance with the special rules established by the Exchange or QTRS on which the security is listed or quoted; or
- as a Special Terms Order where the conditions of the vendor have been disclosed to prospective purchasers and the purchaser has agreed to the conditions.

For example, an issuer may publicly disclose that it is considering the payment of a special dividend or asking security holders to approve a stock split. If the issuer has not established a record date to give effect to these actions, the Exchange or QTRS on which the security is listed or quoted will not have established any special trading rules for the security. In these circumstances, a security holder who enters a Special Terms Order on a marketplace to sell units of this security with a settlement date which is expected to be after the payment of the special dividend or after giving effect to the stock split will be taken to have agreed to "sell" the advantage of the special dividend or stock split to the purchaser. A prospective purchaser can not be taken to have agreed to the vendor withholding the advantage simply because the transaction is expected to settle on a date which is after the proposed target date for the dividend or stock split as announced by the issuer. The vendor's condition on the trade must be specifically disclosed to the prospective purchaser prior to the prospective purchaser agreeing to undertake the trade.

On the other hand, if the issuer has established a record date to give effect to these actions and the Exchange or QTRS on which the security is listed or quoted has established special trading rules for the security such that purchases of the security made on the marketplace on or after the time specified in the special trading rules will not receive the special dividend or the benefit of the stock split, then all trades on that marketplace will be undertaken in accordance with the special trading rules (unless the vendor and the purchaser mutually agree otherwise).

Securities Trading on Multiple Marketplaces

In accordance with Rule 6.1(2) of UMIR, a listed security or a quoted security which trades on any marketplace will be subject to any special rule or direction issued by the Exchange on which the security is listed or by the QTRS on which the security is quoted with respect to:

- clearing and settlement; and
- entitlement of the purchaser to receive a dividend, interest or any other distribution made or right given to holders of that security.

This provision is designed to ensure that orders and trades in a particular security are comparable between each marketplace on which that security trades. If a security is listed on an Exchange and also trades on an ATS, the special trading rules established by the Exchange will apply to trades on the ATS. If a security is inter-listed between two or more Exchanges and QTRSs, Investment Industry Regulatory Organization of Canada ("IIROC") will ensure that the same special trading rules apply on each of the marketplaces.

Remedies for Failure to Provide Advantages on Settlement

Under Rule 10.9 of UMIR, a Market Integrity Official may cancel any trade which, in the opinion of the Market Integrity Official, is unreasonable. If IIROC concludes that the price of a trade is unreasonable given the failure of the vendor to deliver all of the "advantages" of the purchased security that arose after the trade date, IIROC may cancel the trade irrespective of the period of time that may have elapsed between the execution of the trade and the date of settlement.

Rule 2.1 requires both a Participant and an Access Person to transact business openly and fairly when trading on a marketplace. In the opinion of IIROC, if a Participant or Access Person enters into a trade with the intention of not delivering on settlement of the trade all of the advantages that flowed from the security following the execution of the trade that Participant or Access Person is in breach of the requirements of Rule 2.1 to conduct business openly and fairly and would be subject to appropriate disciplinary proceedings by IIROC.

Disciplinary Proceedings: In the Matter of Ronald David Johnson ("Johnson") (September 13, 2002) OOS 2002-003

Facts – During the period April 1999, to May 1999, Johnson, an Approved Person of the Alberta Stock Exchange employed by Canaccord Capital Corporation, participated in the distribution of shares of a private placement. The issuer of the private placement relied on a "close friends and business associates" exemption under the Securities Act (Alberta) to distribute the securities. Johnson placed five clients in the private placement notwithstanding that the clients could not properly rely on the "close friends and business associates" exemption.

Disposition – Johnson knew or should have known that the "close friends and business associates" exemption provided by the securities legislation was not applicable in the case of the five clients with whom he placed the securities. In doing so, he engaged in conduct that was unbecoming and inconsistent with just and equitable principles of trade which was detrimental to the public interest.

Requirements Considered – Alberta Stock Exchange By-laws 8.27 and 16.01A. Comparable UMIR Provision - Rule 2.1

Sanction - \$12,000 fine and costs of \$7,500

Disciplinary Proceedings: In the Matter of Norman Karl Jeske ("Jeske") (December 12, 2002) OOS 2002-010

Facts – During the period of July 1, 1998 to February 1, 1999, Jeske, an investment advisor at Dominick & Dominick Securities Inc., in the course of acting for a company engaged in a normal course issuer bid failed to exercise due diligence in relation to the entry of orders by the company for the purchase of its shares, including from accounts related to or affiliated with the company and its insiders.

