

#### **6.4 Trades to be on a Marketplace**

A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:

- (a) **Unlisted or Non-Quoted Security** - in a security which is not a listed security or a quoted security;
- (b) **Regulatory Exemption** – required or permitted by a Market Regulator to be executed other than on a marketplace in order to maintain a fair or orderly market and provided, in the case of a listed security or quoted security, the Market Regulator requiring or permitting the order to be executed other than on a marketplace shall be the Market Regulator of the Exchange on which the security is listed or of the QTRS on which the security is quoted;
- (c) **Error Adjustment** - to adjust by a journal entry an error in connection with a client order;
- (d) **On a Foreign Organized Regulated Market** – executed on a foreign organized regulated market;
- (e) **Outside of Canada** – executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a foreign organized regulated market in accordance with the reporting requirements of the marketplace of foreign organized regulated market;
- (f) **Term of Securities** – as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security;
- (g) **Options** – as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement;
- (h) **Prospectus and Exempt Distributions** – pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction including any distribution of previously unissued securities by an issuer; or
- (i) **Non-Regulatory Halt, Delay or Suspension** – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.

## **POLICY 6.4 – TRADES TO BE ON A MARKETPLACE**

### **Part 1 – Trades Outside of Marketplace Hours**

*In accordance with section 6.1 of the Trading Rules, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise when a Participant may wish to make an agreement to trade as principal with a Canadian account, or to arrange a trade between a Canadian account and a non-Canadian account, outside of the trading hours of any marketplace that trades the particular security.*

*Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on a foreign organized regulated market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.*

*A Participant may make an agreement to trade in a listed security or a quoted security with a Canadian account as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on a foreign organized regulated market. There is no trade until such time as there is an execution on a marketplace or a foreign organized regulated market or the trade is otherwise completed in accordance with one of the exemptions set out in Rule 6.4. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. A Participant may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace or foreign organized regulated market cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.*

### **Part 2 – Application to Foreign Affiliates and Others**

*The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.*

*Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.*

### **Part 3 – Non-Canadian Accounts**

*Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal with a non-Canadian account or as agent for the purchaser and seller both of whom are non-Canadian accounts. A "non-Canadian account" is defined as an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the Income Tax Act (Canada). There may be certain situations arising where a Participant is uncertain whether a particular account is a "non-Canadian account" for the purpose of this exemption. In these situations the account should be treated as a "Canadian account". The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account's status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.*

*For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.*

### **Part 4 – Reporting Foreign Trades**

*Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade in a listed security or a quoted security that is made as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts, unless the trade is reported to a foreign organized regulated market. If such an "outside Canada" trade has not been reported to a foreign organized regulated market, a Participant shall report such trade to a marketplace no later than the close of business on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.*

### **Part 5 – Application of UMIR to Orders Not Entered on a Marketplace**

*Under Rule 6.4, a Participant, when acting as principal or agent, may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace except in accordance with an exemption specifically enumerated within Rule 6.4. For the purposes of UMIR, a "marketplace" is defined as an Exchange, QTRS or an ATS and a "Participant" is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. If a person is a Participant, certain provisions of UMIR will apply to every order handled by that Participant even if the order is entered or executed on a marketplace that has not adopted UMIR as its market integrity rules or if the order is executed over-the-counter. In particular, the following*

provisions of UMIR will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:

- Rule 2.1 requires a Participant to 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 which are eligible to be traded on a marketplace;
- Rule 4.1 prohibits a Participant from frontrunning certain client orders;
- Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;
- Rule 8.1 governing client-principal trading; and
- Rule 9.1 governing regulatory halts, delays and suspensions of trading.

In accordance with Rule 11.9, UMIR will not apply to an order that is entered or executed on a marketplace in accordance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules or if the order is entered and executed on a marketplace or otherwise in accordance with the rules of an applicable regulation services provider or in accordance with the terms of an exemption from the application of the Trading Rules.

