

## PART 3 – SHORT SELLING

### 3.1 Restrictions on Short Selling – Repealed

#### **POLICY 3.1 – RESTRICTIONS ON SHORT SELLING – Repealed**

##### **Part 1 – Entry of Short Sales Prior to the Opening – Repealed**

##### **Part 2 – Short Sale Price When Trading Ex-Distribution – Repealed**

**Regulatory History:** Effective August 27, 2004, the applicable securities commissions approved the amendment to permit a short sale of an Exchange-traded Fund on a downtick. See Market Integrity Notice [2004-023](#) – “**Provisions Respecting Short Sales**” (August 27, 2004).

Effective April 8, 2005, the applicable securities commissions approved an amendment to permit a short sale of a Basis Order on a downtick. See Market Integrity Notice [2005-010](#) – “**Provisions Respecting a “Basis Order”**” (April 8, 2005).

Effective March 9, 2007, the applicable securities commissions approved an amendment to permit a short sale of a Closing Price Order on a downtick. See Market Integrity Notice [2007-002](#) – “**Provisions Respecting Competitive Marketplaces**” (February 26, 2007).

Effective May 16, 2008, the applicable securities commissions approved an amendment to permit a short sale on a downtick if the order is made for purposes of complying with the Order Protection Rule. See Market Integrity Notice [2008-008](#) – “**Provisions Respecting “Off-Marketplace” Trades**” (May 16, 2008).

In connection with the recognition of IIROC and its adoption of UMIR, the applicable securities commissions approved an amendment to clause (h) at subsection (2) of Rule 3.1 that came into force on June 1, 2008 to replace the phrase “Rule or” with “provision of UMIR or a”. See Footnote 1 in [Status of Amendments](#).

Effective January 8, 2010, the applicable securities commissions approved amendments to replace the words “Exchange-traded Fund” with “Exempt Exchange-traded Fund”. See IIROC Notice [10-0006](#) – “**Provisions Respecting Trading During Certain Securities Transactions**” (January 8, 2010).

Effective August 26, 2011, the applicable securities commissions approved amendments to repeal a reference to “Market Maker Obligations” and replace it with a reference to “Marketplace Trading Obligations”. See IIROC Notice [11-0251](#) - “**Provisions Respecting Market Maker, Odd-Lot and other Marketplace Trading Obligations**” (August 26, 2011).

On March 2, 2012, the applicable securities commissions approved amendments to repeal Rule 3.1 and Policy 3.1 effective October 15, 2012. See IIROC Notice [12-0078](#) – “**Provisions Respecting Regulation of Short Sales and Failed Trades**” (March 2, 2012). Prior to that date, Rule and Policy 3.1 provided:

#### **3.1 Restrictions on Short Selling**

- (1) Except as otherwise provided, a Participant or Access Person shall not make a short sale of a security on a marketplace unless the price is at or above the last sale price.
- (2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:
  - (a) a Program Trade in accordance with Marketplace Rules;
  - (b) made in furtherance of the Marketplace Trading Obligations of that marketplace;
  - (c) for an arbitrage account and the seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available and the seller intends to accept such offer immediately;
  - (d) for the account of a derivatives market maker and is made:
    - (i) in accordance with the market making obligations of the seller in connection with the security or a related security, and

- (ii) to hedge a pre-existing position in the security or a related security;
- (e) the first sale of the security on any marketplace made on an ex-dividend, ex-rights or ex-distribution basis and the price of the sale is not less than the last sale price reduced by the cash value of the dividend, right or other distribution;
- (f) the result of:
  - (i) a Call Market Order,
  - (ii) a Market-on-Close Order,
  - (iii) a Volume-Weighted Average Price Order,
  - (iv) a Basis Order, or
  - (v) a Closing Price Order;
- (g) a trade in an Exempt Exchange-traded Fund; or
- (h) made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy.

