

2.2 Manipulative and Deceptive Activities

- (1) A Participant or Access Person shall not, directly or indirectly, engage in or participate in the use of any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace if the Participant or Access Person knows or ought reasonably to know the nature of the method, act or practice.
- (2) A Participant or Access Person shall not, directly or indirectly, enter an order or execute a trade on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:
 - (a) a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
 - (b) an artificial ask price, bid price or sale price for the security or a related security.
- (3) For greater certainty, the entry of an order or the execution of a trade on a marketplace by a person in accordance with the Marketplace Trading Obligations shall not be considered a violation of subsection (1) or (2) provided such order or trade complies with applicable Marketplace Rules or terms of the contract with the marketplace and the order or trade was required to fulfill applicable Marketplace Trading Obligations.

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 1 – Manipulative or Deceptive Method, Act or Practice

There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or practice:

- (a) *making a fictitious trade;*
- (b) *effecting a trade in a security which involves no change in the beneficial or economic ownership; and*
- (c) *effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group.*

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

- (a) entering an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same or different persons;*
- (b) entering an order or orders for the sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of that security, has been or will be entered;*
- (c) making purchases of, or offers to purchase, a security at successively higher prices or in a pattern generally of successively higher prices;*
- (d) making sales of or offers to sell a security at successively lower prices or in a pattern generally of successively lower prices;*
- (e) entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined sale price, ask price or bid price,*
 - (ii) effect a high or low closing sale price, ask price or bid price, or*
 - (iii) maintain the sale price, ask price or bid price within a predetermined range;**
- (f) entering an order or a series of orders for a security that are not intended to be executed;*
- (g) entering an order for the purchase of a security without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;*
- (h) entering an order for the sale of a security without, at the time of entering the order, having the reasonable expectation of settling any trade that would result from the execution of the order; and*
- (i) effecting a trade in a security, other than an internal cross, between accounts under the direction or control of the same person.*

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

Part 3 – Artificial Pricing

For the purposes of subsection (2) of Rule 2.2, an ask price, bid price or sale price will be considered artificial if it is not justified by real demand or supply in a security. Whether or not a particular price is "artificial" depends on the particular circumstances.

Some of the relevant considerations in determining whether a price is artificial are:

- (a) the prices of the preceding trades and succeeding trades;
- (b) the change in the last sale price, best ask price or best bid price that results from the entry of the order on a marketplace;
- (c) the recent liquidity of the security;
- (d) the time the order is entered and any instructions relevant to the time of entry of the order; and
- (e) whether any Participant, Access Person or account involved in the order:
 - (i) has any motivation to establish an artificial price, or
 - (ii) represents substantially all of the orders entered or executed for the purchase or sale of the security.

The absence of any one or more of these considerations is not determinative that a price is or is not artificial.

Defined Terms: NI 21-101 section 1.1 – "order"
NI 21-101 section 1.4 – Interpretation -- "security"
UMIR section 1.1 – "Access Person", "best ask price", "best bid price", "consolidated market display", "internal cross", "last sale price", "Marketplace Trading Obligations", "Market Regulator", "marketplace", "Marketplace Rules", "Participant" and "related security"
UMIR section 1.2(2) – "person" and "trade"

Related Provisions: UMIR Policy 1.2 Part 3 – interpretation of "ought reasonably to know"

Regulatory History: Effective April 1, 2005, the applicable securities commissions approved an amendment to repeal and replace Rule 2.2 and Policy 2.2. Prior to that date, Rule 2.2 and Policy 2.2 provided:

2.2 Manipulative or Deceptive Method of Trading

- (1) A Participant or Access Person shall not, directly or indirectly, use nor knowingly facilitate nor participate in the use of any manipulative or deceptive method of trading in connection with the entry of an order or orders to trade on a marketplace for the purchase or sale of any security which creates or which could reasonably be expected to create a false or misleading appearance of trading activity or an artificial price for the security or a related security.
- (2) Without limiting the generality of subsection (1), the following activities when undertaken on a marketplace constitute deceptive and manipulative methods of trading:
 - (a) making a fictitious trade;
 - (b) effecting a trade in a security which involves no change in the beneficial or economic ownership;
 - (c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group; and
 - (d) purchasing a security with the intention of making a sale of the same or a different number of units of the security or a related security on a marketplace at a price which is below the price of the last sale of a standard trading unit of such security displayed in a consolidated market display.
- (3) Without limiting the generality of subsection (1), the following activities shall be considered deceptive and manipulative methods of trading when undertaken on a marketplace with the intention of creating a false or misleading appearance of trading activity or an artificial price for a security or a related security:

- (a) entering an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same or different persons;
 - (b) entering an order or orders for the sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of that security, has been or will be entered;
 - (c) making purchases of, or offers to purchase, a security at successively higher prices;
 - (d) making sales of or offers to sell a security at successively lower prices;
 - (e) entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined price or quotation,
 - (ii) effect a high or low closing price or closing quotation, or
 - (iii) maintain the trading price, ask price or bid price within a predetermined range; and
 - (f) entering a series of orders for a security that are not intended to be executed.
- (4) A price will be considered artificial if the price is not justified by real demand or supply in a security.
- (5) For the purposes of subsection (4), a price in a security may be considered not justified by real demand or supply if:
- (a) the price is higher or lower than the previous price and the market immediately returns to the previous price following the trade; and
 - (b) the bid price is raised or the ask price is lowered by an order which, at the time of entry, is the only order at that price and the order is cancelled prior to trading.

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE METHOD OF TRADING

Part 1 – Artificial Pricing

For the purposes of Rule 2.2, a price will be considered artificial if it is not justified by real demand or supply in a stock. Whether or not a particular price or quotation is "artificial" depends on the particular circumstances. A price may be artificial if it is higher or lower than the previous price and the market immediately returns to that previous price following the trade. A quotation may be artificial if it raises or lowers the bid or offering, is the only bid or offering at that price and is removed without trading. However, these factors are only indications and are not on their own evidence that a given price or quotation is artificial. Consideration will also be given to whether any Participant, Access Person or account involved in the order has any motivation to establish an artificial price.

Some of the relevant considerations in determining whether an order is proper are:

- (a) the prices of the immediately preceding and succeeding trades;
- (b) the change in price or quotation that would result from carrying the instruction or entering the order;
- (c) the time the order is entered, or any instructions relevant to the time of executing the order;
- (d) the effect that such a change would have on other Participants or Access Persons who are or who have been interested in the stock; and
- (e) whether or not the person entering the order is associated with a promotional group or other group with an interest in effecting an artificial price, either for banking and margin purposes or for purposes of effecting a distribution of the securities of the issuer.

Where the order is coming from a non-principal account, the responsibility for deciding whether or not an order has been entered with the bona fide intention of buying and selling shares or to establish an artificial price or quotation lies with the Participant, and specifically with the person(s) responsible for handling the order. Each case must be judged on its own merits. Orders which are intended to or which affect an artificial price or quotation are more likely to appear at year end of a month, quarter or year or on and the date of the expiry of options on the listed security.

Effective August 26, 2011, the applicable securities commissions approved amendments to subsection 2.2(3) to (a) insert after the phrase "Marketplace Rules" the phrase "or terms of the contract with the marketplace"; and to (b) delete each occurrence of the phrase "Market Maker Obligations" and substitute "Marketplace Trading Obligations". Prior to that date, Rule 2.2(3) provided:

- (3) For greater certainty, the entry of an order or the execution of a trade on a marketplace by a person in accordance with the Market Maker Obligations shall not be considered a violation

of subsection (1) or (2) provided such order or trade complies with applicable Marketplace Rules and the order or trade was required to fulfill applicable Market Maker Obligations.

On March 2, 2012, the applicable securities commissions approved an amendment to repeal clause (d) of Part 1 of Policy 2.2 effective October 15, 2012. Prior to that effective date, this provision provided:

- (d) purchasing a security with the intention of making a sale of the same or a different number of units of the security or a related security on a marketplace at a price which is below the price of the last sale of a standard trading unit of such security displayed in a consolidated market display.