<p><b>Defined Terms:</b> NI 14-101 section 1.1(3) – “issuer bid”, “order”, “securities legislation” and “take-over bid” NI 21-101 section 1.1 - “order” and “regulation services provider” UMIR section 1.1 – “Canadian account”, “client order”, “Exchange”, “foreign organized regulated market”, “listed security”, “Market Regulator”, “marketplace”, “non-Canadian account”, “Participant”, “quoted security”, “QTRS”, “related entity”, “Requirements”, “trading day” and “Trading Rules” UMIR section 1.2(2) – “person” and “trade”</p> <p><b>Related Provisions:</b> UMIR section 2.1 and 4.1, UMIR Part 5, UMIR sections 6.1, 9.1 and 11.9.</p> <p><b>Regulatory History:</b> Effective May 16, 2008, the applicable securities commissions approved amendments to Rule 6.4 and Policy 6.4 to:</p> <ol style="list-style-type: none"><li>1. replace clauses (d) and (e) of Rule 6.4 which, prior to that date, provided:<ol style="list-style-type: none"><li>(d) <b>On Another Market</b> – on another exchange or organized regulated market that publicly disseminates details of trades in that market;</li><li>(e) <b>Outside of Canada</b> – as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided such trade is reported to a marketplace or to a stock exchange or organized regulated market that publicly disseminates details of trades in that market;</li></ol></li><li>2. add clause (i);</li><li>3. replace Policy 6.4 which, prior to that date, provided:<p><b>Part 1 – Trades Outside of Marketplace Hours</b></p><p>In accordance with section 6.1 of National Instrument 23-101, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise where Participants wish to make an agreement to trade as principal with a Canadian client, or to arrange a trade between a Canadian client and a non-Canadian client, outside of the trading hours of marketplaces.</p><p>Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. This Policy clarifies the procedure to be followed when a Participant wishes to make such a transaction. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on another exchange or organized regulated market, provided that the exchange or market publicly disseminates details of trades in that market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.</p></li></ol>
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Participants may make agreements to trade in listed or quoted securities with Canadian accounts as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on a stock exchange or organized market where the security is listed or quoted. There is no trade until such time as there is an execution on a marketplace, stock exchange or organized market. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. Participants may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.

#### **Part 2 – Application to Foreign Affiliates and Others**

The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the just and equitable principles of trade.

Although certain related entities of Participants, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions. Foreign branch offices of Participants are not separate from the Participant and as such are subject to Requirements.

#### **Part 3 – Non-Canadian Accounts**

Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal or as agent with non-Canadian accounts. A "non-Canadian account" is considered to be an account for a client who is not resident in Canada. There may be certain situations arising where a Participant is uncertain whether a particular account is a "non-Canadian account" for the purpose of this exemption. A trade by or on behalf of an individual normally resident in Canada, or an organization located in Canada, is considered to be a trade for a Canadian account. The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account's status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.

For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.

#### **Part 4 – Reporting Foreign Trades**

Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade made outside of Canada, unless the trade is reported to another stock exchange or an organized regulated market that disseminates details of trades in that market.

Participants shall report such trades to a marketplace no later than the close of business on the next trading day. The report shall identify the stock, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.

**Market Integrity Notice:** The following is the text of Market Integrity Notice 2003-009 issued on April 29, 2003 under the heading "Trades on an Organized Regulated Market":

Participants are reminded that Rule 6.4 of the Universal Market Integrity Rules ("UMIR") prohibits a Participant from trading or participating in a trade of a security that is listed on an exchange or quoted on a quotation and trade reporting system other than through the entry of an order on a marketplace unless the trade falls within one of the enumerated exemptions within Rule 6.4. In particular, clause (d) permits a trade to be executed on another exchange or organized regulated market that publicly disseminates details of trades in that market and clause (e) permits a trade to be executed as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided such trades are reported to a marketplace or a stock exchange or an organized regulated market that publicly disseminates details of trades in that market.

For a market to be an "organized regulated market", the market must be:

- regulated by a self-regulatory organization, or
- recognized to self-regulate its own market.

The provision of trade transparency is a cornerstone of National Instrument 21-101, Marketplace Operation. To ensure public dissemination, trades need to appear on a consolidated tape that is provided to data vendors, information processors or persons providing similar functions for that market such that information on the trade would be available to securities dealers.

**A Participant has the obligation to ensure that the exchange or organized regulated market will publicly disseminate details of any trade made on or reported to that exchange or organized regulated market.**

**Market Integrity Notice:** The following is the text of Market Integrity Notice 2003-010 issued on May 5, 2003 under the heading "Trades in Debt Securities":

Participants are reminded that trades in debt securities that are listed on an exchange or quoted on a quotation and trade reporting system ("QTRS") must be executed on a marketplace pursuant to Rule 6.4 of the Universal Market Integrity Rules ("UMIR").

