

## 6.4 Trades to be on a Marketplace

- (1) 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.
- (2) Subsection (1) does not apply to a trade:
  - (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 or 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.

- (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 more
- if 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.

## **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 clause (a) of subsection (2) of Rule 2.1 respecting specific unacceptable activities.*

*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 and the Dealer Member Rules will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:

- Rule 4.1 prohibits a Participant from frontrunning certain client orders;
- Dealer Member Rule 3300 with respect to the “best execution obligation” 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.

## 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.

<b>Defined Terms:</b>	<p>NI 14-101 section 1.1(3) – “foreign jurisdiction”, “issuer bid”, “securities legislation” and “take-over bid”</p> <p>NI 21-101 section 1.1 - “ATS”, “marketplace participant”, “member”, “order”, “regulation services provider”, “subscriber” and “user”</p> <p>NI 21-101 section 1.3(1) – Interpretation -- “affiliated entity”</p> <p>NI 21-101 section 1.4 – Interpretation -- “security”</p> <p>UMIR section 1.1 – “Canadian account”, “client order”, “Exchange”, “foreign organized regulated market”, “intentional cross”, “listed security”, “Market Regulator”, “marketplace”, “Marketplace Rules”, “non-Canadian account”, “Participant”, “pre-arranged trade”, “quoted security”, “QTRS”, “related entity”, “Requirements”, “standard trading unit”, “trading day”, “trading increment”, “Trading Rules” and “UMIR”</p> <p>UMIR section 1.2(2) – “person” and “trade”</p>
<b>Related Provisions:</b>	UMIR section 2.1 and 4.1, UMIR Part 5, UMIR sections 6.1, 9.1, 10.11 and 11.9.
<b>Regulatory History:</b>	<p>Effective May 16, 2008, the applicable securities commissions approved amendments to Rule 6.4 and Policy 6.4 to replace clauses (d) and (e) of Rule 6.4, add clause (i), and replace Policy 6.4. See Market Integrity Notice <a href="#">2008-008</a> – “Provisions Respecting “Off-Marketplace Trades” (May 16, 2008).</p> <p>Effective February 1, 2011, the applicable securities commissions approved amendments to Rule 6.4, including the introduction of subsections (1) and (2) and the addition of subsection (3). See IIROC Notice <a href="#">11-0036</a> – “Provisions Respecting the Implementation of the Order Protection Rule” (January 28, 2011).</p> <p>Effective December 9, 2013, the applicable securities commissions approved amendments to the French</p>

version of UMIR. See IIROC Notice [13-0294](#) – Notice of Approval and Implementation – “**Amendments to the French version of UMIR**” (December 9, 2013).

Effective September 1, 2016, the applicable securities commissions approved amendments to Part 2 and Part 5 of Policy 6.4. See IIROC Notice [16-0122](#) – “**Implementation of the consolidated IIROC Enforcement, Examination and Approval Rules**” (June 9, 2016).

Effective January 2, 2018, the applicable securities commission approved amendments to Part 5 of Policy 6.4. See IIROC Notice [17-0137](#) – “**Amendments Respecting Best Execution**” (July 6, 2017).

**Guidance:** See Market Integrity Notice [2003-009](#) - “**Trades on an Organized Regulated Market**” (April 29, 2003).

**Guidance:** See Market Integrity Notice [2003-010](#) - “**Trades in Debt Securities**” (May 5, 2003).

**Guidance:** See Market Integrity Notice [2003-017](#) - “**Trades in Listed or Quoted Securities**” (August 20, 2003).

**Guidance:** See Market Integrity Notice [2003-026](#) - “**Trades in TSX-Listed Tier 1 Financing Securities**” (issued on December 5, 2003).

**Guidance:** See Market Integrity Notice [2006-002](#) - “**Guidance – ‘When Issued’ Trading**” (January 30, 2006).

**Guidance:** See Market Integrity Notice [2006-009](#) - “**Guidance – Trades to be on a Marketplace When Acting As Agent**”. (March 24, 2006).

