

## **6.2 Designations and Identifiers**

- (1) Each order entered on a marketplace shall contain:
  - (a) the identifier of:
    - (i) the Participant or Access Person entering the order as assigned to the Participant or Access Person in accordance with Rule 10.15,
    - (ii) the marketplace on which the order is entered as assigned to the marketplace in accordance with Rule 10.15, and
    - (iii) the Participant for or on behalf of whom the order is entered, if the order is a jitney order; and
  - (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:
    - (i) a Call Market Order,
    - (ii) an Opening Order,
    - (iii) a Market-on-Close Order,
    - (iv) a Special Terms Order,
    - (v) a Volume-Weighted Average Price Order,
    - (v.1) a Basis Order,
    - (v.2) a Closing Price Order,
    - (v.3) a bypass order,
    - (vi) part of a Program Trade,
    - (vii) part of an intentional cross or internal cross,
    - (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1,
    - (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1,
    - (x) a non-client order,
    - (xi) a principal order,
    - (xii) a jitney order,
    - (xiii) for the account of a derivatives market maker,
    - (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order,

- (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or
  - (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.
- (2) If the order entered on a marketplace is a Special Terms Order, the order shall contain, in addition to all designations and identifiers required by subsection (1), information in such form as is acceptable to the Market Regulator of the marketplace on which the order is entered respecting:
- (a) any condition on the execution of the order; and
  - (b) the settlement date.
- (3) If following the entry of an order on a marketplace for the sale of security that has not been designated as a short sale such order would become a short sale on execution, the order shall be modified to include the short sale designation required by subsection (1).
- (4) Each order entered on a marketplace including all designations and identifiers required by subsection (1) shall be disclosed to each Market Regulator.
- (5) The marketplace on which the order is entered shall determine if the identifier of the Participant or the marketplace shall be displayed in a consolidated market display.
- (6) Unless otherwise permitted or directed by the Market Regulator, a marketplace shall:
- (a) disclose for display in a consolidated market display any designation attached to an order that is required by subclause (i) to (vii) inclusive of clause (1)(b); and
  - (b) not disclose for display in a consolidated market display any designation attached to an order that is required by subclause (viii) to (xvi) inclusive of clause (1)(b).

**Defined Terms:** N1 21-101 section 1.1 – “order”

UMIR section 1.1 – “Access Person”, “Basis Order”, “bypass order”, “client order”, “Call Market Order”, “Closing Price Order”, “consolidated market display”, “derivatives market maker”, “insider”, “intentional cross”, “internal cross”, “jitney order”, “Market Maker Obligations”, “Market-on-Close Order”, “Market Regulator”, “marketplace”, “non-client order”, “Opening Order”, “Participant”, “principal order”, “Program Trade”, “short sale”, “significant shareholder”, “Special Terms Order” and “Volume-Weighted Average Price Order”

UMIR section 1.2 – “person” and “trade”

**Related Provisions:** UMIR section 3.1 and 10.15

**Regulatory History:** Effective April 8, 2005, the applicable securities commissions approved an amendment to clause (b) of subsection (1) of Rule 6.2 to add subclause (v.1).

Effective March 9, 2007, the applicable securities commissions approved an amendment to clause (b) of subsection (1) of Rule 6.2 to add subclause (v.2).

Effective May 16, 2006, the applicable securities commissions approved an amendment to clause (b) of subsection (1) of Rule 6.2 to add subclause (v.3).

**Market Integrity Notice:** The following is the relevant portion of the text of Market Integrity Notice 2002-012 issued on July 9, 2002 under the heading “**Regulation ID Order Markers and Order Inhibition during Regulatory Halts & Suspensions**”:

#### **Background**

On April 1, 2002, the Universal Market Integrity Rules (“UMIR”) became effective and applied to trading on The Toronto Stock Exchange (“TSX”) and the Canadian Venture Exchange, now the TSX Venture Exchange (“TSXV”). As set out in Market Integrity Notice 2002-003, implementation of certain provisions of UMIR was deferred to permit systems development by the exchanges, information processors, data vendors and dealers. In particular, implementation was deferred until June 3, 2002 or such later date as published by IIROC for the following provisions:

1. the requirement under Rule 6.2 that an order entered on a marketplace contain a designation if the order is entered for the account of a person who is an insider or a significant shareholder of the issuer of the security which is the subject of the order; and
2. with respect to orders entered on TSXV, the requirement under Rule 6.2 that an order contain a designation if the order is entered for a principal account or the account of a derivatives market maker.

#### **Regulation ID Order Marker**

Effective **July 26, 2002**, all orders entered on the TSX or TSXV must contain the “Regulation ID Order Marker”:

- “IA” if the order has been entered for the account of a person who is an insider of the issuer of the security that is the subject of the order; and
- “SS” if the order has been entered for the account of a person who is a significant shareholder of the issuer of the security that is the subject of the order.

For the purposes of the Regulation ID Order Marker, a person will be an insider of an issuer if the securities legislation of the jurisdiction in which the person resides or the securities legislation governing the marketplace on which the order is entered considers such person to be an insider of an issuer. A person will be a significant shareholder of an issuer if the person beneficially owns, directly or indirectly, individually or in combination with other persons, more than 20% of the voting securities of the issuer. If a person is both an “insider” and a “significant shareholder”, the significant shareholder designation should be used.

