

## 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.

**Defined Terms:** NI 14-101 section 1.1(3) – “issuer bid”, “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”

**Related Provisions:** UMIR section 2.1 and 4.1, UMIR Part 5, UMIR sections 6.1, 9.1 and 11.9.

**Regulatory History:** Effective May 16, 2008, the applicable securities commissions approved amendments to Rule 6.4 and Policy 6.4 to:

1. replace clauses (d) and (e) of Rule 6.4 which, prior to that date, provided:
  - (d) **On Another Market** – on another exchange or organized regulated market that publicly disseminates details of trades in that market;
  - (e) **Outside of Canada** – 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;
2. add clause (i);
3. replace Policy 6.4 which, prior to that date, provided:

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

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.

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.

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.

**Guidance:** 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.**

**Guidance:** 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.

**Guidance:** 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.

**Guidance:** 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:

<b>Security</b>	<b>TSX Symbol</b>
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 - Exchnng 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.**

**Guidance:** 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.

**Guidance:** 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.

**Guidance:** 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 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 National Stock Exchange (“CNSX”), 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 CNSX, 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 CNSX. 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.

**Guidance:** The following is the relevant text of IIROC Notice 09-0224 issued on July 30, 2009 under the heading “**Rules Notice – Guidance Note – UMIR – Procedures For Handling Certain Designated Trades As Principal**”:

### Summary

This Rules Notice provides guidance on the procedures for the execution by a Participant as principal of certain pre-arranged trades or intentional crosses that qualify as a “designated trade”<sup>1</sup> under the Universal Market Integrity Rules (“UMIR”) and which involve a distribution to clients of a significant block of stock of a listed security.

### Background

Effective May 16, 2008, UMIR was amended to provide a mechanism to cap the obligation of a Participant, when acting as principal or agent, to fill better-priced orders in the case of designated trades<sup>2</sup> to those orders included in the “disclosed volume”.<sup>3</sup> To ensure that the better-priced orders included in the disclosed value were protected, the amendments provided for the introduction of a “bypass order”<sup>4</sup> marker that would be attached to orders entered to meet best price obligations. The use of the bypass order marker would ensure that the order would not interact with hidden orders, undisclosed portions of iceberg orders or Special Terms Order or other specialty orders.<sup>5</sup> In order to provide marketplaces, Participants and service providers with time to amend their systems to accommodate the bypass order, implementation of this portion of the amendments was deferred until June 1, 2009.<sup>6</sup>

These amendments to UMIR eliminated the “uncertainties” surrounding the ability of a Participant to “move the market” amidst the presence of orders with partial or fully undisclosed volume. On July 18, 2008, the Toronto Stock Exchange (“TSX”) repealed its wide distribution rules<sup>7</sup> that permitted a dealer to “take-on” a principal trade “off-marketplace” in connection with “unwinding” trades to at least 25 separate client accounts. The wide distribution rules capped the amount of “interference” that the execution of the unwinding trades might encounter from “iceberg orders” and possibly certain Special Terms Orders and other “specialty” orders. The TSX noted that “...the wide distribution rules are no longer necessary as a result of the UMIR Amendments because the combination of bypass orders and designated trades essentially duplicates the functionality currently provided through the TSX wide distribution mechanism.”<sup>8</sup>

<sup>1</sup> A “designated trade” is defined as an intentional cross or pre-arranged trade of a security made at a price that:

- would not be less than the lesser of:
  - 95% of the best bid price, and
  - 10 trading increments less than the best bid price; and
- would not be more than the greater of:
  - 105% of the best ask price, and
  - 10 trading increments more than the best ask price.

The definition does not impose any minimum volume or value requirements in order for an intentional cross of pre-arranged trade to qualify as a “designated trade”.

<sup>2</sup> For details of the various amendments to UMIR, see Market Integrity Notice 2008-008 – *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008).

<sup>3</sup> The term “disclosed volume” is defined as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

<sup>4</sup> Bypass Order means an order that is:

- part of a designated trade; or
- to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy

and that is entered on a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order.

<sup>5</sup> UMIR defines a number of “specialty” types of orders such as: a Basis Order; a Call Market Order; a Market-on-Close Order; an Opening Order; a Special Terms Order; or a Volume-Weight Average Price Order.

<sup>6</sup> IIROC Notice 09-0034, Rules Notice – Guidance Note – UMIR – *Implementation Date for the Marking of Bypass Orders* (February 3, 2009).