UMIR applies to debt securities traded on a marketplace that has retained the Investment Industry Regulatory Organization of Canada ("IIROC") as its regulation services provider. In particular, trades in debt securities that are listed on either the Toronto Stock Exchange ("TSX") or the TSX Venture Exchange are subject to UMIR. Although patterned after the former TSX Rule 4-102, **Rule 6.4 does not contain an exemption to permit an off-marketplace trade for a listed debt security where the trade exceeds \$10,000 principal amount or can be completed at a better price off-marketplace.** Rule 6.4 prohibits a Participant from trading or participating in a trade of a debt security that is listed on an exchange or quoted on a QTRS other than through the entry of an order on a marketplace unless the trade falls within one of the enumerated exemptions within Rule 6.4.

The requirements in Rule 6.4 apply to all trades by a Participant, including those originating in either of their Equity or Fixed Income Departments.

**Market Integrity Notice:** The following is the text of Market Integrity Notice 2003-017 issued on August 20, 2003 under the heading "Trades in Listed or Quoted Securities":

**Rule Requirement**

Rule 6.4 of the Universal Market Integrity Rules ("UMIR") requires that a Participant, whether acting as principal or agent, participate in a trade by the entry of an order on a marketplace, subject to specific exemptions enumerated in the rule.

The rule applies to trading in any security listed on an exchange ("Exchange") or quoted on a Quotation and Trade Reporting System ("QTRS") recognized by or registered with a Canadian securities regulatory authority. Currently, if a security is listed on the Toronto Stock Exchange or the TSX Venture Exchange or is quoted on the Canadian Trading and Quotation Systems Inc. ("CNQ"), Participants are obliged, subject to the exemptions in Rule 6.4, to trade in these securities by the entry of orders on a marketplace.

Rule 6.4 applies to each dealer that is a Participant for the purposes of UMIR. A dealer is a Participant if the dealer is a member of an Exchange, user of a QTRS or a subscriber to an Alternative Trading System ("ATS"). Rule 6.4 applies to trading by a Participant in listed or quoted securities whether or not the Participant has trading access to the Exchange or QTRS where the security is listed or quoted. If a Participant does not have access to an appropriate marketplace where the security is listed or quoted, the Participant must utilize the services of another Participant that does have access, with the order being considered a jitney order for the purposes of UMIR.

**As CNQ commenced operations as a QTRS on July 25, 2003, Participants are reminded that all trades in securities that are quoted on CNQ must be made on a marketplace unless the trade is exempted from this requirement by the provisions of Rule 6.4.** A list of securities quoted on CNQ may be found on their website, cnq.ca.

**Market Integrity Notice** The following is the text of Market Integrity Notice 2003-026 issued on December 5, 2003 under the heading "Trades in TSX-Listed Tier 1 Financing Securities":

As noted in Market Integrity Notice 2003-010 issued on May 5, 2003, trades in debt securities that are listed on an exchange or quoted on a quotation and trade reporting system ("QTRS") must be executed on a marketplace pursuant to Rule 6.4 of the Universal Market Integrity Rules ("UMIR"). UMIR applies to debt securities traded on a marketplace that has retained the Investment Industry Regulatory Organization of Canada ("IIROC") as its regulation services provider. In particular, trades in debt securities that are listed on either the Toronto Stock Exchange ("TSX") or the TSX Venture Exchange are subject to UMIR.

Certain debt securities issued by Canadian financial institutions as "Tier 1 Financing" are listed on the TSX. The issuers of these securities had received special exemptions at the time of listing from the Montreal Exchange or the TSX that permitted a trade to be executed in these debt securities in principal amounts of more than \$100,000 in an "off marketplace" transaction that was neither executed on nor reported to the TSX or the Montreal Exchange. The exemptions granted by the TSX and the Montreal Exchange continue to be effective in respect of the following securities:

Security	TSX Symbol
BNS Capital Trust - Series 2000-1	SBA.M
HSBC Canada Asset Trust Hats	HBH.M
Manulife Financial Capital Trust –Series A	MFT.M
RBC Capital Trust Trucs – Series 2010	RYT.M