In completing the Regulation ID Order Marker field, a Participant may rely on the “know your client” information which the Participant has collected from the account holder provided such information is “current” in accordance with the periodic review and update of client information that has been conducted by the Participant. Similarly, when acting for an institutional client, a Participant will not be expected to inquire prior to accepting or executing an order whether the institutional client has become the holder of more than 10% of the securities of a particular issuer. However, if the Participant has actual knowledge that a client, including an institutional client, is an insider or significant shareholder of an issuer the Participant will be under an obligation to ensure the proper marking of any order by that client in securities of that issuer.

#### **Additional Markers/Tag on TSXV Orders**

Effective **July 26, 2002**, all orders entered on TSXV must contain the designation:

- “IN” if the order is for a principal inventory account;
- “OT” if the order is for the account of a derivatives market maker; and

Also effective July 26, 2002, an order that has been entered on TSXV as part of cross that is an internal cross should contain the optional tag that identifies the cross as an internal cross.

The additional designations and tag are the same as presently used for the same types of orders entered on the TSX. An "internal cross" is defined as an intentional cross between two client accounts of a Participant which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the clients and includes a trade where the Participant is acting as a portfolio manager in authorizing the trade between the two client accounts.

**Market Integrity Notice:** The following is the text of Market Integrity Notice 2003-007 issued on March 27, 2003 under the heading "Order Marking":

#### **Rule Requirements**

To assist Participants in complying with the requirements of the Universal Market Integrity Rules ("UMIR"), Market Integrity Notice 2003-0002 dated January 13, 2003 prohibiting double printing, and National Instrument 23-101, the Investment Industry Regulatory Organization of Canada ("IIROC") wishes to confirm the requirements for order marking in particular circumstances and the implications of these requirements for Participants.

Part 11 of National Instrument 23-101 requires a Participant to record specific information regarding each order received or originated from a client (including the identifier assigned to the order and whether the order is a client, non-client or principal order) in addition to recording additional information immediately following the execution of that order. Consequently, a Participant must keep records of each individual trade and such records must be retained for a period of seven years (and during the first two years, in a readily accessible location) and be available upon request by IIROC or other regulatory authorities. Furthermore, after December 31, 2003, National Instrument 23-101 will require the information on each order to be transmitted in electronic form to IIROC or another regulation services provider at the time required by the other regulation services provider.

#### **General Order Marking Principles**

In addition to the audit trail requirements in Part 11 of National Instrument 23-101, Rule 6.2 of UMIR requires orders entered on a marketplace to contain the appropriate designations. In particular, client, non-client and principal orders must be properly designated when entered on a marketplace. Rule 10.11 of UMIR provides that a Participant must supplement the order record required by Part 11 of National Instrument 23-101 by adding certain additional information, including all order designations required by Rule 6.2

In other words, orders entered on a marketplace on behalf of a client must be designated or marked as "client" orders. A client order is an order for the purchase or sale of a security for the account of a client of a Participant or a client of an affiliated entity of a Participant. Should a Participant have a firm order from a client, that order must be entered on a marketplace as "client" and not as inventory or "principal". As indicated in Market Integrity Notice 2003-0002, a Participant should not interpose itself between two orders, effecting two trades when one would have sufficed.

Where a Participant receives an indication of interest from a client or an order with a contingency that has not occurred, the client is under no obligation to purchase the security. In these instances, the Participant assumes liability for any trades done based upon that expression of interest or prior to the fulfillment of the contingency attached to the contingent order and therefore such trades should be marked "principal". In making such trades, a Participant must be cognizant of its obligation not to "frontrun" a client's order that has not been entered for trading.

#### **Order Marking Examples**

The following examples illustrate IIROC's position on order marking under specific circumstances. **It is possible that IIROC's position on order marking differs from business practices adopted by certain Participants, so please review the following scenarios carefully.**

##### **Scenario 1 – Marking of Orders from Foreign Dealers**

A Participant receives an order from a U.S. Securities Dealer that may or may not be an affiliate. The order itself is on behalf of a client of the U.S. dealer.

If the Participant executes the trade as an agent on a marketplace the order should be designated "client". This holds true even when such trades are processed through an account for the purpose of averaging prices or funds conversion.

If, however, the Participant executes an off-marketplace principal take-on trade under clause (e) of UMIR 6.4 (Trade Outside of Canada), all principal unwinding trades on a marketplace in Canada shall be designated as "principal".

What is important in this scenario is the order in which the events occur. If the U.S. Securities Dealer is given an execution prior to entering orders on a marketplace, then the Participant is executing an off-marketplace principal transaction. The Participant has assumed the risk of the market moving prior to unwinding the position and all unwinding trades must be marked "principal". On the other hand, if the U.S. Securities Dealer is not given an immediate execution and instead the order is traded on a marketplace with fills reported after execution, this is an agency trade and must be marked "client".

Please note that foreign affiliates that are registered as securities dealers in a foreign jurisdiction are excluded from the definition of "principal account" in UMIR unless the Participant or a related entity that is a securities dealer in Canada holds an interest in the account. Unless the order is originating from a principal account, all orders from a foreign securities dealer are to be handled as "client" orders. This treatment is consistent with the treatment of Canadian banks that are affiliated with a Participant. These orders should also not be treated as jitney orders (as the Participant is not acting on behalf of another Participant).