Effective December 9, 2013, the applicable securities commissions approved amendments to the French version of UMIR. See IIROC Notice 13-0294 issued on December 9, 2013 under the heading “Rules Notice – Notice of Approval and Implementation – UMIR – Amendments to the French version of UMIR.

Guidance: The following is the text of Market Integrity Notice 2002-010 issued on June 26, 2002 under the heading “**Changes in Beneficial and Economic Ownership**”:

Background

Following discussions with traders and compliance staff of Participants, IIROC wishes to confirm the types of trades that, in the opinion of IIROC, do not involve a change in beneficial and economic ownership. In addition, IIROC wishes to confirm the treatment of trades that do not involve a change in beneficial and economic ownership. To assist traders and Participants in complying with the Universal Market Integrity Rules (“UMIR”), this Market Integrity Notice outlines some guidelines and examples for the treatment of orders that do not constitute a change in beneficial and economic ownership.

Historically, the TSX Venture Exchange (formerly the Canadian Venture Exchange) required trades between spouses to be executed off-marketplace. The Toronto Stock Exchange (the “TSX”), however, viewed these trades as changes in beneficial ownership and required such trades to be executed on a marketplace. Effective April 1, 2002, the requirements of UMIR replaced the previous market integrity components of the rules of TSX and TSX VE. The requirements of UMIR must be applied consistently to Participants, regardless of which marketplace the trade occurs upon. Consequently, it is the position of IIROC that trades that involve a change in beneficial and economic ownership must be traded upon a marketplace on which the Participant is a member, participating organization, user or subscriber.

To this end, Rule 6.4 of UMIR requires trades to be executed on a marketplace where a Participant is acting as principal or agent unless the trade falls within one of the exemptions to the rule. For instance, a Participant that interposes itself between the trades of a client (e.g. the dealer purchases as principal from the client and sells as principal to the client) creates two transactions, which similarly creates a change in beneficial and economic ownership. Such trades are not permitted as off-marketplace transactions. Conversely, trades that do not involve a change in beneficial and economic ownership must be executed off-marketplace.

Manipulative or Deceptive Method of Trading

Trades that do not constitute either a change in beneficial ownership or a change in economic ownership should not take place on a marketplace as such trades constitute a deceptive and manipulative method of trading pursuant to Rule 2.2 of UMIR. For example, a transfer of stock between an individual and a wholly-owned corporation, although constituting a change in beneficial ownership, does not constitute a change in economic ownership and therefore must be done off-marketplace.

Trades for Tax Reasons

Participants receive many requests each year to facilitate large volume or value trade transactions between spouses, for income tax or RRSP purposes, off-marketplace. A trade for tax purposes may only be executed off-marketplace without prior consultation with IIROC provided the trade:

- does not constitute a legal or beneficial change in ownership of the security;
- is not an action to evade tax or securities laws and does not contravene UMIR, or the rules and policies of the exchange upon which the trade would otherwise occur; and
- is executed at a price that is within the context of the market for that particular security at the time of the trade.

Trades between spouses that are executed for tax reasons are viewed by IIROC to constitute a change in both beneficial and economic ownership and therefore would have to be executed on a marketplace. This requirement applies where a person sells securities to the RRSP of their spouse. However, the contribution of securities to a spousal RRSP does not constitute a trade (as there is no valuable consideration) and must be executed off-marketplace.

Gifts or Charitable Donations

Security transfers that are gifts or charitable donations are to be executed off-marketplace, even if the transfer is facilitated by a Participant. Such transfers are done without consideration or payment and therefore do not constitute “trades” pursuant to applicable securities legislation, including the Securities Act (Ontario).

