

Market Integrity Notice

Guidance

May 16, 2008

No. 2008-011

Suggested Routing

- Trading
- Legal and Compliance

Key Topics

- Gatekeeper Obligations
- Regulatory Communications
- Reporting Obligations

UMIR Provisions Referenced

- Rule 10.16 – Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons

NEW PROCEDURES FOR GATEKEEPER REPORTS

Summary

This Market Integrity Notice provides notice that, **effective June 2, 2008**, a Participant or Access Person will be required to file any gatekeeper report required under Rule 10.16 of the Universal Market Integrity Rules using the secure web-based form available on the Investment Industry Regulatory Organization of Canada website at www.iiroc.ca. This Market Integrity Notice also provides feedback on the gatekeeper reports received by Market Regulation Services Inc. for the one-year period ended February 28, 2008.

Questions / Further Information

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**Market Integrity/Policy Notices
Referenced**

- Market Integrity Notice 2006-007 – *Guidance - Gatekeeper Reporting Obligation* (February 24, 2006)
- Market Integrity Notice 2007-012 – *Guidance – Feedback on Gatekeeper Reports* (April 27, 2007)
- Market Policy Notice 2007-006 – *General – New Requirements For Secure Electronic Regulatory Communications* (September 26, 2007)

NEW PROCEDURES FOR GATEKEEPER REPORTS

Summary

This Market Integrity Notice provides notice that, **effective June 2, 2008**, a Participant or Access Person will be required to file any gatekeeper report (“Gatekeeper Report”) required under Rule 10.16 of the Universal Market Integrity Rules (“UMIR”) using the secure web-based form available on the Investment Industry Regulatory Organization of Canada (“IIROC”) website at www.iiroc.ca. This Market Integrity Notice also provides feedback on the gatekeeper reports received by Market Regulation Services Inc. (“RS”) for the one-year period ended February 28, 2008.

RS expects to merge with the Investment Dealers Association of Canada (“IDA”) effective June 1, 2008 to form a new self-regulatory organization known as IIROC. Given the impending merger, all references to RS in this notice should be read as including IIROC.

Background on Regulatory Communications

In Market Policy Notice 2007-006 – *General – New Requirements for Secure Electronic Regulatory Communications* (September 26, 2007), RS provided that a Gatekeeper Report had to be submitted to RS through the use of Echoworx Encrypted Message eXchange (“EMX”) system or through the web-based gatekeeper form available on the RS website. Given the impending merger with the IDA, RS has decided to transition the web-based form to the newly developed IIROC website. The Gatekeeper Form that will be available through the IIROC website will be substantively the same as the current form on the RS website. As of June 2, 2008, all Gatekeeper Reports must be filed using **only** the secure web-based form found under the [“Quick Links”](#) section on the Homepage of the IIROC website.

As with the EMX system, the new web-based form will be password protected and will leverage the same access procedures currently in place at the IDA for the on-line Continuing Education and ComSet systems. Each Participant or Access Person must appoint a person within its organization to act as administrator (“Gatekeeper Report Administrator”). The Gatekeeper Report Administrator will have the authority to add or delete other users within the Participant or Access Person. The Gatekeeper Report Administrator may file Gatekeeper Reports on behalf of the Participant or Access Person or may delegate the responsibility to other users within the Participant or Access Person. The Gatekeeper Report Administrator may be the same individual as the “Administrator” for the current IDA Continuing Education and ComSet systems.

Effective June 2, 2008, Gatekeeper Reports will not be able to be submitted using either the current RS web-based gatekeeper form or EMX. A Participant or Access Person should continue to use the EMX system for all other types of regulatory communications that RS currently requires be filed using the EMX system.

In order to facilitate the introduction of the new procedures, each Participant and Access Person must provide the name and email address of their Gatekeeper Report Administrator to Thomas Moppett at thomas.moppett@rs.ca not later than May 30, 2008.

Gatekeeper Reporting Obligation

Market Integrity Notice 2006-007 – *Guidance – Gatekeeper Reporting Obligation*, (February 24, 2006) provided guidance on the gatekeeper reporting obligation of a Participant or Access Person under Rule 10.16 of UMIR. That guidance set out RS's expectations with respect to:

- the manner in which a Gatekeeper Report is to be submitted;
- information that must be included in a Gatekeeper Report;
- account types to which a gatekeeper reporting obligation extends; and
- factors to be considered by a Participant or Access Person in determining whether a Gatekeeper Report is required.