Disposition – In failing to exercise due diligence in relation to the entry of orders, Jeske's conduct or method of business was inconsistent with just and equitable principles of trade and detrimental to the interests of public.

Requirements Considered – VSE Policy 21.10, VSE Rules B.4.16 and F.2.08, VSE By-law 5.01(2). Comparable UMIR Provision - Rule 2.1.

Sanction - \$12,500 fine and costs of \$1,000; disgorgement of \$2,392 in gains; suspended from access to the Toronto Stock Exchange for 30 days

Disciplinary Proceedings: In the Matter of Luke Roger Beresford Smith ("Smith") (October 24, 2002) OOS 2002-011

Facts – Between October 21, 1996 and December 21, 1996, Smith, an Investment Advisor with C.M. Oliver & Co. Ltd, effected or participated in trades on behalf of three client accounts who

engaged in a pattern of initiating buy and sell orders for a particular security and at substantially the same time and at substantially the same price between the clients' accounts.

Disposition – The trades amongst the clients' accounts could have created the appearance of an artificial market that could have unduly disturbed the normal market condition, and could have created a misleading appearance of trading activity for the particular security. Smith failed in his role as a gatekeeper and his conduct was inconsistent with just and equitable principles of trade.

Requirements Considered – VSE By-law 5.01(2). Comparable UMIR Provision - Rule 2.1 and Policy 2.1, reference made to "gatekeeper function" (Rule 10.16 effective April 1, 2005)

Sanction - \$7,500 fine and costs of \$2,500

Disciplinary Proceedings: **In the Matter of Garrett Steven Prins ("Prins") (April 1, 2003) OOS 2003-001**

Facts – On several occasions between November 22, 2001 and July 18, 2002, Prins informed a registered trader at another dealer of pending client orders for particular securities. The registered trader used this information to enter beneficial trades in the particular securities.

Disposition – Prins acted contrary to just and equitable principles of trade when he disclosed information of pending client trades to a trader at another dealer.

Requirements Considered – TSX Rule 7-106(1)(b) and Rules 2.1(1) and 4.1(1)(c)

Sanction - \$50,000 fine and costs of \$15,000; Suspended from access to the Toronto Stock Exchange for 3 months

Disciplinary Proceedings: **In the Matter of Douglas Francis Corrigan ("Corrigan") (May 28, 2003) OOS 2003-002**

Facts - Corrigan, an investment advisor at Dominick & Dominick Securities Inc. was assigned the account of Client X, an insider of Tree Brewing Co. Ltd. ("Tree Brewing), a VSE-listed issuer. Between August 1, 1998 and March 31, 1999, Corrigan effected or participated in trades of shares of Tree Brewing on behalf of Client X which involved a pattern of uneconomic and repetitive trading whereby Client X sold and subsequent re-purchase of a comparable number of shares of Tree Brewing for the purpose of deferring payment for the securities traded.

Disposition - Corrigan had an obligation to closely monitor the trading by the client and use due diligence to learn the essential facts each order he accepted. In failing to discharge his due diligence obligations and failing to recognize the "red flags" Duke failed to discharge his "gatekeeper" obligation and engaged in conduct which was inconsistent with just and equitable principles of trade.

Requirements Considered – VSE By-law 5.01(2). Comparable UMIR Provision - Rule 2.1 and Policy 2.1, reference made to "gatekeeper function" (Rule 10.16 effective April 1, 2005)

Sanction - \$10,000 fine and costs of \$3,000; disgorgement of \$5,492 in gains

Disciplinary Proceedings: **In the Matter of Dean Duke ("Duke") (May 28, 2003) OOS 2003-003**

Facts – Duke, a trader at Canaccord Capital Corporation was assigned the account of Client X, an insider of Tree Brewing Co. Ltd. ("Tree Brewing), a VSE-listed issuer. Between August 1, 1998 and March 31, 1999, Duke effected or participated in trades of shares of Tree Brewing on behalf of Client X which involved a pattern of uneconomic and repetitive trading whereby Client X sold and subsequent re-purchase of a comparable number of shares of Tree Brewing for the purpose of deferring payment for the securities traded.