#### **Scenario 2 – Offsetting Client Order**

A trader receives an offsetting client order simultaneously as he takes on a block of stock in that security (for all or part of the block).

If the offsetting order is received by the trader after execution of the first client order, the second order must be crossed to the client on a marketplace. If an offsetting order is received while the Participant has a non-client or principal order on a marketplace and wants to give up any subsequent fill to the client, the Participant should “cfo” the account type of the order to “client” in order to ensure an accurate audit trail. Later, if the client order is completed, any remaining balance on the order should be cfo’d to either non-client or principal. (For example, on the Toronto Stock Exchange and the TSX Venture Exchange cfo’ing the account type will not cause the order to lose priority.)

If a Participant with a non-client or principal order on a marketplace receives a client order **after** execution or partial execution of the non-client or principal order and the Participant wishes to give up that execution to the client, the position must be crossed on a marketplace to the client.

#### **Scenario 3 – Several Transactions Over-the-Day on Behalf of a Client**

A trader is purchasing small amounts of a security over-the-day on behalf of a committed, time-stamped client order. The client, however, has instructed the trader that the smaller trades be reprinted on a marketplace in one large block rather than several smaller trades.

It is inappropriate to purchase stock on behalf of a client over time and then reprint the entire block to the client in a single transaction. The client must be informed that this second trade would not represent a change in beneficial ownership since the client was the beneficial owner of the stock from the moment each trade was executed. Consequently, the trade should not be printed on a marketplace.

#### **Scenario 4 – Expressions of Interest**

A client has expressed an interest in buying a particular security to a Participant but has not given a firm order. The Participant decides to go into the marketplace and buy the security in anticipation of putting together a trade with the client.

Expressions of interest by a client are not considered “orders”. Consequently, should a Participant enter the market as a result of an expression of interest the Participant is acting as principal and trades should be marked as such. If the client later agrees to purchase the stock the Participant must cross the stock to the client within the context of the market at that time.

In addition, if the client is receiving a fill on a net basis, pursuant to provision 7.5 of UMIR, the price recorded on the marketplace may not be lower than the net cost or higher than the net proceeds by more than the usual agency commission that would be charged by the Participant to that client for an order of the same size.

#### **Scenario 5 – Contingent Orders**

A trader is purchasing a security as a result of a client order that is contingent upon an event happening (e.g. if you sell all of 100,000 ABC stock, purchase 100,000 shares of XYZ stock on a \$2 spread).

Where the Participant assumes liability for a trade (should the contingency not occur, the Participant would end up owning the security), the order should be marked “principal”. In the event of an “all or none” order where the Participant has decided to strip the terms of the order and enter it into the regular book, the Participant assumes the liability for the order and it should be marked as principal. Unwinding this position to the client must then be done on a marketplace as it constitutes a change in beneficial ownership.

#### **Scenario 6 – Jitney Trades**

If a Participant with a client order sends a jitney order to another Participant for execution, can the originating Participant that gave the order then cross the stock again to its client in a principal-client cross?

Jitney trades executed by the executing Participant are to be marked as client if the trade is on behalf of the originating Participant’s client. If the trade is a principal or non-client trade for the originating Participant, it should then be marked as such. The originating Participant, upon receipt of the security to fill the client order, would journal the fill to the client.

As a general rule, a jitney order must contain all order markings that would have been attached to the order as if the order had been entered on a marketplace directly by the originating Participant. For example, a jitney order must indicate contain the “insider” or “significant shareholder” marker if the order was originally given by an insider or significant shareholder of the issuer of the security which is being bought or sold.

#### **Scenario 7 – Flattening a Liability Position**

A Participant takes on a position from a client in a client-principal trade and unwinds the position in the marketplace at the quote.

What is important in this scenario is the sequence of events. If the client-principal cross occurs first and the Participant then unwinds the position, the unwinding transaction should be marked principal. However, if the Participant takes out the quote in the book first, the order should be marked client and the balance, if there is one, should be marked as a client-principal trade.

### **Scenario 8 – Re-crossing Trades Executed in the U.S.**

A Participant executes trade on behalf of a client through a U.S. securities dealer on a U.S. marketplace. Can this trade be re-crossed on a Canadian marketplace?

If a Participant executes a client order on a particular marketplace in accordance with client instructions, such trades should not be reprinted on a Canadian marketplace. However, if a Participant executes a trade on a U.S. marketplace in order to fill a client order but the client has specifically requested the trade be done on a Canadian marketplace, the Participant should purchase as principal in the foreign market and re-cross the trade in Canada as a principal-client trade. In these circumstances, the Participant must retain the client's instructions with the record of both trades.

**Market Integrity Notice:** The following is the text of Market Integrity Notice 2005-003 issued on March 4, 2005 under the heading "**Marking Jitney Orders**":

#### **Identification of Originating Dealer**

The Universal Market Integrity Rules ("UMIR") define a "jitney order" as an order entered on a marketplace by a Participant (the "Executing Dealer") acting for or on behalf of another Participant (the "Originating Dealer"). Rule 6.2(1)(a)(iii) of UMIR requires each jitney order entered on a marketplace to include the identifier of the Originating Dealer. The trading systems of the Toronto Stock Exchange and the TSX Venture Exchange no longer accept jitney orders unless the appropriate trading number to identify the Originating Dealer is included on the order. The trading system of the Canadian Trading and Quotation System Inc. ("CNQ") presently provides for the inclusion of the identifier of the Originating Dealer. While the identifier of the Originating Dealer of an order is not visible to the public, the identifier is disclosed to the marketplace on which the order is entered and to its regulation services provider.

