

# IIROC NOTICE

## Rules Notice

### Request for Comments

UMIR and the IIROC Rules

**Comments due by: December 4, 2019**

Contact:

Theodora Lam

Senior Policy Counsel, Market Regulation Policy

Telephone: 416-646-7280

e-mail: [tlam@iiroc.ca](mailto:tlam@iiroc.ca)

Madeleine A. Cooper

Policy Counsel, Member Regulation Policy

Telephone: 416-646-7203

email: [mcooper@iiroc.ca](mailto:mcooper@iiroc.ca)

*Please distribute internally to:*

Institutional  
Legal and Compliance  
Senior Management  
Trading Desk  
Retail

**19-0158**

**September 5, 2019**

## Proposed Guidance Respecting Non-Clients

### Executive Summary

IIROC is requesting comment on the proposed guidance respecting the non-client definition (**Proposed Guidance**). The Proposed Guidance is being published concurrently with the proposed amendments respecting the non-client definition (**Proposed Amendments**).

The Proposed Guidance is meant to clarify various requirements in IIROC's Universal Market Integrity Rules (**UMIR**) and the IIROC Rules<sup>1</sup> and provides further detail as to how Dealer Members can comply with the Proposed Amendments.

---

<sup>1</sup> As described in Notice [19-0144](#), the Dealer Member Plain Language Rule Book is now known as the IIROC Rules.



## **Policy Development Process**

A special working group of industry stakeholders and IIROC staff provided their input on the drafting of the Proposed Guidance. We sincerely thank these individuals for their time and valuable contribution. The Market Rules Advisory Committee (**MRAC**) of IIROC also discussed aspects of the Proposed Guidance.<sup>2</sup> MRAC is an advisory committee comprised of representatives of each of the marketplaces for which IIROC acts as a regulation services provider, Participants, institutional investors and subscribers, and the legal and compliance community. In addition to the Non-Client Working Group and MRAC, we also consulted with the CCLS Order Execution Only Sub-Committee and the CCLS Institutional Sub-Committee when drafting the Proposed Guidance and Proposed Amendments. We request comments on all aspects of the Proposed Guidance, including any matter that they do not specifically address. Comments on the Proposed Guidance should be in writing and delivered by **December 4, 2019** to:

Theodora Lam  
Senior Policy Counsel, Market Regulation Policy  
Investment Industry Regulatory Organization of Canada  
Suite 2000, 121 King Street West, Toronto, Ontario M5H 3T9  
e-mail: [tlam@iiroc.ca](mailto:tlam@iiroc.ca)

Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website at [www.iiroc.ca](http://www.iiroc.ca). A summary of the comments contained in each submission will also be included in a future IIROC Notice.

After considering the comments on the Proposed Guidance received in response to this Request for Comments, IIROC may make revisions to the Proposed Guidance prior to the issuance of the final Guidance Note.

## **Appendices**

Appendix A sets out the text of the Proposed Guidance.

---

<sup>2</sup> The review by MRAC of the Proposed Guidance should not be construed as approval or endorsement of the Proposed Guidance. Members of MRAC are expected to provide their personal advice on topics and that advice may not represent the views of their respective organizations as expressed during the public comment process.



## Appendix A – Proposed Guidance

### Rules Notice

### Guidance Note

UMIR and the IROC Rules

*Please distribute internally to:*

Institutional  
Legal and Compliance  
Senior Management  
Trading Desk  
Retail

Contact:

Theodora Lam

Senior Policy Counsel, Market Regulation Policy

Telephone: 416-646-7280

e-mail: [tlam@iroc.ca](mailto:tlam@iroc.ca)

Madeleine Cooper

Policy Counsel, Member Regulation Policy

Telephone: 416-646-7203

email: [mcooper@iroc.ca](mailto:mcooper@iroc.ca)

####

####, 2019

## Dealer Related Person - Frequently Asked Questions

### Executive Summary

To assist Dealer Members in interpreting and applying the definitions of “Dealer Related Person order”<sup>3</sup> and “Dealer Related Person account” under IROC’s Universal Market Integrity Rules (**UMIR**) and the

---

<sup>3</sup> “Dealer Related Person order” means an order for the purchase or sale of a security for a Dealer Related Person account.