<sup>7</sup> TSX Rule Book, Rule 4-103 – Wide Distributions.

<sup>8</sup> TMX Group Notice to Participating Organizations and Members 2008-030 (July 18, 2008).

Under the wide distribution rules of the TSX, a dealer could make, subject to specific conditions, a pre-arranged trade<sup>9</sup> of a significant block of stock whereby the Participant would execute the “take-on” principal trade “off-marketplace” with the understanding that the Participant would immediately “distribute” the block of stock to its clients by means of an “on-marketplace” principal-client trade (with specific client allocations conducted by journal entry). While the amendments to UMIR made various aspects of the wide distribution rules of the TSX redundant (particularly those provisions that capped “interference” from certain types of orders) other aspects, namely the provisions that provided for the principal take-on trade to occur “off-marketplace” and the mechanism for the facilitation of “distribution” of large blocks of stock, were not addressed. As such, the following guidance sets out the expectations of IIROC with respect to the procedures for the execution of certain designated trades that involve a Participant acting as principal. It is important to note that while the wide distribution rules were applicable to the TSX, the procedures described in this Guidance Note are applicable for the conduct of an unwinding trade on any Canadian marketplace.

#### Questions and Answers

The following are specific questions respecting the procedures for the execution of certain designated trades by a Participant and the response of IIROC to each question:

**1. With the elimination of the wide distribution rules of the TSX, is a Participant still able to undertake, as principal, the “distribution” to its clients of a significant block of a listed security?**

- Yes. In certain circumstances, a Participant may agree to take on a significant block of stock from a shareholder of a listed issuer at a discount to the prevailing market price with the intention of immediately attempting to sell the stock to its clients.

The wide distribution procedures of the TSX were designed to facilitate the sale of a large block of stock by a Participant to its clients in an efficient manner.<sup>10</sup> IIROC is of the view that the efficient distribution of large blocks of stock continues to be a laudable goal. As such, IIROC may provide an exemption from Rule 6.4 of UMIR to allow a Participant to complete a principal take-on trade “off-marketplace” if the trade is made in furtherance of a “distribution” to clients. Unlike the wide distribution rules of the TSX, IIROC does not require a minimum volume or value for a transaction to qualify for an “off-marketplace” exemption in accordance with Rule 6.4 of UMIR. In the view of IIROC, an “off-marketplace” exemption is warranted if the Participant, acting as principal, assumes the “economic risk” of the transaction with the “intent to distribute” the stock to its clients.

Under the wide distribution rules of the TSX, the practice developed that wide distributions were generally undertaken at the close or the opening of trading. The introduction of the amendments to UMIR regarding “designated trades” permits these types of distributions to be undertaken at any time during the trading day on any marketplace.

**2. What steps must a Participant take to facilitate an “off-marketplace” take-on trade in a listed security in furtherance of a “distribution” to clients?**

Before a Participant agrees to the “take-on” trade, the Participant must apply to IIROC in writing for an exemption under Rule 6.4(b) of UMIR.<sup>11</sup> In the normal course, IIROC will provide an exemption to allow the principal “take-on” leg of the “distribution” to be executed “off-marketplace” if:

<sup>9</sup> A “pre-arranged trade” is defined as a trade for which the terms of the trade were agreed upon prior to the entry of either the order to purchase or to sell on a marketplace by the persons entering the orders or by the persons on whose behalf the orders are entered.

<sup>10</sup> Prior to their repeal, the wide distribution rules of the TSX required that a transaction meet several additional conditions, including:

- timely public announcement of the wide distribution;
- a minimum transaction value of at least \$25,000,000;
- distribution to 25 or more clients, with no one client’s allocation being more than 50% of the total allocation; and
- completion of the wide distribution by the end of the fourth trading session following the announcement of the wide distribution.

<sup>11</sup> For a general description of the procedures to be followed and the information to be provided in order to obtain an exemption pursuant to Rule 6.4(b), see Market Integrity Notice 2005-020 – *Guidance – Obtaining a Trading Exemption or Rule Interpretation* (June 13, 2005). In addition to the information set out in Market Integrity Notice 2005-020, a Participant seeking an exemption for an “off-marketplace” trade related to a “distribution”, should submit to IIROC the following information:

- the price at which the “take-on” trade will be executed (or the price range if the take-on price has not been determined);
- the intended price of the “distribution” (or the highest price in a range of possible distribution prices if the price of the distribution has not been determined);
- a description of the “marketing efforts” that the Participant has undertaken;
- the number of client accounts that have been solicited or which the Participant intends to solicit to purchase the securities;
- the number and volume of solicited client orders the Participant holds at the time of the proposed “take-on” trade; and
- the name of the counterparty to the “take-on” trade.