Examples

The following examples illustrate trades that would not constitute a change in beneficial and economic ownership:

- A client executing a simultaneous purchase and sale for one account for income tax purposes or for the purpose of revaluing a portfolio. Such trades do not constitute a change in beneficial or economic ownership and therefore are to be executed off-marketplace.
- A client executing a trade with a corporation would constitute a change in beneficial and economic ownership and would

have to be executed on a marketplace unless the corporation is 100% owned by the individual in which case it would not constitute a change in economic ownership and would be required to be executed off-marketplace.

- A client transferring securities from their personal account to their RRSP would not constitute a change in beneficial or economic ownership and the trade must be executed off-marketplace whether or not the transfer was in the form of a sale of the securities to the RRSP or a contribution of the securities to the RRSP as a premium.
- A client transferring securities to a spouse for tax purposes and valuable consideration would constitute a change in beneficial and economic ownership and therefore the transfer should be executed on a marketplace. A gift of securities to a spouse or the contribution of securities to a spousal RRSP would not constitute a trade and the transfer should be completed off-marketplace.

Guidance: The following is the text of Market Integrity Notice 2002-021 issued on December 16, 2002 under the heading “**Prohibition Against Establishing Artificial Prices**”:

Participants are reminded that under Rule 2.2 of the Universal Market Integrity Rules (“UMIR”) trading activities undertaken with the intention of creating an artificial price for a security or a related security will be considered deceptive and manipulative methods of trading. In particular, it will be considered manipulative or deceptive to enter an order or orders for the purchase or sale of a security with the intention of creating a false or misleading appearance of trading activity or an artificial price for the security to:

- Establish a predetermined price or quotation,
- Affect a high or low closing price or closing quotation, or
- Maintain the trading price, ask price or bid price within a predetermined range.

The responsibility of deciding whether or not an order has been entered with the intention of establishing an artificial price or quotation lies initially with the Participant, and specifically with the person or persons responsible for handling the order. **If a Participant has provided access to the trading system of an exchange or other marketplace to “eligible clients” pursuant to the rules of the marketplace, the Participant nonetheless is fully responsible for all orders entered by such clients.**

As noted in Policy 2.2, orders that are intended to affect or which affect an artificial price or quotation are more likely to appear at the end of a month, quarter or year. As December 31st represents the end of a month, quarter and year in addition to being traditionally a lower trading volume day, it is particularly susceptible to the entry of orders that may affect an artificial price or quotation. **With year-end approaching, Participants are to ensure that provisions of Rule 2.2 and Policy 2.2 are brought to the attention of their trading staff and compliance departments and that appropriate steps are taken to review client activities.**

Guidance: The following is the text of Market Integrity Notice 2003-002 issued on January 13, 2003 under the heading “**Prohibition on Double Printing**”:

Investment Industry Regulatory Organization of Canada (“IIROC”) wishes to remind Participants of the prohibition on “double printing”. The term “double printing” refers to two trades being made on a marketplace when only one trade was required to execute an order. For example, double printing occurs when a firm with a client order to buy purchases stock as principal (into inventory) and then crosses the stock to the client, effecting two trades on a marketplace to satisfy the client order. This practice creates artificial volume and results in inflated trading volume figures for both the firm and the marketplace, damaging the credibility of both the marketplace and its trading statistics.

Given the creation of artificial volume, double printing may constitute a manipulative and deceptive method of trading contrary to Rule 2.2 of the Universal Market Integrity Rules (“UMIR”). Rule 2.2 of UMIR prohibits firms from using, knowingly facilitating or participating in the use of any manipulative or deceptive method of trading in connection with the entry of an order or orders to trade on a marketplace for the purchase or sale of any security which creates or which could reasonably be expected to create a false or misleading appearance of trading activity or an artificial price for the security or a related security. Double printing may also result in a violation of client priority requirements contrary to Rule 5.3 of UMIR.

IIROC will be monitoring for double printing through its ongoing market surveillance activities as well as through periodic trade desk reviews of firms. Firms are encouraged to examine their trading practices and order handling procedures to ensure that orders are being marked and handled in accordance with UMIR. Violations may result in enforcement action being initiated by IIROC.