Disposition – Duke had an obligation to closely monitor the trading by Client X and use due diligence to learn the essential facts of each order he accepted. In failing to discharge his due diligence obligations and failing to recognize the "red flags" Duke failed to discharge his "gatekeeper" obligation and engaged in conduct which was inconsistent with just and equitable principles of trade.

Requirements Considered – VSE By-law 5.01(2). Comparable UMIR Provision - Rule 2.1 and Policy 2.1

Sanction - \$20,000 fine and costs of \$3,000; disgorgement of \$3,633.57 in gains

Disciplinary Proceedings: Rule 2.1(1) was considered **In the Matter of Frank Patrick Greco ("Greco") (May 28, 2003) Decision 2003-004.** See Disciplinary Proceedings under Rule 4.1.

Disciplinary Proceedings: **In the Matter of Garnet Glen Ferguson ("Ferguson") (November 6, 2003) OOS 2003-008**

Facts – On September 25, 2000, Ferguson, a registered representative, while in possession of material non-public information, entered into a pre-arranged transaction with a promoter of an issuer of a Canadian Venture Exchange Inc. listed stock to purchase shares of the company on behalf of six of his clients. The trade materially upticked the price of the stock. Subsequently, between October 2-6, 2000, and prior to the material information respecting the issuer being partially disclosed generally, Ferguson sold the shares of the company in "solicited" sales for three of the clients at a significant premium.

Disposition – In purchasing securities on behalf of his clients while in possession of material information, which he knew or ought to have known had not been generally disclosed, and for do so in the context of effecting a new high trade where he ought to have known that the effect of such a purchase would be to create an abnormal market condition for that security, Ferguson’s conduct was inconsistent with just and equitable principles of trade and detrimental to the public interest.

Requirements Considered – CDNX Rules F.2.18(4)(a) and F.2.01(2). Comparable UMIR Provision - Rule 2.1 and Policy 2.1

Sanction - \$15,000 fine and costs of \$2,500; disgorgement of \$1,095 in gains

Disciplinary Proceedings: In the Matter of Brian Alexander Kaufman (“Kaufman”) (November 6, 2003) OOS 2003-009

Facts – Between July 2000 and February 2001, Kaufman, a registered representative, caused a series of trades to be transacted on behalf of his client who was engaged in suspicious trading activities which included perceived undeclared short sales, uneconomical trading and up-ticked purchases in thinly traded securities. Despite knowing these facts, Kaufman appeared to execute sell orders without reasonable knowledge that the apparent long sales were in fact covered by freely tradeable shares.

Disposition – The failed settlements, uneconomic trading and market dominance in a thinly traded security by the client ought to have put Kaufman on a heightened state of alert for possible market abuses. Kaufman should have not continued to execute sales for his clients without ensuring that the accounts were long or without credible evidence that his clients held freely tradeable shares in other accounts to cover those sales. In failing to identify these red flags Kaufman failed to act as a “gatekeeper” and engaged in conduct which was inconsistent with just and equitable principles of trade and detrimental to the public interest.

Requirements Considered – CDNX Rules F.1.01(1), F.2.01(2) and E.1.01. Comparable UMIR Provision - Rule 2.1 and Policy 2.1

Sanction - \$10,000 fine and costs of \$4,000, disgorgement of \$1,363.82 in gains; strict supervision for 6 months; successful completion of the Conduct and Practices Handbook examination

Disciplinary Proceedings: In the Matter of Linda Grace Malinowski (“Malinowski”) (November 26, 2003) OOS 2003-011

Facts – In her capacity as sales assistant, Malinowski was responsible for entering orders for one stock on behalf of clients and at the direction of the investment advisor for whom she worked. Between February 1 and June 9 of 2000 she was responsible for entering unsolicited buy orders on behalf of clients that were alleged to be engaged in trading which created a false and misleading appearance of trading activity in the stock and in certain instances, created artificial prices. Malinowski raised concerns about the trading of the clients, but was told by her IA that she shouldn’t be concerned. She did not escalate the matter further and continued to take orders from the clients.

Disposition - Persons entering orders on behalf of clients have a gatekeeper responsibility to guard against entering orders for clients who may appear to be engaging in manipulative and deceptive trading. Malinowski failed in her duty as gatekeeper and hence constituted conduct contrary to just and equitable principles of trade.