Counsel in Market Regulation Policy may be contacted by telephone or in writing as follows:

- Tim Ryan – 416-646-7266 or by email at [tryan@iiroc.ca](mailto:tryan@iiroc.ca); or
- Naomi Solomon – 416-646-7280 or by email at [nsolomon@iiroc.ca](mailto:nsolomon@iiroc.ca); or
- Kevin McCoy – 416-943-4659 or by email at [kmccoy@iiroc.ca](mailto:kmccoy@iiroc.ca).

- the size of the “take-on” trade is such that the trade could not be completed on a marketplace without being disruptive of the market;
- the price of the “take-on” trade varies from the intended price of the “distribution” (or the highest price in a range of possible distribution prices if the price of the distribution has not been finally determined) by an amount that is not more than the usual agency commission that would be charged by that Participant to that client for an order of the same size;<sup>12</sup>
- the Participant intends to “distribute” the block of shares to its clients and does not already hold client orders for a significant proportion of the block; and
- the Participant agrees that to the extent that the distribution price is more than the greater of 5% or 10 trading increments lower than the prevailing market price at the time the distribution trades are to be executed, the Participant will move the market in accordance with the requirements set out in Part 2 of Policy 2.1 of UMIR to within 5% or 10 trading increments of the distribution price before executing the designated trade.

Any exemption granted by IIROC applies only to the transaction described in the application for exemption.

**3. Are there any circumstances under which IIROC would not provide an “off-marketplace” to facilitate a “distribution” of a block of securities?**

Yes. IIROC generally will not grant an “off-marketplace” exemption if, at the time of the proposed take-on trade, the Participant already holds client orders for a significant proportion<sup>13</sup> of the block. In these circumstances, IIROC believes that it is more appropriate for the transaction to be completed “on-marketplace” with the Participant acting as agent for both vendor and purchasers. However, it is acceptable for a Participant to have received “indications of interest” from clients to participate in the distribution.

**4. How is a Participant expected to execute the “unwinding” trade?**

After the negotiation of the take-on trade, the Participant would market the “distribution” of the block to its clients. The unwinding trade may be executed concurrent with or following the completion of the take-on trade. Unless IIROC otherwise agrees, IIROC expects the unwinding trade to be executed on a marketplace later that trading day. IIROC will permit the unwinding trades to be recorded on a marketplace in a single principal-client trade for the entire block of stock at the distribution price. The single trade will be permitted even in circumstances where the Participant has not received client orders for the full amount of the block. After the unwinding trade has been “printed”, the Participant may allocate the securities to clients by means of journal entry for the balance of that trading day.<sup>14</sup>

**5. What is a Participant expected to do if not all of the unwinding trade is allocated to clients by the end of the trading day?**

If a Participant has not allocated all the securities that were subject of the unwinding trade to clients by the end of the trading day, IIROC expects that the Participant will take the unallocated securities into its inventory account and file with IIROC a “Regulatory Marker Correction Form” setting out, among other things, the number of securities marked as a trade to a client which have been taken into inventory.<sup>15</sup> To the extent that a Participant has taken unallocated securities into inventory, any future sales of the securities must be completed “on-marketplace” as a principal trade that is subject to all of the provisions of UMIR, including Rule 5.2 (best price).

**6. Is a Participant required to submit a report to IIROC once the distribution has been completed?**

Yes. After the “unwinding” trade has been fully-allocated to clients or taken into inventory by the Participant, the Participant must submit written confirmation to IIROC (at the e-mail address provided in the confirmation of the grant of the exemption) setting out:

- the number of client accounts who received an allocation in the distribution;
- the largest percentage allocation to a single account; and
- the number of client accounts that were solicited to purchase securities covered by the unwinding trade.

<sup>12</sup> In essence, this condition ensures that the request for an exemption to execute the trade on a marketplace is not an attempt to avoid the application of Rule 7.5 of UMIR dealing with recorded prices.