<b>Security</b>	<b>TSX Symbol</b>
RBC Capital Trust Trucs – Series 2011	RYT.P
Scotia Mortgage Investment Corporation	SMC.M
Sun Life Capital Trust - Exchng Cap Sec Ser A	SLE.M
TD Capital Trust - Series 2009	TDD.M
TD Mortgage Investment Corporation Hybrids	TDB.M

**Trades in any of these securities in the principal amount of less than \$100,000 must be made through a marketplace unless the trade is made pursuant to an exemption contained in Rule 6.4 of UMIR.**

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2006-002 issued on January 30, 2006 under the heading “**Guidance – “When Issued” Trading**”:

**Summary**

This Market Integrity Notice provides guidance relating to the ability of a Participant to undertake trading in a security which is qualified for distribution but which has not yet been issued by the issuer.

**Definition**

The term “trades on a when issued basis” is defined in Rule 1.1 of the Universal Market Integrity Rules (“UMIR”) as a purchase or sale of a security to be issued pursuant to:

- a prospectus offering where a receipt for the final prospectus for the offering has been issued by the applicable securities regulatory authority but the offering has not closed and settled;
- a proposed plan of arrangement, an amalgamation or a take-over bid prior to the effective date of the amalgamation or the arrangement or the expiry date of the take-over bid; or
- any other transaction that is subject to the satisfaction of certain conditions,

and the trade is to be settled only if the security is issued and the trade in the security prior to the issuance would not contravene the applicable securities legislation. Essentially, if the condition for the issuance or distribution of the security is not satisfied, all trades which have been executed on a “when issued” basis will be cancelled.

**Trades to be on a Marketplace**

If an Exchange or QTRS has posted a market to trade the security on a “when issued” basis, a Participant acting as principal or agent may not trade nor participate in a trade in the security on a “when issued” basis by means other than the entry of an order on a marketplace unless the transaction is specifically exempted from this requirement in accordance with the provisions of Rule 6.4 of UMIR. If no “when issued” market is posted by an Exchange or QTRS, a Participant may trade the security over-the-counter on a “when issued” basis (often referred to a trading in the “grey market”). If an Exchange has granted a “conditional listing”, the security may be traded over-the-counter on a “when issued” basis until such time as the Exchange or a QTRS actually posts a “when issued” market or the securities are issued or distributed and are able to trade on the “regular” market of the Exchange or QTRS.

In accordance with National Instrument 21-101, an alternative trading system (“ATS”) may trade any security that is listed on an Exchange or quoted on a QTRS. If an Exchange or QTRS has posted a “when issued” market in the security, the security will be considered to be a listed security or quoted security and may trade on a “when issued” basis on an ATS. If no “when issued” market is posted by an Exchange or QTRS, an ATS will not be able to trade the security on a “when issued” basis.

**Application of Short Sale Restrictions**

The application of the price restrictions on a short sale under Rule 3.1 of UMIR will depend on whether the securities that have been subscribed for under a prospectus or which will be issued under an arrangement, amalgamation, take-over bid or similar transaction are to be sold in a “when issued” market or in the “regular” market in which the listed and outstanding securities of the same class already trade. If a person has entered into a contract to purchase a security that trades on a “when issued” basis (either by subscription to the offering or purchase on a “when issued” basis over-the-counter or on a marketplace) or would become the holder of such security as a result of an arrangement, amalgamation or take-over bid, that person may sell such securities on a “when issued” basis. If the sale is made on a “when issued” basis, the sale will not be considered a short sale (since the settlement of the sale will be subject to the condition that the securities be issued or distributed) However, if the sale is made in the “regular” market for that security where units of that security which are issued and outstanding trade, the sale will be considered a “short sale” and will be subject to the price restriction in Rule 3.1 of UMIR that the sale must not be completed at a price which is less than the last sale price. The sale is considered “short” in this circumstance because the issuance or distribution of the security is subject to a condition which may not be met and the trade will have to be settled with borrowed securities.

If a person does not have an entitlement to receive a security when that security is issued, any sale of that security in either the “when issued” or the “regular” market will be considered to be a short sale and the sale will be subject to the price restriction in Rule 3.1 of UMIR.

### **Reporting Transactions in the Grey Market**

If a security is traded on a “when issued” basis over-the-counter in the so-called “grey market”, a Participant may be required to report such trade to the Canadian Unlisted Board (“CUB”) if the purchase or sale has been made in Ontario. Reference should be made to section 154 of Ontario Regulation 1015 (R.R.O. 1990) to determine if and by whom a trade report to CUB may be required.