### **POLICY 3.1 – RESTRICTIONS ON SHORT SELLING**

#### **Part 1 – Entry of Short Sales Prior to the Opening**

Prior to the opening of a marketplace on a trading day, a short sale may not be entered on that marketplace as a market order and must be entered as a limit order and have a limit price at or above the last sale price of that security as indicated in a consolidated market display (or at or above the previous day's close reduced by the amount of a dividend or distribution if the security will commence ex-trading on the opening).

#### **Part 2 – Short Sale Price When Trading Ex-Distribution**

When reducing the price of a previous trade by the amount of a distribution, it is possible that the price of the security will be between the trading increments. (For example, a stock at \$10 with a dividend of \$0.125 would have an ex-dividend price of \$9.875. A short sale order could only be entered at \$9.87 or \$9.88.) Where such a situation occurs, the price of the short sale order should be set no lower than the next highest price. (In the example, the minimum price for the short sale would be \$9.88, being the next highest price at which an order may be entered to the ex-dividend price of \$9.875).

In the case of a distribution of securities (other than a stock split) the value of the distribution is not determined until the security that is distributed has traded. (For example, if shareholders of ABC Co. receive shares of XYZ Co. in a distribution, an initial short sale of ABC on an ex-distribution basis may not be made at a price below the previous trade until XYZ Co. has traded and a value determined).

Once a security has traded on an ex-distribution basis, the regular short sale rule applies and the relevant price is the previous trade.

**Guidance:** See Market Integrity Notice [2004-020](#) - “**Sales of Restricted Securities**” (August 13, 2004) pertaining to whether a sale involving a “restricted” security should be marked as a “short sale”.

**Repealed Guidance:** See Market Integrity Notice [2005-023](#) - “**Securities Trading on Multiple Marketplaces**” (July 29, 2005). Effective September 1, 2006, Market Integrity Notice 2005-023 was repealed and replaced by Market Integrity Notice [2006-017](#) - “**Securities Trading on Multiple Marketplaces**” (September 1, 2006).

**Repealed Guidance:** See Market Integrity Notice [2005-024](#) - “**Short Sales Made in Furtherance of Market Maker Obligations**” (July 27, 2005). Effective October 15, 2012, Market Integrity Notice 2005-024 was repealed and replaced by IIROC Notice [12-0300](#) – **Guidance on “Short Sale and Short-Marking Exempt Order Designations**” (October 11, 2012).

**Repealed Guidance:** See Market Integrity Notice [2005-025](#) - “**Bundling Orders from a Long and Short Position**” (July 27, 2005). Effective October 15, 2012, Market Integrity Notice 2005-025 was repealed and replaced by IIROC Notice [12-0300](#) – **Guidance on Short Sale and Short-Marking Exempt Order Designations**” (October 11, 2012).

**Guidance:** See Market Integrity Notice [2005-028](#) - “**Sale of Securities Subject to Transfer Restrictions Only in the United States**” (July 29, 2005).

