

10.12 Retention and Inspection of Records and Instructions

- (1) A Participant shall retain:
- (a) the record of each order as required by Rule 10.11; and
 - (b) sufficient information to identify the beneficial owner of each account for which a record of an order is retained,
- for a period of not less than seven years from the creation of the record of the order, and for the first two years, such record and information shall be kept in a readily accessible location.
- (2) A Participant shall allow the Market Regulator of the marketplace:
- (a) of which the Participant is a member, user or subscriber;
 - (b) on which the Participant entered the order; or
 - (c) on which the order of the Participant was executed,
- to inspect and make copies of the record of an order, any record related to the order required to be maintained by the Participant in accordance with applicable securities legislation or the requirements of any self-regulatory organization of which the Participant is a member and information on the beneficial owner of the account at any time during ordinary business hours during the period that such record and information is required to be retained by the Participant.
- (3) An Access Person shall allow the Market Regulator of the marketplace:
- (a) of which the Access Person is a subscriber; or
 - (b) on which the order of the Access Person was executed,
- to inspect and make copies of any information respecting an order at any time during ordinary business hours during the period of not less than seven years from the date of the origination of the order, and for the first two years, such information shall be kept in a readily accessible location.

Defined Terms: NI 21-101 section 1.1 – “order”, “member”, “subscriber” and “user”

UMIR section 1.1 – “Access Person”, “Market Regulator”, “marketplace”, and “Participant”

Guidance: The following is the text of Market Integrity Notice 2002-005 issued on April 10, 2002 under the heading “**Evidence of Beneficial Ownership of Accounts**”.

The Investment Industry Regulatory Organization of Canada (“IIROC”) is the regulation services provider for various marketplaces. IIROC enforces marketplace requirements that include the Universal Market Integrity Rules (“UMIR”). UMIR came into effect on these markets on April 1, 2002.

Rule 10.12(1) of UMIR requires Participants to retain a record of each order and sufficient evidence to identify the beneficial owner of each account. At a recent UMIR Education Seminar for Participants, questions were raised about the extent and application of this Rule. In this Market Integrity Notice, IIROC sets out its interpretation of Rule 10.12(1)(b). The key points are:

- Rule 10.12 is a record keeping requirement. The obligation to maintain “sufficient evidence” of the beneficial ownership of an account under the rule is the responsibility of the Participant (dealer) and will generally be met in each province by compliance with securities legislation and the requirements of self-regulatory organizations other than IIROC.
- Generally it is not expected that a record of the beneficial ownership will be created as the trade occurs but rather the record of beneficial ownership will have been prepared previously (for example account opening documentation) as required by applicable legislation and SRO requirements.
- A Participant must retain the information on the beneficial ownership of an account for a period of not less than seven years from the date of the creation of the record of an order for the purchase or sale of a security for the account.

Applicable Legislation and SRO requirements include the following:

- Section 39 of the British Columbia Securities Rules requires a dealer to maintain, subject to certain exceptions, a record to show the beneficial owner of securities held in an account if different from the client.
- TSE Rule 2-402 (in effect prior to the adoption of UMIR on April 1, 2002) required a Participating Organization of the TSE to maintain at its principal office in Canada evidence of the beneficial owner or the party or parties financially responsible for an account.
- Rule 200 of the Investment Industry Regulatory Organization of Canada (“IIROC”) sets out minimum record requirements for a Participant that is a member of the IIROC. In particular Rule 200.1(i) sets out the requirements for the identification of beneficial owner of accounts. Rule 1300.1(a) establishes that “(E)ach Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted”.
- Section 29(3)(h)(i) of The Alberta Securities Commission Rules provides that, subject to Section 30(4) of those Rules, each Registrant shall maintain books and records relating to a client record for each cash and margin account containing “the name and address of the beneficial owner and the guarantor, if any, of the account”.
- Section 222(6) of the Commission des valeurs mobilières du Québec Regulations concerning Securities requires each dealer to maintain a file for each client containing “the name and address of the account holder and, where applicable, of his guarantor”.

Disciplinary Proceedings: Rule 10.12(1) was considered **In the Matter of Zoltan Horcsok (“Horcsok”)** (July 18, 2005) SA 2005-003. See Disciplinary Proceedings under 7.1.

Disciplinary Proceedings: Rule 10.12(1) was considered **In the Matter of TD Securities Inc. (“TDSI”)** (July 5, 2006) DN 2006-007. See Disciplinary Proceedings under Rule 5.1.