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2006-009 issued on March 24, 2006 under the heading “**Guidance – Trades to be on a Marketplace When Acting As Agent**”:

#### **Summary**

This Market Integrity Notice provides guidance on when the Investment Industry Regulatory Organization of Canada (“IIROC”) would consider a Participant to be acting in respect of a trade as agent for a client in circumstances that would require the trade to be executed by means of the entry of an order on a marketplace in accordance with the Universal Market Integrity Rules (“UMIR”).

#### **Background**

Rule 6.4 of UMIR provides that a Participant, when acting as principal or agent, may not trade or participate in a trade other than through the entry of an order on a marketplace. Rule 6.4 provides a series of enumerated exceptions to this broad requirement. The obligation imposed by Rule 6.4 applies only when the Participant is trading or participating in a trade in a principal capacity or as agent for a client.

#### **Indicators of “Acting as Agent” in Respect of a Trade**

Ordinarily, a Participant would be considered to be “acting as agent” when involved in a transaction on behalf of a client. In particular, IIROC will consider a Participant to be acting as agent for a client in a transaction if the Participant undertakes any one of the following:

- charges the client a commission in respect of the completion of the transaction;
- provides the client with a “trade confirmation” in respect of the completion of the transaction;
- provides advice with respect to the structuring or the completion of the transaction;
- solicits the client to undertake the transaction;
- participates in a transaction that must be inter-mediated by a registrant in accordance with applicable securities legislation (and no other registrant has acted in connection with the transaction on behalf of the client); or
- locates or assists in the location of the counter-party to the transaction.

While each transaction would be evaluated on the basis of the specific fact situation, IIROC generally would consider that a Participant is not acting as agent for a client in respect of a trade if the Participant:

- completes a transaction on behalf of a client that involves no change in beneficial and economic ownership; or
- acts solely on the instructions of the client and performs functions that are purely administrative in nature.

IIROC accepts that the following functions performed by a Participant (on their own and without other indicators of acting as agent) will be considered administrative in nature:

- delivery by the Participant to a client of a certificate for a security registered in the name of the client that is in the possession of the Participant;
- guarantee of the signature of a client in respect of a certificate for a security registered in the name of the client;
- transfer of securities to another dealer or custodian in accordance with the instructions of the client (including the transfer of securities held in the name of the Participant or its nominee); and
- transfer of securities to the account of another client of the Participant in accordance with the instructions of the client (provided that the Participant is satisfied that the transaction is in compliance with applicable securities legislation including the ability to complete the transaction without the inter-mediation of a registrant).

If a Participant participates in a trade but has not acted as principal or agent, the Participant must maintain a written record with sufficient details to demonstrate why the transaction was undertaken other than by the entry of an order on a marketplace including the steps undertaken by the Participant to determine that the transaction is in compliance with applicable securities legislation. In particular, the Participant must be aware if a client undertakes a number of transactions in this fashion as the exemption from registration generally provided under applicable securities legislation for “isolated trades” may have ceased to be available. If the Participant has acted solely on the instructions of the client in the performance of administrative functions, the Participant is urged to obtain the instructions from the client in writing.

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2007-018 issued on September 7, 2007 under the heading “**Specific Questions Related to Trading Listed Debt and Other Securities**”:

#### **Summary**

This Market Integrity Notice provides guidance on specific questions related to the obligation of a Participant under the Universal Market Integrity Rules (“UMIR”) to trade a security listed on an exchange in Canada (an “Exchange”) through the entry of orders on a marketplace.

## **Background**

Under Rule 6.4 of UMIR, a Participant acting as principal or agent may not trade nor participate in a trade, subject to specific enumerated exceptions, other than through the entry of an order on a marketplace. Rule 6.4 applies to trading in any security that is listed on an Exchange or quoted on a Quotation and Trade Reporting System ("QTRS") recognized by or registered with a Canadian securities regulatory authority. Currently, if a security is listed on the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") or Canadian Trading and Quotation System ("CNQ"), a Participant is obligated, subject to the exemptions in Rule 6.4, to trade these securities by the entry of orders on a marketplace. Rule 1.1 of UMIR defines a marketplace as a recognized Exchange, QTRS or an alternative trading system ("ATS") that carries on business in Canada.