Requirements Considered – Section 17.09(1)(b) of the General By-law of the TSX and Rule 7-106(1)(b) of the Rules of the TSX. Comparable UMIR Provision – Rule 2.1(1)

Sanction - \$10,000 fine; successful completion of the Conduct and Practices Handbook examination

Disciplinary Proceedings: In the Matter of David Avery Little (“Little”) (December 22, 2003) OOS 2003-014

Facts – Between July 4 and July 12, 2002, Little, a registered representative at Yorkton Securities Inc. (“Yorkton”), instructed traders at Yorkton to jitney sell orders for EQT shares held by Yorkton in an Inventory Account. Shortly after the execution of each jitney sell order, Little caused an order to be entered on behalf of a client, who was also an insider of EQT (“Related Client”), to purchase small quantities of EQT shares at prices in excess of the price at which Little had sold the shares. Five of these Related Client orders and trades entered and executed during the relevant period produced up ticks.

Disposition – When a registrant acts for an insider of an issuer in whose securities trades are made, the registrant must exercise a higher level of due diligence to learn the essential facts relative to the orders. In failing to take greater care when accepting and executing unsolicited orders for a Related Client Little failed to act as a “gatekeeper” and failed to act in accordance with just and equitable principles of trade.

Requirements Considered – Rules 2.1(1) and 10.4(1)(a)

Sanction - \$12,500 fine and costs of \$2,500

Disciplinary Proceedings:	<u>In the Matter of Kai Tolpinrud (“Tolpinrud”) (January 16, 2004) OOS 2004-001</u>
	<p><i>Facts – Canaccord Capital Corporation employed Tolpinrud to trade for institutions, quasi-institutional clients, and corporate clients and at the same time permitted him to trade his personal account and inventory accounts. In reliance on this arrangement, between March 1, 2001 and March 11, 2002 Tolpinrud took advantage of client orders and information when acting as agent for the purchase and sale of securities to commit numerous infractions and contraventions including frontrunning, trading opposite his clients, improper client-principal trading, failing to give client orders priority when he entered client and non-client orders and other infractions.</i></p> <p><i>Disposition – Tolpinrud engaged in trading practices which contravened the requirements of the CDNX and the TSE and were inconsistent with just and equitable principles of trade and detrimental to the interests of the public.</i></p> <p><i>Requirements Considered – TSE Rule 4-405(1), CDNX Rules C.2.17, F.2.01, F.2.03, F.2.04, F.2.05, F.2.10(2)(f), F.2.18 (8), G.3.01(6). Comparable UMIR Provisions – Rule 2.1, 2.2, 4.1, 5.3</i></p> <p><i>Sanction - \$110,000 fine and costs of \$21,500; disgorgement of \$29,925 gain; permanent withdrawal of access to the TSX-VN, TSX and all other marketplaces regulated by RS</i></p>
Disciplinary Proceedings:	<u>In the Matter of Gerald Douglas Phillips (“Phillips”) (February 26, 2004) SA 2004-002</u>
	<p><i>Facts – On June 26, 2003, Phillips, a registered representative entered a client market sell order at a \$0.70 limit in the exchange book even though there were pending buy orders in the TSX’s special terms book against which the client’s order could have traded at a better price.</i></p> <p><i>Disposition – In failing to make an effort to fill the client’s market order at the better price offered in the special terms book, Phillips caused his dealer to breach its best price obligation to the client and acted in a manner which was inconsistent with just and equitable principles of trade.</i></p> <p><i>Requirements Considered – Rules 2.1(1)(a), 5.2 and 10.4(1)(a)</i></p> <p><i>Sanction - \$10,000 fine and costs of \$3,500</i></p>
Disciplinary Proceedings:	<u>In the Matter of Louis Anthony De Jong (“DeJong”) and Dwayne Barrington Nash (“Nash”) (July 29, 2004) Decision 2004-004</u>
	<p><i>Facts – De Jong and Nash were both employees of Credit Suisse First Boston Canada Inc. (“CSFB”). Client X advised DeJong that he was interested in buying a large block of BCE shares which CSFB recently acquired in an unrelated transaction. In order to deliver the shares to client X at the agreed upon price, DeJong and Nash made improper use of a CSFB error account to document a loss to CSFB and sold the shares to client X in an improper off-marketplace transaction. RS alleged that Nash and DeJong violated Rule 2.1(1), for which they were liable under Rule 10.4(1)(a).</i></p> <p><i>Held - While Rule 10.4(1)(a) extends liability to employees for breaches of Rule 2.1, to the extent that the acts of De Jong and Nash fell factually within Rule 6.4 of UMIR, RS lacked the jurisdiction and authority to extend liability to DeJong and Nash under Rule 10.4(1)(a).</i></p> <p><i>Requirements Considered – Rules 2.1(1), 6.4 and 10.4(1)(a)</i></p> <p><i>Disposition – charges against DeJong and Nash dismissed</i></p>
Disciplinary Proceedings:	<u>In the Matter of CIBC World Markets Inc., (“CIBC”) Scott Mortimer and Carl Irizawa (December 21, 2004) SA 2004-008</u>
	<p><i>Facts – From March to December, 2002, a group of related clients with accounts at CIBC engaged in suspicious trading in stocks and warrants listed on the TSX and the TSX Venture Exchange. The trading was carried out through numerous accounts held by the client group at CIBC, its affiliates and an unrelated investment dealer, and involved the alleged manipulation of illiquid derivative securities through a series of set-up trades entered through a Direct Market Access account at CIBC and another dealer and crosses between accounts held by the client group at CIBC.</i></p> <p><i>Disposition – Both the investment advisor and his sales assistant failed to fulfill their respective gatekeeper responsibilities by failing to recognize the “red flags” upon entry of the crosses and upon review of the crosses the day after they were conducted. The “red flags” ought to have caused them to further scrutinize the clients’ trading and escalate their issues of concern to supervisory personnel.</i></p> <p><i>A Participant is responsible for ensuring that it adequately supervises all trading, including Direct Market Access trading. The policies and procedures employed by CIBC were not adequate in that they did not focus on the potentially manipulative or deceptive nature of the client trading and as a result CIBC failed to recognize the “red flags” posed by the nature of the related clients trading.</i></p>