The Executing Dealer is responsible for marking an order as a "jitney order" and for properly identifying the Originating Dealer. The Executing Dealer must appropriately mark and identify the Originating Dealer for each jitney order, including when:

- the Executing Dealer acts exclusively on behalf of the Originating Dealer in an introducing/carrying broker relationship; or
- the Originating Dealer is not a member, user or subscriber of the marketplace on which the Executing Dealer enters the order.

However, an Executing Dealer should not identify an order as a jitney order if the Originating Dealer has not been assigned a unique identifier in accordance with Rule 10.15 of UMIR. Presently, a dealer that is a member of the Montréal Exchange and does not have access to any marketplace for which the Investment Industry Regulatory Organization of Canada ("IIROC") acts as the regulation services provider has not been assigned a unique identifier in accordance with UMIR and, as such, an order from that dealer should not be identified as a "jitney order". In these limited circumstances, an order from a dealer that has not been assigned a unique identifier should be designated as a "client order".

#### **Regulatory Markers on Jitney Orders**

Both the Executing Dealer and the Originating Dealer have an obligation to ensure that all applicable designations and identifiers required under Rule 6.2 of UMIR are included on the entry of a jitney order. The Originating Dealer has the same obligations regarding client knowledge that the Originating Dealer would have if the Originating Dealer entered the order onto the marketplace. The Originating Dealer must provide the Executing Dealer with all information necessary to ensure that all required designations and identifiers are included with the order at the time of the entry of the order on a marketplace.

The Executing Dealer has an obligation to make reasonable inquiries of the Originating Dealer regarding appropriate designations and identifiers. However, the Executing Dealer will be entitled to rely on the information provided by the Originating Dealer and the Executing Dealer will not be expected to make independent inquiries.

#### **Crossing Jitney Orders**

The "jitney order" and "cross" markers may only be used together when a single Originating Dealer jitneys both the buy and the sell orders to one Executing Dealer. In these circumstances, the Executing Dealer enters the trade with appropriate markers designating the trade as both a jitney order and an intentional or internal cross.

If an Originating Dealer jitneys one side of a trade to an Executing Dealer that executes the jitney order with an order that has not been provided by the Originating Dealer, the trade should not be considered to be a cross and the cross designation should not be used. The Executing Dealer should enter both the buy and sell order separately onto a marketplace with only the order from the Originating Dealer marked as a "jitney order".

If the Executing Dealer wishes to avoid interference from orders that may have priority at the execution price of the trade, the trade must be executed between the posted bid and offer. If the Executing Dealer is concerned that the market price may "trade away" before the second order can be entered, there is an exception to the requirement that the orders be entered separately. IIROC will not object to the use of the "cross" designation to enter the orders in a single step, provided:

- the transaction is designated as a "jitney order" and a "cross" upon entry to a marketplace;
- the trade occurs between the posted bid and ask prices on the marketplace; and
- a representative of the Participant contacts IIROC (Market Surveillance Eastern Region 416-646-7220 or Market Surveillance Western Region 604-643-6505) at the time of the trade or as soon as practicable after the trade to advise of the transaction.

IIROC will review the trade and, if all requirements have been met, IIROC will make arrangements with the applicable marketplace to amend the trade record to remove the "jitney order" marker from one side of the trade.

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2006-014 issued on June 16, 2006 under the heading "Guidance – "Insider" and "Significant Shareholder" Markers".

#### **UMIR Requirements and Applicable Securities Legislation**

Rule 6.2 of UMIR requires that each order for the purchase or sale of a particular security entered on a marketplace for the account of an insider or significant shareholder of the issuer of that security shall contain a designation acceptable to the Investment Industry Regulatory Organization of Canada ("IIROC"). The order designations enable IIROC to monitor the trading activity on Canadian marketplaces of insiders and significant shareholders. Such monitoring allows IIROC to assist securities regulatory authorities by providing initial detection of possible violations of securities legislation principally related to insider trading.

#### **Definition of "Insider"**

Rule 1.1 of UMIR defines the term "insider" as a person who is an insider of an issuer for the purpose of applicable securities legislation. Applicable securities legislation generally defines an insider of an issuer as including a director, senior officer or a person who owns, controls or directs 10 per cent or more of the voting rights in an issuer's securities. For further clarification, reference must be made to the securities legislation of every jurisdiction in which the issuer is a reporting issuer or equivalent. Reference should also be made to CSA Staff Notice 55-308 – Questions on Insider Reporting.

#### **Definition of "Significant Shareholder"**

Rule 1.1 of UMIR defines the term "significant shareholder" as a person who holds separately, or in combination with any other persons, more than 20 per cent of the outstanding voting securities of an issuer. Generally speaking, under applicable securities legislation, a person who owns, controls or directs 10 per cent or more of the voting rights in an issuer's securities is an "insider". As such, a "significant shareholder" under UMIR would typically meet that definition of "insider".