In accordance with Rule 6.4, a Participant may participate in the trade of a listed security or quoted security by means other than through the entry of an order on a marketplace when the trade is:

- required or permitted by a Market Regulator to be executed other than on a marketplace;
- to adjust for an error in connection with a client order;
- executed on an organized regulated market outside of Canada that publicly disseminates details of trades in that market;
- executed as principal with a non-Canadian account or as agent between two non-Canadian accounts (provided the trade is reported to a marketplace or an organized regulated market outside of Canada that publicly disseminates detail of trades in that market);
- as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security;
- as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement; or
- involving previously unissued securities.

## **Questions and Answers**

The following is a list of questions regarding the obligations of a Participant with respect to trading in a security is listed on an Exchange and that trades on a marketplace:

### **1. When is a security considered to be "listed" on an Exchange?**

The rules of the Exchange as approved by the applicable securities regulatory authority will determine when a security is to be considered "listed". For example, for securities listed on TSX, TSXV and CNQ, a security becomes "listed" at 5:00 p.m. on the trading day immediately preceding the trading day on which the security will be available for trading.

A security that has been "conditionally approved" for listing on an Exchange is not considered a "listed security" for the purposes of UMIR and trades in that security may be executed in the over-the-counter market until such time as the security becomes "listed".

### **2. Must trades in debt securities that are listed on an Exchange be executed on a marketplace?**

Rule 6.4 provides that, subject to enumerated exemptions, a Participant, acting as principal or agent, may not trade or participate in a trade other than through the entry of an order on a marketplace. IIROC issued Market Integrity Notice 2003-010 – Guidance – Trades in Debt Securities (May 5, 2003) which specifically provides that trades in debt securities that are listed on an exchange (or quoted on a QTRS) must be executed on a marketplace pursuant to Rule 6.4. However, an exception was made for trades in certain debt securities issued by Canadian financial institutions that are listed on the TSX and that had received special exemptions from either the TSX or the Montréal Exchange prior to the original listing of the specific debt securities to allow trades in principal amounts of more than \$100,000 to be executed "off-marketplace". Reference should be made to Market Integrity Notice 2003-026 – Guidance – Trades in TSX-Listed Tier 1 Financing Securities (December 5, 2003) which provides a complete list of the specific debt securities that qualify for this exemption. It should be noted that trades in the specific debt securities in the principal amount of less than \$100,000 are not covered by the special exemption and must be made through a marketplace unless the trade is made pursuant to an exemption provided under Rule 6.4.

### **3. Is there an exemption to permit "over-the-counter" trading of "listed debt" issued by a government or government agency?**

No. If a debt security is listed on an Exchange or quoted on a QTRS, a Participant must trade the security by means of the entry of orders on a marketplace. For example, several series of bonds issued by the Province of Manitoba ("Builder Bonds") and the Manitoba Hydro-electric Board ("Manitoba Hydro Bonds") are listed on CNQ. Trades in these series of Builder Bonds and Manitoba Hydro Bonds may not be executed over-the-counter regardless of the principal amount involved in the trades. Unless otherwise exempted from Rule 6.4, a trade in these Builder Bonds and Manitoba Hydro Bonds must be completed on a marketplace in compliance with the other provisions of UMIR that apply to the trading of listed securities generally.

### **4. What steps must a Participant take to facilitate an "off-marketplace" trade in listed securities that are subject to a "hold period" under securities laws?**

Under Rule 6.4(b) of UMIR, the Investment Industry Regulatory Organization of Canada ("IIROC") may provide a regulatory exemption to permit a Participant to execute a trade, acting as agent or principal, by means other than entry

of an order on a marketplace in order to maintain a fair and orderly market. One of the most common regulatory exemptions granted by IIROC to Participants is to permit the Participant to be involved in an "off-marketplace" trade for securities that are subject to statutory hold period (i.e. four-month hold securities).

As set out in Market Integrity Notice 2005-020 – Guidance - Obtaining a Trading Exemption or Rule Interpretation (June 13, 2005), IIROC Market Policy counsel will generally permit the sale of "hold period" stock to be completed by a Participant by means of an "off-marketplace" transaction in order to ensure that the transaction is completed without interference from investors who may not be qualified to hold the securities (i.e. non-accredited investors).