Guidance: The following is the relevant portion of Market Integrity Notice 2004-021 issued on August 26, 2004 under the heading “**Entry of Off-Setting Market-on-Close Orders**”:

A Participant or Access Person must ensure that market orders entered on the Market-on-Close Facility of the Toronto Stock Exchange are accurate and that any change or cancellation of such order must be entered prior to 3:40 p.m. Certain efforts by a Participant and Access Person to offset its Market MOC Order after 3:40 p.m. may be considered a manipulative or deceptive trading practice and would be subject to disciplinary proceedings by the Market Regulator.

Background

The Market-on-Close Facility (“MOC Facility”) of the Toronto Stock Exchange (“TSX”) permits the entry of market orders to trade at the closing price (“Market MOC Order”) from 7:00 a.m. to 3:40 p.m. At 3:40 p.m., the TSX calculates and broadcasts the order

imbalance for each of the securities participating in the MOC Facility indicating whether the imbalance is on the buy or sell side and the size of the imbalance. After 3:40 p.m., only limit orders on the opposite side of the market as the imbalance (“Limit MOC Order”) may be entered into the MOC Facility. The MOC Facility is “blind” as there is no transparency with respect to particular orders entered as Market MOC Orders or Limit MOC Orders. A Market MOC Order entered prior to 3:40 p.m. may not be amended or cancelled at any time after 3:40 p.m. and any Limit MOC Order entered prior to 4:00 p.m. may not be amended or cancelled at any time after 4:00 p.m.

Recently, there has been a circumstance in the MOC Facility where a Participant has sought to “correct a situation” by entering a Limit MOC Order at a price that virtually assured that a Market MOC Order for the account of the same person would cross with the Limit MOC Order and the trade resulting from this cross was subsequently cancelled by the Participant. Participants have enquired whether an offsetting Limit MOC Order may be entered into the MOC Facility for the account of the same person, either to limit the ability of other Participants to trade against an erroneous order or to affect the price that the Market MOC Order would receive.

Position of the Market Regulator

It is the position of the Market Regulator that the entry by a Participant or Access Person of a Limit MOC Order to off-set a Market MOC Order entered by that Participant or Access Person constitutes a “wash trade”. It is unacceptable for a Participant or Access Person to undertake a “wash trade”, directly or indirectly, even in circumstances where the Participant or Access Person is trying to “correct” an erroneous Market MOC Order. The conduct of a “wash trade” will result in disciplinary proceedings by IIROC against the Participant or Access Person.

Rule 2.2 of the Universal Market Integrity Rules prohibits “affecting a trade in a security which involves no change in the beneficial or economic ownership”. In addition, Rule 2.2. provides that the entry of an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same person will be considered a manipulative and deceptive methods of trading if undertaken with the intention of creating a false or misleading appearance of trading activity or an artificial price.

A Participant or Access Person should take every precaution to ensure that Market MOC Orders entered into the MOC Facility are accurate. In particular, it is recommended that all Market MOC Orders be reviewed and confirmed prior to 3:40 p.m. If a Participant has arranged a trade with another party to be completed in the MOC Facility at the closing price, it is incumbent on each of the prospective parties to the trade to assure themselves that the order for the other side of the trade has been entered into the MOC Facility prior to 3:40 p.m. such that the MOC imbalance for that security broadcast by the TSX at 3:40 p.m. is accurate.

If a Participant or Access Person becomes aware at any time prior to 3:40 p.m. that a Market MOC Order has been entered in error, the Participant or Access Person may cancel the order. If a Participant or Access Person becomes aware at any time after 3:40 p.m. that it has entered a Market MOC Order in error, the Participant or Access Person shall immediately contact the Market Surveillance Section of Investment Industry Regulatory Organization of Canada at 416.646.7220 and provide the particulars of the order.

If Market Surveillance determines that it would be in the interest of a fair and orderly market to permit the Participant or Access Person to enter an off-setting Limit MOC Order for a Market MOC Order previously entered for the account of the same person, Market Surveillance will specifically authorize the entry of the off-setting order. Market Surveillance will issue a notice to the effect that the closing imbalance previously disclosed by the TSX should be adjusted.