“Dealer Related Person account” means an account that is controlled or directed by:

- (a) an employee or Approved Person of a Dealer Member,
- (b) an employee of an affiliate of a Dealer Member,
- or
- (c) an employee of a related entity of a Participant

whose role or function would have access to:

- (i) a material fact or material change with respect to an issuer that is in the Dealer Member’s possession and that has not been generally disclosed and would reasonably be expected to affect the price of a security of that issuer,
- or
- (ii) trading-related information that is in the Dealer Member’s possession that could reasonably be expected to affect interest in the purchase or sale of a security or the execution of a trade

where the control or direction is exercised by the employee or Approved Person outside of his or her required role or function.



IIROC Rules (**Amendments**), IIROC has compiled a list of frequently asked questions along with our responses in this Guidance, which is effective on \*\*.

The Guidance clarifies various requirements in UMIR and the IIROC Rules and provides further detail as to how Dealer Members can comply with the Amendments.

|   |   |
|---|---|
| Guidance Note .....   | 1 |
| Request for Comments .....  | 1 |
| I. General .....  | 5 |
| 1. <i>What are the general impacts of the Amendments?</i> .....   | 5 |
| II. Confidential information .....  | 5 |
| 2. <i>What does it mean to have access to “confidential information”?</i> .....   | 5 |
| 3. <i>What type of trading-related information is captured by the “Dealer Related Person account” definition?</i> .....                                   | 6 |
| III. Control or direction .....   | 6 |
| 4. <i>How should Dealer Members determine who has control or direction over an investment account?</i> .....  | 6 |
| 5. <i>How should Dealer Members treat portfolio managers or traders that have control or direction over a client’s account?</i> .....                     | 7 |
| IV. Supervision .....   | 8 |
| 6. <i>What is IIROC’s expectation on Dealer Members when reviewing whether an account is properly flagged as a “Dealer Related Person account”?</i> ..... | 8 |
| 7. <i>What are IIROC’s expectations in terms of updating the status of accounts?</i> .....  | 8 |
| 8. <i>How often should Dealer Members review for the accurate marking of accounts?</i> .....  | 8 |



## I. General

### 1. What are the general impacts of the Amendments?

The Amendments would replace the definition of a “non-client account” with a “Dealer Related Person account”, which changes the scope of the definition. UMIR previously defined all orders from an employee of a Participant or related entity as “non-client orders”. The definition of a “non-client order” in the IIROC Rules<sup>4</sup> was even broader than the UMIR definition as it combined orders from both a Dealer Member’s proprietary account as well as orders from an Approved Person’s account.

The “Dealer Related Person account” definition captures an account controlled or directed by:

- an employee or Approved Person at the Dealer Member
- an employee of an affiliate of a Dealer Member
- an employee of a related entity of a Participant

that has access to confidential information as defined in clauses (i) and (ii) of the definition.

We also introduced a new definition of “Dealer Member account” in the IIROC Rules.

We have adopted a principles-based approach to provide Dealer Members with greater flexibility to identify which accounts fall within the “Dealer Related Person account” definition and which orders are to be considered Dealer Related Person orders. Below, we have set out certain considerations to assist Dealer Members when identifying a Dealer Related Person account.

## II. Confidential information

### 2. What does it mean to have access to “confidential information”?

In determining whether an employee or Approved Person has access to confidential information with respect to an issuer-<sup>5</sup> or trading<sup>6</sup>-related information, Dealer Members may consider the type and

---

<sup>4</sup> IIROC Notice No. [18-0014](#) – Rules Notice – Request for Comments – DMR - *Re-Publication of Proposed IIROC Dealer Member Plain Language Rule Book* (January 18, 2018) proposed a new definition of “non-client accounts” or “non-client orders” to mean :

Accounts or orders in which the *Dealer Member* or an *Approved Person* has a direct or indirect interest other than the commission charged.

<sup>5</sup> Clause (i) of the definition of a “Dealer Related Person account” provides:

(i) a material fact or material change with respect to an issuer that is in possession of the Dealer Member and that has not been generally disclosed and would reasonably be expected to affect the price of a security of that issuer

<sup>6</sup> Clause (ii) of the definition of a “Dealer Related Person account” provides:

(ii) trading-related information that is the Dealer Member’s possession that could reasonably be expected to affect interest in the purchase or sale of a security or the execution of a trade.



extent of access to information the employee or Approved Person has and the information barriers in place at the Dealer Member.