Reference should be made to Market Integrity Notice 2005-020 for a summary of the most common exemptions granted by IIROC Market Policy counsel involving "off-marketplace" trades and for general guidance on the procedure for applying for an "off-marketplace" exemption.

**5. What is the obligation when trading a "unit" that consists of a listed security and an unlisted security?**

A listed issuer may undertake a private placement or public offering of "units" comprised of a listed security together with an unlisted security, typically a purchase warrant. If the securities which comprise the "unit" must be traded together and the "units" are not listed on an Exchange or quoted on a QTRS, trades in the units cannot be executed on a marketplace and must be executed over-the-counter. To the extent that the unit is "severable", that is, the listed security comprising part of the unit may trade separately from the unlisted component of the unit, trades in the listed security must be completed only by means of entry of an order on a marketplace unless the trade is specifically exempted from that requirement. Trades in the unlisted security comprising part of the unit must be traded over-the-counter.

If an unlisted unit (or any unlisted component of the unit) is traded over-the-counter in the so-called "grey market", a Participant may be required to report such trade to the Canadian Unlisted Board ("CUB") if the purchase or sale has been made in Ontario. Reference should be made to section 154 of Ontario Regulation 1015 as amended to determine if and by whom a trade report to CUB may be required. It should be noted that only trades in listed securities must fit into one of the enumerated exemptions under Rule 6.4 to be traded "off-marketplace". Trades involving unlisted securities do not require an "off-marketplace" exemption from IIROC.

**Disciplinary Proceedings: In the Matter of John Warwick Holland ("Holland") (October 29, 2002) OOS 2002-006**

*Facts – Between April 1, 1999 and July 31, 1999, Holland, an investment advisor employed by Yorkton Securities Inc., facilitated the purchase of shares of a Vancouver Stock Exchange listed company for five clients. The acquisition of the shares was conducted by way of journal entries and not on an exchange.*

*Disposition – Subject to specific exemptions, which do not apply to these circumstances, all trades of exchange-listed securities must be conducted on a marketplace.*

*Requirements Considered – VSE Rules C.1.08. Comparable UMIR Provision - Rule 6.4*

*Sanction - \$10,000 voluntary payment and \$3,500 for costs*

**Disciplinary Proceedings: Rule 6.4 was considered In the Matter of Louis Anthony De Jong ("DeJong") and Dwayne Barrington Nash ("Nash") (July 29, 2004) Decision 2004-004. See Disciplinary Proceedings under 2.1.**

**Disciplinary Proceedings: In the Matter of Credit Suisse First Boston Canada Inc. ("CSFB") (December 3, 2004) SA 2004-007**

*Facts – On April 15, 2003, CSFB entered into an agreement to purchase, as principal, 9,047,092 BCE shares. Shortly thereafter CSFB and its affiliates began to contact clients (including Canadian clients) to line up purchasers for the shares. The indicated interest was greater than expected, and CSFB faced a significantly over-subscribed book. To avoid the displacement obligations associated with conducting the trade as a block trade or wide distribution on the TSX and on other markets, the firm decided to execute the take-on trade (principal buy) through the over-the-counter ("OTC") market in London and the unwinding trade (principal sell) in the OTC market in the United States. On April 16, 2003, as part of its unwinding trade to Canadian clients, CSFB executed the trade of 7,701,000 BCE shares to Canadian accounts on the New York OTC market prior to the opening of the market. CSFB subsequently reported details of the unwinding trade the NASD and NYSE. Later the same day the take-on trade was crossed through London with details of the transaction being reported to the Financial Services Authority ("FSA").*

*Disposition – Compliance with Rule 6.4(e) required that the "take-on" trade be reported to a marketplace, stock exchange or organized regulated market that publicly disseminates details of trades in the market. To the extent that the FSA does not publicly disseminate transaction reports, the take-on trade was not conducted in accordance with Rule 6.4.*

*Conducting a trade to Canadian clients in the OTC market in the United States outside of market hours, even if that trade is subsequently reported to the NYSE and NASD, does not constitute*

execution of a trade on “another exchange or organized regulated market that publicly disseminates details of trades in that market” within the purview Rule 6.4(d). CSFB executed the unwinding-trades to Canadian clients before the opening of the market with the knowledge that trades conducted prior to the opening of the markets would not be printed on a consolidated tape.