<b>Guidance:</b>	See Market Integrity Notice <a href="#">2006-006</a> - “ <b>Sale of Securities Subject to Certain United States Securities Laws</b> ” (February 17, 2006).								
<b>Repealed Guidance:</b>	See Market Integrity Notice <a href="#">2006-010</a> - “ <b>Short Sale Designations and Restrictions</b> ” (April 7, 2006). Effective October 15, 2012, Market Integrity Notice 2006-010 was repealed and replaced by IIROC Notice <a href="#">12-0300</a> – <b>Guidance on Short Sale and Short-Marking Exempt Order Designations</b> ” (October 11, 2012).								
<b>Guidance:</b>	See Market Integrity Notice <a href="#">2006-017</a> – “ <b>Securities Trading on Multiple Marketplaces</b> ” (September 1, 2006). See also guidance for Rules 5.1, 5.2, 5.3, 7.7 and 8.1.								
<b>Guidance:</b>	See Market Integrity Notice <a href="#">2007-003</a> – “ <b>‘Principal Market’ Determination for 2007</b> ” (February 28, 2007).								
<b>Guidance:</b>	See Market Integrity Notice <a href="#">2007-014</a> - “ <b>Exemption of Certain Inter-listed Securities from Price Restrictions on Short Sales</b> ” (July 6, 2007).								
<b>Guidance:</b>	See Market Integrity Notice <a href="#">2007-015</a> – “ <b>Specific Questions Related to Trading on Multiple Marketplaces</b> ” (August 10, 2007). See also guidance for Rules 2.2, 5.1, and 7.1.								
<b>Guidance:</b>	See Market Integrity Notice <a href="#">2008-002</a> – “ <b>‘Principal Market’ Determination for 2008</b> ” (January 11, 2008).								
<b>Guidance:</b>	See IIROC Notice <a href="#">08-0101</a> - “ <b>Restated Reminder Respecting Obligations in the Conduct of Short Sales</b> ” (September 23, 2008) which, effective as of September 23, 2008, revised and replaced IIROC Notice <a href="#">08-0098</a> - “ <b>Reminder Respecting Obligations in the Conduct of Short Sales</b> ” (September 22, 2008).								
<b>Guidance:</b>	See IIROC Notice <a href="#">08-0121</a> – “ <b>Extension of the Prohibition of Short Sales of Financial Sector Issuers</b> ” (October 6, 2008).								
<b>Guidance:</b>	See IIROC Notice <a href="#">09-0007</a> – “ <b>‘Principal Market’ Determination for 2009</b> ” (January 9, 2009).								
<b>Guidance:</b>	See IIROC Notice <a href="#">10-0095</a> – “ <b>‘Principal Market’ Determination for 2010</b> ” (April 6, 2010).								
<b>Disciplinary Proceedings:</b>	<b><u>In the Matter of Salman Partners Inc. (“Salman”), Sameh Magid (“Magid”), William Burk (“Burk”) and Ian Todd (“Todd”)</u> (February 18, 2005) SA 2005-001</b>  <i>Facts – Between April 1, 2002 and July 30, 2002, Salman engaged in a paired trading strategy with one of its institutional clients which it erroneously believed constituted arbitrage trading. The arrangement did not in fact constitute arbitrage trading for the purposes of UMIR, and as such, the trades entered as part of the strategy did not benefit from the various exemptions provided for under UMIR, and caused Salman to violate numerous UMIR provisions. In April 2002, Salman engaged in trading in a second issuer that resulted in certain transactions being recorded off-market when those transactions ought to have been posted on an exchange. Finally, in another trade, Salman failed to properly supervise a trader’s attempt to cover a short position in an issuer when a client submitted a buy order in the same security. Throughout these events, Salman failed to maintain a proper audit trail for their order flow.</i>  <i>Disposition – Salman failed to develop and implement appropriate policies and procedures to fulfill its compliance and supervisory obligations in relation to its trading on marketplaces regulated by RS, including failing to ensure that employees with supervisory responsibilities had clearly defined roles and responsibilities and that audit trail requirements were complied with. Several senior officers were found to have failed in their supervisory responsibilities as well.</i>  <i>Requirements Considered – Rules 3.1, 5.3(6), 6.2(1)(b)(viii) and (x), 6.4, 7.1 and 10.11(1) and Policy 7.1</i>  <i>Sanction -</i> <table> <tr> <td>Salman Partners Inc. -</td> <td>\$600,000 fine and costs of \$90,000</td> </tr> <tr> <td>Sameh Magid -</td> <td>\$80,000 fine and costs of \$15,000; personal undertakings</td> </tr> <tr> <td>William Burk -</td> <td>\$30,000 fine</td> </tr> <tr> <td>Ian Todd -</td> <td>\$30,000 fine</td> </tr> </table>	Salman Partners Inc. -	\$600,000 fine and costs of \$90,000	Sameh Magid -	\$80,000 fine and costs of \$15,000; personal undertakings	William Burk -	\$30,000 fine	Ian Todd -	\$30,000 fine
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<b>Disciplinary Proceedings:</b>	Rule 3.1 was considered <b><u>In the Matter of Vinh-Phat Nguyen-Qui (“Nguyen-Qui”)</u> (October 11, 2012) DN 12-0298.</b> See Disciplinary Proceedings under Rule 2.2.								