In determining whether to permit the entry of an off-setting order for the amount of the error or a lesser amount, Market Supervision will consider:

- the possible impact of the erroneous Market MOC Order on the closing price;
- the extent to which trading activity may have already occurred in the affected security based on the MOC imbalance report; and
- whether there is sufficient time to issue a notice to the market of the adjustment to the imbalance report.

Guidance: The following is the text of Market Integrity Notice 2005-004 issued on March 4, 2005 under the heading “**Double Printing and the Entry of Orders**”:

Prohibition on “Double Printing”

Investment Industry Regulatory Organization of Canada (“IIROC”) considers that “double printing” creates a false or misleading appearance of trading activity contrary to the provisions of Rule 2.2 of the Universal Market Integrity Rules (“UMIR”) that prohibits a manipulative or deceptive method of trading. The term “double printing” occurs when two trades are made on a marketplace when only one trade was necessary to execute an order.

IIROC issued Market Integrity Notice 2003-002 on January 13, 2003 dealing with the issue of “double printing” and Market Integrity Notice 2003-007 on March 27, 2003 dealing with order marking. To assist Participants in complying with the prohibition on “double printing”, this Market Integrity Notice provides additional examples of how orders should be handled and marked, particularly when there are multiple marketplaces trading the same securities. These examples are provided for guidance only and illustrate IIROC’s position under specific scenarios. If a Participant is unclear on how to handle or mark an order in a particular situation, the Participant is encouraged to contact IIROC for guidance.

Examples of Orders for More than 50 Standard Trading Units

This Market Integrity Notice clarifies that a Participant will not be considered to have engaged in “double printing” if the Participant:

- executes, as principal, with a client order for more than 50 standard trading units that could not be filled, in accordance with the terms of the client order, by orders displayed in a consolidated market display for any single marketplace; and
- subsequently executes trades with certain of the orders displayed in the consolidated market display at the same price as the principal trade with the client.

For each of the examples, assume that:

- a Participant receives a client order to buy 100,000 shares of XYZ at a price of \$10.00 per share; and
- the shares of XYZ are traded on two marketplaces: the Exchange and ATS1.

Example 1:

If the consolidated market display indicates that the Exchange has orders to sell 30,000 shares of XYZ at a price of \$10.00 per share, the Participant would be able to either:

- execute, as principal on either the Exchange or ATS1, a cross with the client for the 100,000 shares and then execute principal trades with any or all of the orders indicated in the consolidated market display; or
- purchase, as agent for the client, the 30,000 shares offered on the Exchange and then enter a principal-client cross for 70,000 shares on either the Exchange or ATS1.

Example 2:

If the consolidated market display indicates that the Exchange has orders to sell 30,000 shares and ATS1 has orders to sell 70,000 shares at \$10.00 per share, the Participant would be able to either:

- execute, as principal on either the Exchange or ATS1, a cross with the client for the 100,000 shares and then execute principal trades with any or all of the orders on the Exchange or ATS1 indicated in the consolidated market display; or
- purchase, as agent for the client, the 30,000 shares offered on the Exchange and the 70,000 shares offered on ATS1.

While the number of shares offered on the two marketplaces is sufficient to satisfy the purchase order from the client, the number of shares offered on any one marketplace will not. Given the uncertainties of being able to execute trades in both marketplaces, the Participant may trade with the client as principal and then execute principal trades with any or all of the orders outstanding on one or both of the marketplaces and will not be considered to have engaged in “double printing”.

If the Participant does not have trading access to ATS1, the Participant would be able to either:

- execute, as principal on the Exchange, a cross with the client for the 100,000 shares and then execute principal trades with any or all of the orders on the Exchange indicated in the consolidated market display; or
- purchase, as agent for the client, the 30,000 shares offered on the Exchange and then enter a principal-client cross on the Exchange for 70,000 shares.