For example, if a Dealer Member stores or manages confidential information on an internal system that is accessible to every employee, then it would be difficult to exclude any employee from the definition of a “Dealer Related Person account”, even if certain employees are not required to access the system as part of their role or function.

However, if a Dealer Member can point to documented barriers that safeguard confidential information and limit the accessibility of the confidential information to identifiable individuals, then the Dealer Member would only need to include accounts controlled by the identified individuals under the “Dealer Related Person account” definition.

### **3. What type of trading-related information is captured by the “Dealer Related Person account” definition?**

Indications of interest, orders, historical trade and position data, as well as trading strategies are important trading-related information that could fall under the definition. For example, an examination of a client’s historical trades may reveal a series of trades indicative of a pattern of buying or selling in a specific security that could also be considered “trading-related” information that could fall under the definition. Under a principles-based approach, the Dealer Member should consider whether a client’s holdings reveal a certain trading strategy in its assessment of confidential trading-related information under clause (ii) of the “Dealer Related Person account” definition.

## **III. Control or direction**

### **4. How should Dealer Members determine who has control or direction over an investment account?**

The “Dealer Related Person account” definition focuses on the individual that has investment authority over the account, rather than on the person who holds the account. Therefore the key is in determining who can direct trading for the account, regardless of whether the account is held by:

- an employee or Approved Person, whether it is held directly in his or her own name, or held indirectly through a joint account or another entity (e.g. corporation) in which the employee or Approved Person has beneficial ownership



- someone connected to the employee or Approved Person, such as a spouse, children, other family members or individuals living at the same household or elsewhere.

To exclude an account from the definition, the Dealer Member would need to conclude that the employee or Approved Person has no ability to direct trading for that account. For example, the definition would not capture a managed account that is held directly by an employee, but over which the employee has no control or direction. However, if an employee is able to influence trading for the managed account, then the account would be captured under the “control or direction” part of the “Dealer Related Person account” definition. For example, a Dealer Member may conclude that senior executives always have the potential to affect trading in their managed accounts, and mark them as Dealer Related Person accounts.

Under a principles-based approach, we expect Dealer Members to consider and document the controls in place that prohibit or restrict unauthorized persons from placing orders for the account in question.

#### **5. How should Dealer Members treat portfolio managers or traders that have control or direction over a client’s account?**

In interpreting confidential information under the clause (ii) of the “Dealer Related Person account” definition, we would include knowledge of trading-related information for accounts handled by the portfolio manager or trader during his or her employment. For example, a portfolio manager generating an order for an account under his or her management would be considered knowledge of confidential trading-related information for the purpose of clause (ii) of the “Dealer Related Person account” definition.

The portfolio manager or trader should not use confidential trading-related information to benefit investment decisions in accounts over which they have control or direction outside of their employment, such as a family member’s account over which the portfolio manager or trader has trading authority.



#### **IV. Supervision**

##### **6. What is IIROC’s expectation on Dealer Members when reviewing whether an account is properly flagged as a “Dealer Related Person account”?**

For the purpose of marking an account under the Amendments, IIROC does not expect Dealer Members to detect employees or Approved Persons covertly directing trades using someone else’s account. When reviewing for control or direction over an account, IIROC would instead focus on formal controls and documentation. The onus is on Dealer Members to demonstrate they have:

- a reasonable method of restricting accounts to prevent unauthorized trading
- effective policies and procedures to identify accounts that would qualify as Dealer Related Person accounts.

##### **7. What are IIROC’s expectations in terms of updating the status of accounts?**

In addition to having the ability to add new accounts as a “Dealer Related Person account”, Dealer Members must also be able to stop marking an existing account as a “Dealer Related Person account” when it falls outside of the definition.

Dealer Members should not “over-mark” orders as Dealer Related Person orders because this impacts other IIROC rules. For example, the individual at issue may lose the benefit of certain trading rules that ensure Dealer Members treat clients with priority over other principal orders or “Dealer Related Person orders”.

If an individual has moved to a new role where they no longer have access to confidential information (including where the person no longer works at a Dealer Member), or no longer has control or direction over an account:

- that account would be no longer be considered a “Dealer Related Person account”
- the Dealer Member should not continue to flag their orders as such.

##### **8. How often should Dealer Members review for the accurate marking of accounts?**

We expect Dealer Members to review and update the “Related Dealer Person” status of accounts no less than once every 12 months.