#### **Questions and Answers**

The following is a list of the most frequently asked questions regarding the UMIR "insider" and "significant shareholder" order marking obligations and the response of IIROC to each:

**1. Must an order be marked "insider" if it is for the account of a person who is exempt under the relevant securities legislation from insider reporting obligations?**

If an insider has an insider reporting obligation for a particular transaction under applicable securities legislation, the order for that transaction must be marked as "insider" for the purposes of UMIR. If an insider is exempt from insider reporting obligations under the applicable securities legislation **in respect of the particular transaction**, the order does not need to be marked as "insider" for the purposes of UMIR. To establish whether a **particular transaction** is exempt from insider reporting obligations, reference must be made to the applicable securities legislation and requirements, including, but not limited to:

- National Instrument 55-101 – Insider Reporting Exemptions which sets out exemptions for certain directors and senior officers from certain insider reporting obligations and sets out the exemptions and reporting obligations in the cases of acquisitions under automatic securities purchase plans (for example, employee stock purchase plans), dividend reinvestment plans and in the case of certain issuer events such as stock splits; and
- National Instrument 62-103 – The Early Warning System and Related take-Over Bid and Insider Reporting Issues ("NI 62-103") which outlines exemptions for certain "eligible institutional investors" and others from certain insider reporting obligations.

**2. Must an order be marked "insider" or "significant shareholder" if it is for the account of a person who is exempt under the relevant securities legislation from aggregating its holdings for the purposes of "early warning requirements" or "control block distributions"?**

If a person who would otherwise be a "significant shareholder" or "insider" is granted relief from aggregating the securities owned or controlled through, for example, separate business units for the purposes of the definition of "control block distribution" or "early warning requirements" under the applicable securities legislation, the order may not need to be marked as "significant shareholder" or "insider" for the purposes of UMIR if the person is also exempt from insider reporting requirements. To establish whether a person is granted relief from aggregation, reference should be made to Part 5 of NI 62-103. To determine if a particular transaction is exempt from insider reporting requirements, reference must be made to the applicable securities legislation and requirements including Part 9 of NI 62-103.

**3. What information may a Participant rely on when establishing whether an order must be marked "insider" or "significant shareholder"?**

As set out in Market Integrity Notice 2002-012 - Regulation ID Order Markers (July 9, 2002), a Participant may rely on the "know your client" information which the Participant has collected from the account holder, provided such information is "current" in accordance with the requisite periodic reviews and updates of client information. Similarly, when acting for an institutional client, a Participant will not be expected to inquire prior to accepting or executing an order whether the

institutional client has become the holder of more than 10 per cent of the voting rights in an issuer's securities (in the case of "insider") or 20 per cent of the outstanding voting securities of the issuer (in the case of "significant shareholder"). However, if the Participant has actual knowledge that a client, including an institutional client, is an "insider" or "significant shareholder" of an issuer, for example, through its monitoring of news releases required under "early warning" requirements, the Participant will be under an obligation to ensure the proper marking of any order by that client in securities of that issuer, subject to any applicable exemptions.

**4. Must an order be marked "insider" if it is for the account of a spouse of an insider? Does it matter if the order is for a joint-account?**

Generally speaking, under securities legislation, an insider is required to file an insider trading report for a transaction made by a spouse (or other relation or any other person) if the insider has "control or direction" over the securities. Reference should be made to the securities legislation of the applicable jurisdictions to determine when an insider is considered to have "control and direction" over securities. For the purposes of UMIR, any order for a person that is subject to insider reporting obligations or requirements must be marked as "insider".

**5. Do purchases under a normal course issuer bid need to be marked "insider"?**

Under Part 6 of National Instrument 55-101 – Insider Reporting Exemptions, an issuer is subject to a modified reporting requirement when acquiring securities of its own issue under a normal course issuer bid, though the report must be made within 10 days following the month end in which the purchase occurred. As such, orders entered onto a marketplace for the account of the issuer under a normal course issuer bid must be marked "insider".

**6. How should an order be marked if a person is both an "insider" and a "significant shareholder"?**

As set out in Market Integrity Notice 2002-012 - Regulation ID Order Markers (July 9, 2002), the order of a person who is both an "insider" and a "significant shareholder" should contain the "significant shareholder" designation.

**7. May an order by an "insider" or "significant shareholder" be bundled together with an order by a non-"insider" or non-"significant shareholder"?**

Generally, the orders should be entered separately with one order being entered with the appropriate "insider" or "significant shareholder" marker and the other order entered without a marker. However, if the orders are bundled, the entire bundled order must be appropriately marked "insider" or "significant shareholder".

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2007-004 issued on February 28, 2007 under the heading "Guidance – Marking Orders Received from Other Dealers":

**UMIR Requirements**

Rule 1.1 of UMIR defines a "Participant" generally as a registered dealer that is a:

- member of an exchange;
- user of a quotation and trade reporting system; or
- subscriber to an alternative trading system.

As such, any dealer that enters an order on a marketplace is a "Participant" for the purposes of UMIR. Similarly, a dealer is a "Participant" if the dealer is a member, user or subscriber but chooses to enter orders on a marketplace through another dealer.

Rule 1.1 of UMIR defines a "jitney order" as an order entered on a marketplace by a Participant acting for or on behalf of another Participant. For additional guidance on the marking of jitney orders, reference should be made to Market Integrity Notice 2005-003 – Marking Jitney Orders (March 4, 2005).