Example 3:

If the consolidated market display indicates that the Exchange has orders to sell 30,000 shares at \$10.00 per share but there is also an “iceberg order” to sell an undisclosed volume of 70,000 shares at the same price, the Participant would be able to either:

- execute, as principal on either the Exchange or ATS1, a cross with the client for the 100,000 shares and then execute principal trades with the orders indicated in the consolidated market display and with the previously undisclosed volume of the iceberg order; or
- purchase, as agent for the client, the 30,000 shares offered on the Exchange and then enter a principal-client cross on the Exchange or ATS1 for 70,000 shares.

Only orders and volume disclosed in a consolidated market display available to the Participant will be considered when determining whether the execution of a trade would constitute double printing.

Example 4:

If the consolidated market display indicates that the Exchange has orders to sell a total of 100,000 shares of XYZ at a price of \$10.00 per share, the Participant would enter the client order to purchase 100,000 shares on the Exchange.

The Participant must **not**:

- execute a principal-client cross of 100,000 shares on either the Exchange or ATS1 and then purchase as principal the shares offered on the Exchange; nor
- purchase as principal the shares offered on the Exchange and then execute a principal-client cross of 100,000 shares on the Exchange or ATS1.

Since the client order can be executed through the entry of one order, the involvement of the Participant in the transaction in a principal capacity would constitute “double printing”.

Handling of Orders for Less than 50 Standard Trading Units

Under UMIR, if a Participant receives a client order for 50 standard trading units or less with a value of \$100,000 or less the Participant must, subject to certain exceptions listed in Rule 6.3 of UMIR, enter the client order on a marketplace. In accordance

with the provisions of Rule 6.3, the Participant may execute the client order upon receipt at a better price than orders indicated in a consolidated market display. If the Participant executes the client order against a principal order or non-client order at a better price, Rule 8.1 of UMIR requires that the Participant must have taken reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market at the time.

Since the Participant is executing as principal at a better price than the one indicated in a consolidated market display, it would not be considered “double printing” if the Participant, subsequent to the trade with the client, unwound all or part of the position acquired in the trade with the client by executing trades with the “inferior-priced” orders.

For the purposes of UMIR, 50 standard trading units would be:

- 5,000 units of a security trading at \$1.00 or more per unit;
- 25,000 units of a security trading at \$0.10 or more per unit and less than \$1.00 per unit; and
- 50,000 units of a security trading at less than \$0.10 per unit.

Guidance: The following is the relevant text of Market Integrity Notice 2005-029 issued on September 1, 2005, under the heading “**Guidance –Entering Orders on Both Sides of the Market**”:

Summary

This Market Integrity Notice provides guidance relating to the entry of orders on both sides of the market for the benefit of the same person. Subject to certain limited exceptions, the entry of orders on both sides of the market for the benefit of the same person will be considered to be manipulative and deceptive contrary to Rule 2.2 of the Universal Market Integrity Rules (“UMIR”).

General Prohibition

Rule 2.2(1) of UMIR prohibits any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace. A Participant or Access Person is prohibited from entering an order on a marketplace if the Participant or Access Person knows or ought reasonably to know that any resulting trade will be either fictitious or involve no change in beneficial or economic ownership.

Similarly, a Participant or Access Person will have contravened Rule 2.2(2) if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:

- a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
- an artificial ask price, bid price or sale price for the security or related security.

A Participant or an Access Person will be considered to have engaged in “wash trading”, a type of manipulative and deceptive activity, if the Participant or Access Person knows or ought reasonably to know that:

- orders for the purchase and for the sale of the same security are being entered on a marketplace;
- the orders are for the benefit of an account or accounts which have the same economic and beneficial owner or are under the direction or control of the same person; and
- the orders have the potential of trading with each other.

