

## **PART 11 – ADMINISTRATION OF UMIR**

### **11.1 General Exemptive Relief**

- (1) A Market Regulator may exempt a specific transaction from the application of a provision of UMIR, if in the opinion of the Market Regulator, the provision of such exemption:
  - (a) would not be contrary to the provisions of any applicable securities legislation and the regulation and rules thereunder;
  - (b) would not be prejudicial to the public interest or to the maintenance of a fair and orderly market; and
  - (c) is warranted after due consideration of the circumstances of the particular person or transaction.
  
- (2) A Market Regulator may, upon approval by the applicable securities regulatory authority, exempt a marketplace or a class of transactions from the application of a provision of UMIR.
  
- (3) The Market Regulator shall amend UMIR to reflect any exemption provided under subsection (2).

**Defined Terms:** NI 14-101 section 1.1(3) – “securities legislation” and “securities regulatory authority”  
 UMIR section 1.1 – “Market Regulator”, “marketplace” and “UMIR”  
 UMIR section 1.2(2) – “person”

**Regulatory History:** In connection with the recognition of IIROC and its adoption of UMIR, the applicable securities commissions approved amendments to the title Part 11 and Rule 11.1 that came into force on June 1, 2008 to replace the word “Rules” with “UMIR” and the word “Rule” with “provision of UMIR”.

**Market Integrity Notice:** The following is the relevant text of Market Integrity Notice 2005-020 issued on June 13, 2005 under the heading “Guidance – Obtaining a Trading Exemption or Rule Interpretation”:

*This Market Integrity Notice is the first of a series of notices that will provide guidance on the procedures to obtain an exemption from or a formal rule interpretation of a provision of the Universal Market Integrity Rules (“UMIR”). This Market Integrity Notice focuses particularly on one of the most common exemptions requested; an approval for a Participant to act as principal or agent in respect of a trade which will be completed “off-marketplace” in accordance with Rule 6.4(b). Future Market Integrity Notices will provide guidance with respect to other, less common exemptions.*

**Background**

*One of the primary roles of the Market Regulation Policy (“Market Policy”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) is to assist in the administration of UMIR by providing Participants, Access Persons and their advisors with interpretations of or exemptions from particular provisions of UMIR in a responsive and timely manner. Market Policy closely monitors industry practices and trends and the regulatory environment to ensure that UMIR addresses and stays ahead of changes in the industry and the marketplaces and the regulatory environment.*

*IIROC may grant an exemption from the application of any provision of UMIR to a specific transaction if, in the opinion of IIROC, the provision of such exemption:*

- *would not be contrary to the provisions of any applicable securities legislation or requirements;*
- *would not be prejudicial to the public interest or to the maintenance of a fair and orderly market; and*
- *is warranted after due consideration of the circumstances of the particular person or transaction.*

IIROC may, with the approval of the applicable securities regulatory authority, grant an exemption to a marketplace or a class of transactions from the application of a provision of UMIR. It is contemplated that the consent of the applicable securities regulatory authorities would be conditional on IIROC pursuing an appropriate amendment to UMIR to reflect the effect of the exemption.

#### **General Application Procedure**

Anyone seeking to obtain an interpretation of or an exemption from a provision of UMIR should contact Market Policy counsel either via phone or e-mail (contact information is set out at the end of this Notice). Generally, counsel will require the following information in writing (delivered by fax or e-mail):

- the name of the Participant or Access Person and contact person;
- the name of the security;
- the fact situation which gave rise to the interpretation/ruling/exemption request; and
- an explanation as to why an interpretation/ruling/exemption is necessary or desirable.

Counsel will usually deliver a brief interpretation, ruling, exemption, or exemption denial over the phone or via a short e-mail message. Occasionally, an exemption is not required and Market Policy counsel will deliver a clarification or interpretation of UMIR. Counsel will follow up with a more formal written interpretation, ruling, exemption or exemption denial in due course. The formal written interpretation, ruling, exemption or exemption denial will state the following:

- date of the interpretation/ruling/exemption/denial;
- the reason for the decision to approve/deny the exemption;
- any conditions on the exemption;
- any necessary explanation of the interpretation/ruling; and
- the name of the Market Policy counsel who delivered the interpretation/ruling or granted/denied the exemption

Exemptions granted by Market Policy counsel apply only in respect of the specific transaction discussed. An exemption should never be considered to be a "blanket exemption" applicable to other, similar situations.