Requirements Considered – Sections 2-401(5) and 7-106(1)(b) of the Toronto Stock Exchange Rules and Rule 2.1(1), 7.1(1) and Policy 7.1

Sanction -

CIBC - \$700,000 fine and costs of \$92,500; undertakings involving strict supervision and training of staff

Scott Mortimer - \$50,000 fine and costs of \$15,000

Carl Irizawa - \$20,000 fine and costs of \$7,500

Disciplinary Proceedings: In the Matter of Glen Grossman (“Grossman”) (July 18, 2005) SA 2005-004

Facts – In February of 2005, Grossman, a trader employed with UBS Securities Canada Inc. (“UBS Canada”) tried to conceal trading improprieties conducted by another trader at UBS Canada’s US affiliate by altering an existing Canadian client trade ticket, creating a false and misleading “chat” communication and failing to be forthcoming regarding these circumstances during UBS Canada’s investigation of the trading irregularities.

Disposition – Grossman’s alteration of a trade ticket and failure to act in a forthcoming manner with UBS Canada’s compliance department’s investigation of the trading irregularities constituted conduct inconsistent with just and equitable principles of trade and resulted in UBS Canada violating certain audit trail requirements under UMIR.

Requirements Considered – Rules 2.1(1)(a), 10.3(4), 10.4(1)(a) and 10.11(1)

Sanction - \$75,000 fine and costs of \$25,000; suspension from RS regulated marketplaces for 3 months; 6 months strict supervision

Disciplinary Proceedings In the Matter of Ricardo Mashregi (“Mashregi”) (October 14, 2005) DN 2005-007

Facts – Between October 2003 and February 2005, Mashregi, a registered trader at Dundee Securities Corporation engaged in a practice which involved the entry of anonymous non-client overlapping orders (buy side order was higher than or equal to the price of the sell order) on both sides of the market prior to 9:28 a.m. and subsequently canceling or changing one or both of the orders between 9:28 a.m. and the opening of the market. By entering orders in this manner, Mashregi positioned himself for a guaranteed fill in the opening session and avoided the application of the TSX trading mechanism that allocates which orders will receive a complete fill at the opening.

Disposition – The positioning of anonymous non-client overlapping orders in order to guarantee a fill in the opening session and avoid the application of the TSX trading mechanism that allocates which orders will receive a complete fill at the opening constituted conduct which was contrary to just and equitable principles of trade.