Rule 6.2 of UMIR requires that each order entered on a marketplace contain various identifiers and designations that may be applicable to the order including:

- the identifier of the Participant entering the order on a marketplace (the "Executing Participant");
- in the case of a jitney order, the identifier of the Participant for or on behalf of whom the order is entered;
- the designation that the order is:
  - a jitney order,
  - a principal or non-client order,
  - an order that will be a short sale or a short exempt sale,
  - an order from an insider or significant shareholder.

Reference should be made to the text of Rule 6.2 for a listing of all of the required identifiers and designations to be attached to an order entered on a marketplace.

**Origination and Routing of Orders for Execution**

A client order, principal order or non-client order may originate with a dealer that is either a Participant (an "Originating Participant") or with a dealer that does not have access to any marketplace as a member, user or subscriber (an "Originating Dealer"). An Originating Participant, because it is a member, user or subscriber to at least one marketplace, may enter the order for execution on any marketplace to which it has trading access (and thereby become the Executing Participant) or the Originating Participant may route the order to:

- an Executing Participant for entry on a marketplace; or
- another dealer to act as intermediary (a "Participant Intermediary" if the other dealer is a Participant for the purposes of UMIR or otherwise a "Dealer Intermediary") in routing the order to an Executing Participant.

An Originating Dealer, because it does not have trading access to any marketplace, may route the order to:

- an Executing Participant for entry on a marketplace; or
- a Participant Intermediary or a Dealer Intermediary for routing to an Executing Participant.

#### **Jitney Orders**

With the introduction of multiple competitive marketplaces, it is unlikely that a dealer will be a member, user or subscriber of all marketplaces and thereby unlikely to have trading access to each marketplace. In particular, certain marketplaces that are alternative trading systems do not permit dealers to be subscribers.<sup>1</sup> If the dealer is a member, user or subscriber to **any** marketplace, the dealer is a Participant for the purposes of UMIR and any order routed, directly or through an intermediary, to an Executing Participant for entry on **any** marketplace (including a marketplace to which the Originating Participant or Participant Intermediary is not a member, user or subscriber) must be marked as a "jitney order". In essence, if there is an Originating Participant or a Participant Intermediary in the origination or handling of an order that order must be marked as a "jitney order".

Currently, trading systems only permit the inclusion of one identifier of the Participant for or on behalf of which the Executing Participant is handling the order. In these circumstances, IIROC is of the view that the identifier of the Originating Participant is the one that should be included on the order. However, if the order originates with an Originating Dealer and is routed to a Participant Intermediary, IIROC is of the view that the identifier of the first Participant Intermediary to handle the order should be included on the order (as this will permit surveillance staff of IIROC to contact the first person in the order chain that is subject to the jurisdiction of IIROC to obtain any additional information that may be required regarding an order).

In the United States, there is a practice of a client providing a dealer with a "step-out" order in which the client instructs the executing dealer to ticket all or part of the trade to another dealer. In the view of IIROC, such a practice is tantamount to the client providing instructions to the other dealer to jitney all or part of the order to the executing dealer. For this reason, any such order received from a client must be marked as a "jitney order" on behalf of the Participant that will settle the trade with the client.

#### **Responsibility for Ensuring Proper Order Marking**

Each of the Executing Participant and any Originating Participant or Participant Intermediary has an obligation to ensure that all applicable designations and identifiers are included on the entry of a jitney order on a marketplace. The order must:

- be marked jitney;
- contain the identifiers of the Executing Participant and the Originating Participant (or the identifier of the Participant Intermediary if the order was routed from an Originating Dealer); and
- contain all other designations required under Rule 6.2 that are relevant to the order (e.g. non-client, insider, short sale, etc.).

The Originating Participant must provide any intermediary (either a Participant Intermediary or Dealer Intermediary) or the Executing Participant with all information necessary to ensure that all required designations and identifiers are included with the order at the time of the entry of the order on a marketplace. The Originating Participant has the same obligations regarding client knowledge that would apply if the Originating Participant entered the order directly onto the marketplace.

If an Executing Participant receives an order directly from an Originating Dealer (or from a Dealer Intermediary that is acting on behalf of an Originating Dealer), that order will not be considered a "jitney order" for the purposes of UMIR. In these circumstances, the Executing Participant is responsible for ensuring that its identifier and all designations relevant to the order as required under Rule 6.2 of UMIR (e.g. non-client, insider, short sale, etc.) are included on the entry of the order to a marketplace.

An Originating Participant that uses a Dealer Intermediary for routing orders to an Executing Participant must ensure that the Dealer Intermediary is able to receive and to pass on to the Executing Participant all required identifiers and designations on an order. Similarly, a Participant Intermediary or Executing Participant must ensure that a Dealer Intermediary or Originating Dealer has adequate policies and procedures in place to assure that orders routed to the Executing Participant contain all of the designations and identifiers that are required by Rule 6.2 of UMIR.

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2007-016 issued on August 10, 2007 under the heading "Guidance – Specific Questions Related to "Insider" Marking Requirements".

#### **Summary**

This Market Integrity Notice provides guidance on specific questions relating to the requirement under the Universal Market Integrity Rules ("UMIR") to mark an order entered on a marketplace to purchase or sell a security for the account of a person who is an insider of that security.