#### **Regulatory Exemption from Requirement for Trades to be on a Marketplace**

One of the most common exemptions requested from Market Policy is an approval for a Participant to act as principal or agent in respect of a trade which will be completed "off-marketplace" in accordance with Rule 6.4(b). In order to provide trade transparency to marketplace participants, UMIR requires a Participant acting as principal or agent to execute trades by means of the entry of orders on a marketplace. IIROC is prepared to grant an exemption from this requirement if the execution of the trade on a marketplace would be:

- disruptive of a fair and orderly market; or
- impractical in order for the seller, purchaser or their agents to comply with applicable securities legislation.

The following is a summary of four of the most common exemptions granted to a Participant to permit the Participant to be involved in an "off-marketplace" trade.

##### **Exempt Distribution from Control**

Where a controlling shareholder of an issuer wishes to trade securities of that issuer, the shareholder may do so in accordance with Multilateral Instrument 45-102 ("MI 45-102") or the comparable provisions of securities legislation in Québec. MI 45-102 provides an exemption from prospectus requirements for a distribution from control that satisfies certain conditions. Compliance with this legislation and instrument may require that the sales made by the controlling shareholder are completed by a Participant by means other than the entry of orders on a marketplace.

In accordance with clause 6.4(b) of UMIR, Market Policy counsel will generally permit the sales by the controlling shareholder to be completed by a Participant, as underwriter or agent, "off-marketplace". In addition to the information listed above under "General Application Procedure", Market Policy counsel will require the name of the controlling shareholder and written confirmation that the transactions comply with the terms of the applicable securities legislation and MI 45-102. Market Policy counsel will always issue a formal written exemption in these cases.

##### **Exempt Take-over Bid**

Where a person offers to purchase securities of an issuer and the securities subject to that offer, together with the offeror's securities constitute 20 per cent or more of the outstanding class of securities of the issuer, the offeror is considered under securities laws to have made a "take-over bid". Such offer may be exempt from the take-over bid rules if it complies with clause 93(1)(c) of the Securities Act (Ontario) or applicable securities legislation in other jurisdictions. Compliance with the conditions of clause 93(1)(c) of the Securities Act (Ontario) or applicable securities legislation in other jurisdictions may require that the purchases made by the offeror are completed by a Participant by means other than the entry of orders on a marketplace.

In accordance with clause 6.4(b) of UMIR, Market Policy counsel will generally permit the purchases made by such an offeror to be completed by a Participant, as underwriter or agent, "off-marketplace". In addition to the information listed above under "General Application Procedure", Market Policy counsel will require the name of the offeror and written confirmation that the transaction complies with the terms of the applicable securities legislation. Market Policy counsel will always issue a formal written exemption in these cases.

#### **Trades by a Controlling Shareholder Under a Normal Course Issuer Bid**

Where an issuer wishes to complete a normal course issuer bid through the facilities of a marketplace, the issuer will often seek an exemption from the rules of the marketplace to permit it to purchase shares from its controlling shareholder under the bid. This is done so the interest of the controlling shareholder remains at the level it held prior to the commencement of the normal course issuer bid. Typically, issuers intend that shares purchased by them from the controlling shareholder on a particular day will be at a price equal to the volume-weighted average price of purchases made by the issuer on the marketplace from shareholders other than the controlling shareholder on that day. This method usually requires that the purchases made by the issuer from the controlling shareholder must be completed by a Participant by means other than the entry of orders on the marketplace.

In accordance with clause 6.4(b) of UMIR, Market Policy counsel will generally permit the purchases by the issuer from the controlling shareholder to be completed by a Participant "off-marketplace". In addition to the information listed above under "General Application Procedure", Market Policy counsel will require written confirmation that the issuer has complied with the terms of the approval of the normal course issuer bid that may be established by the marketplace. Market Policy counsel will always issue a formal written exemption in these cases.

#### **Trades During a Statutory Resale Restriction**

Often, shareholders whose shares are subject to a "hold period" under securities laws wish to dispose of their shares to an accredited investor who is qualified under those securities laws to hold the restricted shares. As a non-qualified investor may not hold such shares, steps must be taken to ensure that the transaction may be completed without interference by such non-qualified investors. As such, this transaction must be completed by a Participant by means other than the entry of orders on the marketplace.

In accordance with clause 6.4(b) of UMIR, Market Policy counsel will generally permit the sales by the shareholder to be completed by a Participant "off-marketplace" where the Participant makes the case that the exemption is necessary to maintain a fair and orderly market. This permission is always subject to the Participant reporting the details of the trade to a marketplace which publicly disseminates such details. Market Policy counsel may provide notice of the exemption by a telephone call or e-mail message which will be followed-up with a more formal written ruling or exemption.

#### **General Commentary - Contact Information**

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

<b>Counsel</b>	<b>Telephone No.</b>	<b>Fax No.</b>	<b>E-mail Address</b>
James Twiss	416-646-7277	416-646-7265	jtwiss@iroc.ca
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