Statistics and Information on Gatekeeper Reports Received by RS

Market Integrity Notice 2007-012 – *Guidance – Feedback on Gatekeeper Reports* (April 27, 2007) set out statistical information on the Gatekeeper Reports received in the year ended February 28, 2007 (“2007 Review”). Based on a review of the Gatekeeper Reports received during the year ended February 28, 2008 (“2008 Review”), RS was able to undertake a year-over-year comparison of reporting trends, anomalies and deficiencies. Some of the key findings include:

- Gatekeeper Reports received by RS for both the 2007 Review and 2008 Review involved activity on the Toronto Stock Exchange, TSX Venture Exchange or Canadian Trading and Quotation System
- 22 Participants filed a Gatekeeper Report during the 2008 Review, an increase of 30% from the 2007 Review.
- No Gatekeeper Reports were filed for the 2007 Review or the 2008 Review in connection with activities on an alternative trading system.
- No Gatekeeper Reports were received from an Access Person during either the 2007 Review or 2008 Review.
- During the 2008 Review, approximately 12.5% of Gatekeeper Reports involved trading by a “Dealer-Sponsored Access” account (“DSA Account”). This represents a significant increase over the 2007 Review in which only 5% of Reports were in connection with trading by a DSA Account.
- During both the 2007 Review and 2008 Review, slightly more than 50% of Gatekeeper Reports involved trading by an “Order Execution Account”.
- The bulk of Gatekeeper Reports received during both the 2007 Review and the 2008 Review were related to:
 - Rule 2.1 (Just and Equitable Principles),
 - Rule 2.2 (Manipulative and Deceptive Activities),

- Rule 2.3 (Improper Orders and Trades), and
- Rule 6.4 (Trades to be on a Marketplace).

Feedback on Gatekeeper Reports

Obligation to File a Gatekeeper Report

While RS is generally satisfied with the level of reporting by Participants, RS continues to encourage a Participant or Access Person to file a Gatekeeper Report in all circumstances if an investigation by the Participant or Access Person concludes that a violation of one or more of the integrity rules enumerated in Rule 10.16(1) has ***or may have*** occurred. To the extent that an investigation conducted by a Participant or Access Person determines that a violation ***may have occurred***, RS would encourage a Participant or Access Person to file a Gatekeeper Report notwithstanding that the information contained in the Gatekeeper Report may not be complete (i.e. filing has been made on an “interim basis” prior to the conclusion of the investigation) or the investigation, while properly diligent, is inconclusive as to whether a violation of UMIR has occurred.

Rule 10.16 provides that a Participant is expected to act on “red flag” activity in a principal, non-client or client account of a Participant. To the extent that an investigation by a Participant determines that a violation has or may have occurred in any of these account types, a Report should be filed with RS. The filing of a Gatekeeper Report with RS extends to all client account types, and includes a DSA Account or Order Execution Account. In the view of RS, orders entered by such accounts, to the extent that they are entered directly on a marketplace without the involvement of staff of the Participant, present heightened risks to both market integrity and the Participant through whom the order is routed. As such, RS expects a Participant to have adequate policies and procedures with respect to the filing of Gatekeeper Reports with RS which include provisions for filing Gatekeeper Reports for such “higher risk” account types.

Identification of Client

During the 2007 Review, RS noted that a number of Reports did not properly identify the client that was subject of the Gatekeeper Report. During the 2008 Review, RS staff found that all Gatekeeper Reports received properly identified the name of the client(s) involved. RS thanks all Participants for their attention to this issue and reminds all Participants to continue to include all relevant information on the identity of clients, including DSA Accounts and Order Execution Accounts.

In the view of RS, all information contained in a Report is being submitted by a Participant or Access Person for a regulatory purpose. Participants and Access Persons should refer to the Joint Regulatory Notice on Federal and Provincial Privacy Legislation, jointly published on December 3, 2003 by RS, the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada, the Bourse de Montréal Inc. and the Canadian Investor Protection Fund regarding the obligation of a Participant or Access Person to provide such information.

Next Steps

As part of its current trade desk review process, RS staff continues to review the policies and procedures adopted by a Participant relating to their gatekeeper reporting obligation under Rule 10.16 of UMIR. In particular, RS staff will review the adequacy of internal policies and procedures related to the detection, investigation and escalation of violations or potential violations of UMIR, as well as the adequacy of policies and procedures relating to the filing of a Gatekeeper Report.

Questions / Further Information

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