<sup>1</sup> See "Limited Access to a Marketplace" in Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006). In particular, of the current marketplaces, Bloomberg Tradebook Canada Company and Liquidnet Canada Inc. limit subscribers to their marketplaces to "institutional investors" other than dealers.

## **Background**

Investment Industry Regulatory Organization of Canada (“IIROC”) issued Market Integrity Notice 2006-014 – Guidance – “Insider” and “Significant Shareholder” Markers (June 16, 2006) which provides guidance on the marking requirements under UMIR for orders entered on a marketplace for the account of a person who is an insider or significant shareholder. In particular, the Notice provided guidance on:

- marking obligations for an insider who is exempt under relevant securities legislation from insider reporting obligations;
- information a Participant may rely on when establishing whether an order must be marked “insider” or “significant shareholder”;
- “insider” marking requirements for orders entered for the account of a spouse (or other relation or any other person) of an insider; and
- Marking requirements when “insider” or “significant shareholder” orders are bundled with non-“insider” or non-“significant shareholder” orders.

This Market Integrity Notice addresses specific questions related to the use the “insider” marker for order entered on a marketplace and supplements the guidance provided in the above referenced Market Integrity Notice.

## **Questions and Answers**

The following is a list of the most frequently asked questions regarding the UMIR “insider” order marking requirements and the responses of IIROC to each:

- 1. Must an order be marked “insider” if it is for the account of a person who does not meet the definition of an “insider” under applicable securities legislation, but by virtue of his or her employment, receives or has access to material non-public information concerning an issuer whose shares are traded on a marketplace?**

Rule 1.1 of UMIR defines the term “insider” as a person who is an insider of an issuer for the purpose of applicable securities legislation. In the view of IIROC, if a person has an insider reporting obligation under applicable securities legislation, any order entered on a marketplace for the purchase or sale of a security to which such insider reporting obligation applies, must be marked as “insider” for the purposes of UMIR.

Prior to marking an order as “insider” the person for whose account the order is entered must ensure that he or she is, or is deemed to be, an “insider” under applicable securities legislation and has an insider reporting obligation. If a person does not have an insider reporting obligation or is exempt from insider reporting obligations in respect of a particular transaction under applicable securities legislation, the order does not need to be marked as “insider” for the purposes of UMIR.

- 2. Are there any circumstances when an order would have to marked “insider” when the registered owner is not an “insider”?**

Generally, securities legislation requires an insider to file an insider trading report if the insider **directly or indirectly beneficially owns or exercises “control or direction”** over the securities. For the purposes of UMIR, any order for a person that is subject to insider reporting obligations or requirements must be marked as “insider”. For further clarification, reference must be made to the securities legislation of every jurisdiction in which the issuer is a reporting issuer or equivalent. Reference should also be made to CSA Staff Notice 55-308 – Questions on Insider Reporting.

- 3. Is an order by an issuer to purchase securities of the issuer for an employee stock purchase plan required to be marked “insider”?**

Under applicable securities legislation, an issuer is exempt from relevant securities legislation governing purchases by an issuer of its own securities if the purchase(s) are made through the facilities of a recognized stock exchange and the purchases are made in accordance with the by-laws, regulations and policies of the exchange.

Under applicable provisions of the Toronto Stock Exchange and TSX Venture Exchange rules and policies<sup>2</sup>, a trustee or other purchasing agent (the “Plan Trustee”) for a pension, stock purchase plan or other plan in which employees or shareholders of a listed company may participate is deemed to be making an offer to acquire securities on behalf of the listed issuer where the Plan Trustee is deemed to be “non-independent”. A Plan Trustee is considered to be “non-independent” if the issuer, directly or indirectly, has control over the time, price, amount or manner of purchases or the choice of the broker through which the purchases are to be made.

In the view of IIROC, if a Plan Trustee is deemed to be “non-independent” under applicable exchange by-laws, rules or policies an order entered onto a marketplace for the account of the issuer must be marked “insider” for the purposes of UMIR. If a Plan Trustee is deemed to be “independent” under applicable exchange rules and policies (i.e. issuer is not making discrete investment decisions for acquisitions under such plan or acquisitions are established by written formula or criteria set out in a plan document) orders entered onto a marketplace do not need to be marked as “insider” for the purposes of UMIR. Reference should be made to TSX Rule 6-501 and TSXV Policy 5.6 for procedures and policies respecting normal course issuer bids made through its facilities.

<sup>2</sup> Canadian Trading and Quotation System (“CNQ”) does not have rules governing purchases by an issuer of its own securities on the CNQ marketplace.