**Guidance:** See Market Integrity Notice [2007-018](#) - “**Specific Questions Related to Trading Listed Debt and Other Securities**”. (September 7, 2007).

**Guidance:** See IIROC Notice [09-0224](#) - “**Procedures For Handling Certain Designated Trades As Principal**” (July 30, 2009).

**Guidance:** See IIROC Notice [17-0138](#) – “**Guidance on Best Execution**” (July 6, 2017).

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

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

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

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

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

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

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

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

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

Conducting a trade to Canadian clients in the OTC market in the United States outside of market hours, even if that trade is subsequently reported to the NYSE and NASD, does not constitute execution of a trade on “another exchange or organized regulated market that publicly disseminates details of trades in that market” within the purview Rule 6.4(d). CSFB executed the unwinding-trades to Canadian clients before the opening of the market with the knowledge that trades conducted prior to the opening of the markets would not be printed on a consolidated tape.

*Requirements Considered* – Rules 6.4 and 10.11(1).

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

**Disciplinary Proceedings:** Rule 6.4 was considered **In the Matter of Salman Partners Inc. (“Salman”), Sameh Magid (“Magid”),**

**William Burk (“Burk”) and Ian Todd (“Todd”) (February 18, 2005) SA 2005-001.** See Disciplinary Proceedings under Rule 3.1.

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

*Facts – In the period April 4, 2002 to April 18, 2005 an agency trader at Scotia Capital Inc. (“Scotia”) and the registrant responsible for trading Scotia’s proprietary book of preferred shares, engaged in a pattern of soliciting client orders during periods when Scotia was involved in a distribution of the subject securities. In total, 39 client orders were solicited 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, off-marketplace trades were conducted 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”. The short positions were covered 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 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 off-marketplace trades were improper and 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 its representatives 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 David Berry (“Berry”) (January 17, 2013) DN 13-0018**

*Facts – Between April 2002 and April 2005 (the “Relevant Period”), Berry, Head of Preferred Trading and the registrant responsible for trading Scotia Capital’s proprietary book of preferred shares, solicited Canadian client buy orders in new issues on or about the dates the new issues were publicly announced. Clients agreed to pay the distribution prices for the new issues prior to the date on which the securities were assigned a CUSIP number and the new issue began trading on the TSX. On the first day of trading, Berry conducted off-marketplace trades in the newly listed shares by selling them short from his inventory account to clients at the distribution price. The trades were not printed on a marketplace or organized regulated market. Berry subsequently covered the short positions in the newly listed shares created in the inventory account by buying shares in the marketplace, either on the first day of trading for the newly listed shares or at a later date or dates. IIROC alleged this was contrary to UMIR 7.7(5) [as it existed prior to May, 2005] and UMIR 6.4. Scotia Capital previously acknowledged breaches of UMIR 7.7(5) and 6.4.*

*Held – Berry was entitled to the presumption of innocence and the fact that third party Scotia Capital acknowledged breaches of UMIR 7.7(5) and 6.4 did not in any way affect Berry. Berry traded in new, unlisted securities and thus did not contravene UMIR 6.4. The panel also determined that UMIR 7.7(5) was meant to prevent price manipulation of existing shares. Berry did not contravene UMIR 7.7(5) because he traded new, unlisted securities at the distribution price, and was therefore not capable of influencing the price of the securities.*

*Requirements Considered – Rules 7.7(5) [as it existed prior to May, 2005] and 6.4.*

*Disposition – The charges against Berry were dismissed.*

**Proposed Amendments:** For information on the current proposed amendments to Part 5 of Policy 6.4, refer to [IIROC Notice 15-0277](#) – Rules Notice – Request For Comments – UMIR and DMR – Proposed Provisions Respecting Best Execution (December 10, 2015)