<sup>13</sup> The determination of what constitutes a “significant proportion” is a fact specific analysis that takes into account various factors, including, but not limited to, the liquidity profile of the security and recent trading patterns in the security. While IIROC retains sole discretion in determining what constitutes a “significant proportion” for the purposes of Rule 6.4(b), IIROC will generally consider client orders that account for more than 25% of the volume of the distribution to be a “significant proportion”.

<sup>14</sup> For this purpose, IIROC considers the end of the “trading day” to be the close of trading on the last of the marketplaces on which the security trades and which provides pre-trade transparency. In the context of designated trade distribution to clients, IIROC will also take into account the liquidity and volatility profile of the particular securities when determining whether the “take-on” price satisfies this requirement.

<sup>15</sup> Reference should be made to IIROC Rules Notice 08-0033 – Guidance Note – *New Procedures For Order Marker Corrections* (July 30, 2008) for guidance on the procedures for reporting order marker corrections and the use of the web-based “Regulatory Marker Correction Form” that is available on the IIROC website at [www.iroc.ca](http://www.iroc.ca). Permitting the unwinding trade to be marked “principal-client” combined with the submission of a Regulatory Marker Correction Form via a secure web-based system to the extent that the unwinding trade has not been fully-allocated to clients, prevents information leakage on how much of the block of securities was taken into inventory by the Participant.

**7. Is the unwinding trade subject to the “best price” obligation under Rule 5.2 of UMIR?**

Yes. The execution of the unwinding trade is subject to the Participant making reasonable efforts to trade with better-priced orders disclosed in a consolidated market display. In order to limit interference from better-priced orders not included in the “disclosed volume” on the marketplace on which the unwinding trade is to be executed, the Participant would mark the unwinding trade with the “bypass order” marker. However, if the Participant had not “fully allocated” the unwinding trade at the time of its execution, the Participant may wish to interact with the undisclosed volume and Special Terms Orders in order to reduce the amount of stock that the Participant might potentially have to take into inventory and, in these circumstances, the Participant may decide not to mark the unwinding trade as a “bypass order”.

**8. Is a Participant required to mark any orders entered on other marketplaces for “displacement” purposes as “bypass”?**

No, but IIROC recommends the use of the bypass marker on orders sent to displace better-priced orders on other protected marketplaces to avoid interference from “undisclosed” liquidity. For example, if a Participant sends an order to a protected marketplace<sup>16</sup> to trade with the “disclosed volume” on that marketplace in compliance with the “best price” obligation under Rule 5.2 of UMIR and does not mark the order “bypass”, the Participant takes on the risk that the order will interact with the undisclosed volume, including hidden orders and the undisclosed portion of iceberg orders and Special Terms Orders. To the extent that not all of the orders included in the “disclosed volume” are filled, the Participant continues to have a displacement obligation. For greater certainty, notwithstanding that a Participant enters an order on a particular protected marketplace that is of a sufficient volume and is at price that will fill the disclosed volume, to the extent that the order is not marked “bypass” and the order encounters “interference” from undisclosed orders on the marketplace, the Participant will not have met its obligations under Rule 5.2.

**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.

<sup>16</sup> Presently, the TSX, TSX Venture Exchange, CNSX, Pure, Alpha, Chi-X and Omega are considered to be a “protected marketplace”. Reference is made to the definition of a “protected marketplace” in Rule 1.1 of UMIR.

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.

**Proposed Amendments:** For information on the current proposed amendments for Rule 6.4 and Policy 6.4, refer to IIROC Notice 09-0328 – Rules Notice - Request for Comments – UMIR – Provisions Respecting the Implementation of the Order Protection Rule (November 13, 2009) which includes the following proposed amendments:

4. Rule 6.4 is amended by:
  - (a) inserting a period after the first occurrence of the word “marketplace” and renumbering that sentence as subsection (1);
  - (b) deleting the phrase “unless the trade is” and substituting the phrase “Subsection (1) does not apply to a trade” and renumbering the sentence as subsection (2); and
  - (c) inserting the following as subsection (3):
    - (3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that:
      - (a) is part of an intentional cross;
      - (b) is part of a pre-arranged trade;
      - (c) is for more than 50 standard trading units; or
      - (d) has a value of \$250,000 or moreif the entry of the order on a foreign organized regulated market would avoid execution against a better-priced order entered on a marketplace pursuant to Part 6 of the Trading Rules.
3. Policy 6.4 is amended by adding the following as Part 6:

**Part 6 – Foreign Currency Translation**

If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as “marginal” because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.