<b>Disciplinary Proceedings:</b>	Rule 6.2(1)(b)(viii) and (x) was considered <u><b>In the Matter of Salman Partners Inc. (“Salman”), Sameh Magid (“Magid”), William Burk (“Burk”) and Ian Todd (“Todd”)</b></u> (February 18, 2005) SA 2005-001. See Disciplinary Proceedings under Rule 3.1.
<b>Disciplinary Proceedings:</b>	<p><u><b>In the Matter of Union Securities Ltd. (“Union”)</b></u> (April 18, 2006) DN 2006-004</p> <p><i>Facts – Between 15 October 2002 and 31 July 2005, Union failed to implement adequate trade supervision and compliance systems and appoint a Head of Trading with the effective responsibility for supervising trading. In failing to do so, Union’s supervisory system could not adequately mitigate certain risks to the marketplace which were identified by RS in the course of its trade desk reviews. In particular, Union failed to update its written policies and procedures in a timely fashion to ensure that orders entered on a marketplace contained acceptable order designations, failed conduct accurate internal auditing and maintain an appropriate audit trail in its paper ticket practices.</i></p> <p><i>Disposition – A Participant is required to implement an updated trade supervision and compliance system which is appropriate for its business and which allows the Participant and its directors, officers, partners and employees to detect, prevent and address violations or a possible violations of UMIR. Union failed to adopt, implement and update its trading supervision and compliance policies and procedures such that they met the minimum requirements under UMIR.</i></p> <p><i>Requirements Considered – Rules 6.2, 10.11, 7.1 and Policy 7.1</i></p> <p><i>Sanction – \$150,000 fine; certification to RS by Union’s President and a director of Union (on behalf of the Board of Directors) that:</i></p> <ul style="list-style-type: none"> <li>a) on or before 30 May 2006 Union will implement all of the recommendations made in the Consultant Report,</li> <li>b) on or before 30 July 2006 Union has implemented all of the recommendations made in the Consultancy Report, including developing implementing, and filing with RS, enhanced supervision and compliance procedures to reduce incidence of audit trail deficiencies, and</li> <li>c) on or before 30 September 2006, that they expect the procedures Union has implemented will reduce audit trail deficiency rates to less than 10%.</li> </ul> <p><i>Also, Union will consent to and cooperate with any and all reasonable trade desk review and information requests from RS to monitor progress on achieving targets.</i></p>
<b>Disciplinary Proceedings:</b>	Rule 6.2(1)(b) was considered <u><b>In the Matter of Raymond James Ltd. (“Raymond James”) and Marc Deslongchamps (“Deslongchamps”)</b></u> (June 30, 2006) DN 2006-006. See Disciplinary Proceedings under Rule 5.3
<b>Disciplinary Proceedings:</b>	<p><u><b>In the Matter of Golden Capital Securities Ltd. (“Golden”), Jack Finkelstein (“Finkelstein”) and Jeff Rutledge (“Rutledge”)</b></u> (November 23, 2007) DN 2007-004</p> <p><i>Facts – Between April 1, 2002 and July 31, 2005, Golden was deficient in a number of its order designation and audit trail requirements. Golden also failed to appoint a Head of Trading and trading supervisor and failed to ensure its employees with trade supervision functions were properly trained.</i></p> <p><i>Between June 2004 and March 2005, Finkelstein participated in several trades that involved matching buy and sell orders to “cross” securities that were either missing or contained inaccurate order information related to the size, price, time of receipt and/or variations to an order. In one case Finkelstein failed to correctly designate the inventory side of a client/principal cross involving 50 standard trading units or less which resulted in the cross being executed without the required price improvement to the client.</i></p> <p><i>Between June 2004 and March 2005, Rutledge participated in several trades involving matching buy and sell orders to “cross” securities that were either missing or contained inaccurate order information related to the size, price, time of receipt and/or variations to an order. In one case Rutledge failed to correctly designate the inventory side of a client/principal cross involving 50 standard trading units or less which resulted in the cross being executed without the required price improvement to the client.</i></p> <p><i>Disposition – By failing to ensure that each order entered on a marketplace contained the proper order designations and failing to implement adequate policies and procedures to ensure compliance with UMIR, Golden contravened Rule 6.2(1)(b), Rule 7.1, Rule 7.1(3) and Policy 7.1 of UMIR. Finkelstein and Rutledge, by failing to record all order designations and information required with respect to the entry of an order on a marketplace and failing to ensure that a client order executed against a principal order or non-client order receive the required price improvement breached Rules 6.2, 6.2(1)(b) and 8.1 of UMIR.</i></p> <p><i>Requirements Considered – Rules 6.2, 7.1, 8.1, 10.11 and Policy 7.1</i></p>

*Sanction – Golden - \$180,000 fine and costs of \$20,000;  
Finkelstein - \$25,000 fine; and  
Rutledge - \$35,000 fine and costs of \$5,000 .*

**Proposed Amendments:**

*For information on the current proposed amendments to Rule 6.2 of UMIR, refer to:*

- (i) Market Integrity Notice 2007-009 - Request for Comments - Provisions Respecting Access to Marketplaces (April 20, 2007) which includes the following proposed amendments:*
  - 3. Clause (a) of subsection (1) of Rule 6.2 is amended by:*
    - (a) deleting the word “and” at the end of subclause (ii);*
    - (b) inserting the following as subclause (iv):*
      - (iv) the Marketplace Eligible Client as assigned by the Participant and submitted to the Market Regulator in accordance with Rule 7.8, if the order is entered by the Marketplace Eligible Client by Dealer-Sponsored Access; and*
- (ii) Market Integrity Notice 2007-017 - Request for Comments - Provisions Respecting Short Sales and Failed Trades (September 7, 2007) which includes the following proposed amendments:*
  - 3. Amending clause (b) of subsection (1) of Rule 6.2 by:*
    - (a) deleting in subclause (viii) the phrase “which is subject to the price restriction under subsection (1) of Rule 3.1”; and*
    - (b) deleting subclause (ix).*