

## **10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons**

- (1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal, non-client or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of:
  - (a) Subsection (1) of Rule 2.1 respecting specific unacceptable activities;
  - (b) Rule 2.2 respecting manipulative and deceptive activities;
  - (c) Rule 2.3 respecting improper orders and trades;
  - (d) Rule 4.1 respecting frontrunning;
  - (e) Dealer Member Rule 3300 respecting best execution of client orders;
  - (f) Rule 5.3 respecting client priority;
  - (g) Rule 6.4 respecting trades to be on a marketplace; and
  - (h) Any Requirement that has been designated by the Market Regulator for the purposes of this subsection.
  
- (2) An officer, director, partner or employee of an Access Person shall forthwith report to their supervisor or the compliance department of the Access Person upon becoming aware of activity by the Access Person or a related entity that the officer, director, partner or employee believes may be a violation of:
  - (a) Subsection (2) of Rule 2.1 respecting specific unacceptable activities;
  - (b) Rule 2.2 respecting manipulative and deceptive activities;
  - (c) Rules 2.3 respecting improper orders or trades; and
  - (d) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.
  
- (3) If a supervisor or compliance department of a Participant or Access Person receives a report pursuant to subsection (1) or (2), the supervisor or compliance department shall diligently conduct a review in accordance with the policies and procedures of the Participant adopted in accordance with Rule 7.1 or in accordance with the ordinary practices of the Access Person.
  
- (4) If the review conducted by the supervisor or compliance department concluded that there may be a violation, the supervisor or compliance department shall:
  - (a) make a written record of the report by the officer, director, partner or employee and the review conducted in accordance with subsection (3);

- (b) diligently investigate the activity that is the subject of the report and review;
  - (c) make a written record of the findings of the investigation; and
  - (d) report the findings of the investigation to the Market Regulator if the finding of the investigation is that a violation of an applicable provision of UMIR has occurred and such report shall be made not later than the 15<sup>th</sup> day of the month following the month in which the findings are made.
- (5) Each Participant and Access Person shall with respect to the records of the report, the review and the findings required by subsection (4):
- (a) retain the records for a period of not less than seven years from the creation of the record; and
  - (b) allow the Market Regulator to inspect and make copies of the records at any time during ordinary business hours during the period that such record is required to be retained in accordance with clause (a).
- (6) The obligation of a Participant or an Access Person to report findings of an investigation under subsection (4) is in addition to any reporting obligation that may exist in accordance with applicable securities legislation, the requirements of any self-regulatory entity and any applicable Marketplace Rules.

## **POLICY 10.16 – GATEKEEPER OBLIGATIONS OF DIRECTORS, OFFICERS AND EMPLOYEES OF PARTICIPANTS AND ACCESS PERSONS**

### **Part 1 – The Gatekeeper Obligation**

*Rule 10.16 requires a Participant or Access Person to conduct further investigation or review where the Participant or Access Person has reason to believe that there may have been a violation of one of the provisions enumerated in Rule 10.16. A Participant or Access Person cannot ignore “red flags” which may be indicative of improper behaviour by a client, director, officer, partner or employee of the Participant, Access Person or related entity.*

<b>Defined Terms:</b>	<p>NI 14-101 section 1.1(3) – “securities legislation”</p> <p>NI 21-101 section 1.1 – “order” and “self-regulatory entity”</p> <p>UMIR section 1.1 – “Access Person”, “client order”, “employee”, “Market Regulator”, “marketplace”, “Marketplace Rules”, “Participant”, “principal account”, “related entity”, “Requirements” and “UMIR”</p> <p>UMIR section 1.2(2) – “trade”</p>
<b>Regulatory History:</b>	<p>Effective April 1, 2005, the applicable securities commissions approved an amendment to add Rule 10.16 and Part 1 of Policy 10.16. See Market Integrity Notice <a href="#">2005-011</a> – “<b>Notice of Amendment Approval - Provisions Respecting Manipulative and Deceptive Activities</b>” (April 1, 2005).</p> <p>Effective February 1, 2011, the applicable securities commissions approved an amendment to delete clause (f) of subsection (1) of Rule 10.16 as a result of the repeal of Rule 5.2 and to renumber the remaining clauses accordingly. See Notice <a href="#">11-0036</a> - “<b>Provisions Respecting the Implementation of the Order Protection Rule</b>” (January 28, 2011).</p> <p>Effective December 9, 2013, the applicable securities commissions approved amendments to the French version of UMIR. See Notice <a href="#">13-0294</a> “<b>Amendments to the French version of UMIR</b>” (December 9, 2013).</p> <p>Effective September 1, 2016, the applicable securities commissions approved amendments to make editorial changes to Rule 10.16. See IIROC Notice <a href="#">16-0122</a> – “<b>Implementation of the consolidated IIROC Enforcement, Examination and Approval Rules</b>” (June 9, 2016).</p>

Effective January 2, 2018, the applicable securities commissions approved amendments to update the rule reference to the best execution obligation in Rule 10.16. See IIROC Notice [17-0137](#) - "**Amendments Respecting Best Execution**" (July 6, 2017).

**Guidance:** See Market Integrity Notice [2006-007](#) - "**Guidance – Gatekeeper Reporting Obligation**" (February 24, 2006). The procedure for filing a Gatekeeper Report was updated as of June 1, 2008, see Market Integrity Notice [2008-011](#) – "**New Procedures for Gatekeeper Reports**" (May 16, 2008).

**Guidance:** See Market Integrity Notice [2007-012](#) - "**Guidance – Feedback on Gatekeeper Reports**" (April 27, 2007). The procedure for filing a Gatekeeper Report was updated as of June 1, 2008, see Market Integrity Notice [2008-011](#) – "**New Procedures for Gatekeeper Reports**" (May 16, 2008).

**Guidance:** See Market Integrity Notice [2008-011](#) - "**Guidance – New Procedures for Gatekeeper Reports**" (May 16, 2008).

**Disciplinary Proceedings:** Rule 10.16 was considered **In the Matter of Dominick & Dominick Securities Inc. ("Dominick") (December 19, 2002) OOS 2002-009.** See Disciplinary Proceedings under Rule 7.1.

**Disciplinary Proceedings:** Rule 10.16 was considered **In the Matter of Luke Roger Beresford Smith ("Smith") (October 24, 2002) OOS 2002-011.** See Disciplinary Proceedings: under Rule 2.1

**Disciplinary Proceedings:** Rule 10.16 was considered **In the Matter of Douglas Francis Corrigan ("Corrigan") (May 28, 2003) OOS 2003-002.** See Disciplinary Proceedings under Rule 2.1.

**Disciplinary Proceedings:** Rule 10.16 was considered **In the Matter of Tony D'Ugo ("D'Ugo") (April 6, 2010) DN 10-0093.** See Disciplinary Proceedings under Rule 2.1.

**Disciplinary Proceedings:** Rule 10.16 was considered **In the Matter of Francesco Mauro ("Mauro") and Scott Fraser Harding ("Harding") (May 25, 2010) DN 10-0149.** See Disciplinary Proceedings under Rule 2.2.