Requirements Considered – Rule 2.1

Sanction - \$50,000 fine and costs of \$10,000

Disciplinary proceedings: In the Matter of Ian Scott Douglas (“Douglas”) (December 14, 2005) DN 2005-009

Facts – Between July 2003 and December 2003, Douglas, a junior trader at Dundee Securities Corporation engaged in a practice which involved the entry of anonymous non-client overlapping orders (buy side order was higher than or equal to the price of the sell order) on both sides of the market prior to 9:28 a.m. and subsequently canceling or changing one or both of the orders between 9:28 a.m. and the opening of the market. By entering orders in this manner, Douglas positioned himself for a guaranteed fill in the opening session and avoided the application of the TSX trading mechanism that allocates which orders will receive a complete fill at the opening.

Disposition – The positioning of anonymous non-client overlapping orders in order to guarantee a fill in the opening session and avoid the application of the TSX trading mechanism that allocates which orders will receive a complete fill at the opening constituted conduct which was contrary to just and equitable principles of trade.

Requirements Considered – Rule 2.1

Sanction – \$30,000 fine and costs of \$15,000

Disciplinary Proceedings: In the Matter of Dale Alfred Michaud (“Michaud”) (January 11, 2006) DN 2006-001

Facts – On October 10, 2003, Michaud, a trader at Canaccord Capital Corporation received an order to buy 1 million shares of a TSXV issuer at \$0.15 on behalf of a number of client and non-client accounts. The buy order was to be sent to a Jitney Dealer to be executed as an arranged cross with accounts at the Jitney Dealer. Shortly after placing the buy order with the Jitney Dealer, and prior to the execution of the arranged cross, Michaud entered a non-client day order to buy 10,000 shares of the issuer at \$0.16 at a time when the prevailing bid price for the issuer was \$0.18.

Disposition – By entering his buy order at a price which was lower than the prevailing bid price at a time when he knew or ought to have known that the order would have to be “taken out” before the Jitney Dealer could execute the cross, Michaud acted contrary to just and equitable principles of trade.

Requirements Considered – Rule 2.1

Sanction - \$15,000 fine and costs of \$10,000; disgorgement of \$210 gain

Disciplinary Proceedings: In the Matter of Margaret Alice Coleman (“Coleman”) and Judy Gail Koochin (“Koochin”) (April 5, 2006) DN 2006-002

Facts – Between June 24, 2004 and September 30, 2004, Coleman, a registered representative and Trading Officer at a CIBC World Markets Inc. (“CIBC WM”) branch and Koochin, a registered futures contract representative at the same branch, entered a series of buy orders for a TSXV issuer on behalf of a client who had an interest in maintaining the market price of the issuer. During the relevant period, the client submitted 27 orders for the purchase of the issuer’s shares in a manner that suggested that the client was maintaining the market price within a pre-determined range. In all but two instances (where orders were entered by a trading assistant) Koochin or Coleman submitted the orders to the TSXV by means of an electronic connection to the computerized order management and routing system of CIBC WM.

Disposition – In failing to recognize the “red flags” associated with the pattern of orders submitted by the client and for entering orders they knew or ought to have known reasonably could have been expected to create an artificial price in the shares, Koochin and Coleman’s conduct was contrary to just and equitable principles of trade.

Requirements Considered – Rule 2.1

Sanction –

Coleman: \$150,000 fine and costs of \$13,125; 6 months strict supervision

Koochin: \$75,000 fine and costs of \$6,562.50; 6 months strict supervision

Proposed Amendments:

For information on the current proposed amendment to Part 1 of Policy 2.1 of UMIR, refer to Market Integrity Notice 2007-017 – Request for Comments - Provisions Respecting Short Sales and Failed Trades (September 7, 2007) which includes the following proposed amendment:

- 2. Part 1 of Policy 2.1 is amended by deleting the second paragraph and substituting the following:*

Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is a failure to conduct business openly and fairly or in accordance with just and equitable principles of trade. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who “uses” another person to make a trade off of a marketplace (in circumstances where an “off-market exemption” is not available) to be violating the requirement to conduct business openly and fairly or in accordance with just and equitable principles of trade. Similarly, the Market Regulator considers that a person who enters into a transaction for the purpose of rectifying a failure in connection with a failed trade prior to the time that a report must be filed in accordance with Rule 7.11 and such person knows or ought reasonably to know that such transaction will result in a failed trade to be engaging in “re-aging” for the purpose of avoiding reporting obligations contrary to the requirement to conduct business openly and fairly or in accordance with just and equitable principles of trade.