Requirements Considered – Rules 6.4 and 10.11(1)

Sanction - \$1,350,000 fine and costs of \$150,000

**Disciplinary Proceedings:** Rule 6.4 was considered **In the Matter of Salman Partners Inc. (“Salman”), Sameh Magid (“Magid”), William Burk (“Burk”) and Ian Todd (“Todd”)** (February 18, 2005) SA 2005-001. See Disciplinary Proceedings under Rule 3.1.

**Disciplinary Proceedings:** **In the Matter of Scotia Capital Inc. (“Scotia”)** (February 26, 2007) DN 2007-001

Facts – In the period April 4, 2002 to April 18, 2005 Marc McQuillen (“McQuillen”) a fully licensed agency trader at Scotia Capital Inc. (“Scotia”) and David Berry (“Berry”), the Head of Preferred Trading and the registrant responsible for trading Scotia’s proprietary book of preferred shares, and McQuillen’s immediate supervisor, engaged in a pattern of soliciting client orders during a periods when Scotia was involved in a distribution of the subject securities. In total, McQuillen and Berry solicited 39 client orders in 16 new issues at times when Scotia was involved in a distribution. In respect of 15 of the solicitations, on or about the first day of trading, McQuillen and Berry conducted off-marketplace trades in the newly listed shares by selling them “short” from an inventory account at the distribution price. In respect of 24 of the solicitations, the trades to clients from an inventory account took place before the security was listed, in the “grey market”. McQuillen and Berry covered their short positions by purchasing shares of the newly issued shares in the secondary market, in most cases at prices lower than the distribution price paid by clients during the distribution. The profit to the inventory account from shorting the shares was \$731,959, of which Scotia received 80% (\$571,167).

Disposition – The sale of securities by McQuillen and Berry from an inventory account, were secondary market transactions, and as such, purchasers of the shares were not afforded the inherent rights that they would have been otherwise entitled to as purchasers of a “new issue” under a prospectus. In addition, the improper off-marketplace trades resulted in market participants potentially being misled as to the true nature of the demand for the shares and may have affected their investment decisions. Scotia is liable under UMIR for contraventions by Berry and McQuillen between April 4, 2002 and October 14, 2003 of UMIR provisions related to trading by a Participant involved in a distribution of securities (28 occasions) and the requirement that trades be on a marketplace (5 occasions).

Requirements Considered – Rules 6.4, 7.7(5) (pre-May 2005 version), 10.3(1) and 10.3(4)

Sanction – \$571,167 fine and costs of \$67,000

**Disciplinary Proceedings:** **In the Matter of Marc McQuillen (“McQuillen”)** (February 28, 2007) DN 2007-002

Facts – In the period April 4, 2002 to April 18, 2005 Marc McQuillen (“McQuillen”) a fully licensed agency trader at Scotia Capital Inc. (“Scotia”) and David Berry (“Berry”), the Head of Preferred Trading and the registrant responsible for trading Scotia’s proprietary book of preferred shares, and McQuillen’s immediate supervisor, engaged in a pattern of soliciting client orders during periods when Scotia was involved in a distribution of the subject securities. In total, McQuillen and Berry solicited 39 client orders in 16 new issues at times when Scotia was involved in a distribution. In respect of 15 of the solicitations, on or about the first day of trading, McQuillen and Berry conducted off-marketplace trades in the newly listed shares by selling them “short” from an inventory account at the distribution price. In respect of 24 of the solicitations, the trades to clients from an inventory account took place before the security was listed, in the “grey market”. McQuillen and Berry covered their short positions by purchasing shares of the newly issued shares in the secondary market, in most cases at prices lower than the distribution price paid by clients during the distribution.

Disposition – The sale of securities by McQuillen and Berry from an inventory account, were secondary market transactions, and as such, purchasers of the shares were not afforded the inherent rights that they would have been otherwise entitled to as purchasers of a “new issue” under a prospectus. In addition, the improper off-marketplace trades resulted in market participants potentially being misled as to the true nature of the demand for the shares and may have affected their investment decisions. This conduct resulted in Scotia Capital Inc. contravening UMIR provisions related to restrictions on trading by a Participant involved in a distribution of securities and the requirement that trades be on a marketplace, for which McQuillen is liable.

Requirements Considered – Rules 6.4, 7.7(5) (pre-May 2005 version) and 10.3(4)

Sanction – \$25,000 fine payable by McQuillen to RS.