Market Integrity Notice 2004-021 – Entry of Off-Setting Market-on-Close Orders issued on August 26, 2004 sets out the position of Investment Industry Regulatory Organization of Canada (“IIROC”) that the entry by a Participant or Access Person into the Market-on-Close Facility operated by The Toronto Stock Exchange (“TSX”) of a Limit MOC Order to off-set a Market MOC Order entered by that Participant or Access Person constitutes a “wash trade”. It is unacceptable for a Participant or Access Person to undertake a “wash trade”, directly or indirectly, even in circumstances where the Participant or Access Person is trying to “correct” an erroneous Market MOC Order that may not otherwise be cancelled in the Market-on-Close Facility.

Exceptions from the General Prohibition

IIROC will not consider a Participant or Access Person to be engaging in a manipulative or deceptive activity if the “wash trade” arises in the following circumstances:

- **Trades Executed When Order Entered In Error** – If a Participant or Access Person enters an order in error on a marketplace which executes against an existing order for the same beneficial or economic owner, the resulting “wash trade” will not be considered manipulative or deceptive provided the Participant or Access Person immediately contacts the Market Surveillance Section of IIROC (at 416.646.7220 in Toronto or 604.643.6505 in Vancouver) for specific guidance based on the particular circumstances including the cancellation of the “wash trade”.
- **Trades Executed by an Automated Program Trading System** – If a Participant or Access Person uses an automated program trading system to generate orders, the matching of orders for the same beneficial or economic owner will not be treated as a manipulative or deceptive activity provided the Participant or Access Person has taken reasonable steps to ensure that the automated program trading system does not enter orders that may execute as a “wash trade” on a regular basis.
- **Orders Generated by a Marketplace** – If a Participant is a market maker in accordance with the Marketplace Rules of an Exchange or QTRS and the trading system of the Exchange or QTRS automatically generates orders in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations, the matching of principal orders, in whole or in part, with an automatically generated order will not be treated as a manipulative or deceptive activity.

- **Consent of IIROC** - If a Participant or Access Person is unable for any reason to cancel an existing order that the Participant or Access Person is otherwise entitled to cancel (e.g. for temporary technology problems experienced by the Participant or Access Person), IIROC may specifically permit a Participant or Access Person to enter additional orders that may execute as a “wash trade” if the Market Surveillance Section of IIROC is satisfied that the entry of such orders would be in the interest of a fair and orderly market.

As set out in Market Integrity Notice 2004-021, Market Surveillance may in some cases specifically authorize the entry of an off-setting Limit MOC Order for a Market MOC Order in the Market-on-Close Facility of the TSX. In determining whether to permit the entry of an off-setting order for the amount of an error or a lesser amount, Market Surveillance will consider:

- the possible impact of the erroneous Market MOC Order on the closing price;
- the extent to which trading activity may have already occurred in the affected security based on the MOC imbalance report; and
- whether there is sufficient time to issue a notice to the market of the adjustment to the imbalance report.

Guidance: The following is the relevant text of Market Integrity Notice 2005-030 issued on September 1, 2005, under the heading “**Guidance – Avoiding Double Printing in the Use of an Error Account**”:

Summary

This Market Integrity Notice provides guidance relating to the proper use of an error account to avoid the appearance of “double printing”, including the circumstances when securities should be transferred into an error account and the method for transferring the securities out of the account.

Background

Rule 6.4 of the Universal Market Integrity Rules (“UMIR”) requires that a Participant execute all trades, whether acting as principal or as agent, through the entry of an order on a marketplace, subject to the exemptions set out in Rule 6.4. One of the exemptions set out in Rule 6.4 allows a Participant to adjust by a journal entry an error in connection with a client order. If a Participant must take a position in a security as a result of a trading error, the Participant should utilize an error account to facilitate the correction of the error and unwind the position in order to provide a verifiable audit trail.

General Obligations

If a Participant has made an error in the trading of a client order, the Participant generally will be obliged to take a position in the security (either a short position or a long position depending on the error made) within the error account. The transfer of the position between the error account and the client’s account or the client accumulation account should be executed as a journal transaction and must not be executed on the marketplace.

Once the position has been transferred to the error account, the Participant shall:

- unwind the position by executing a trade on a marketplace; or
- retain the position by transferring the security by a journal entry to an inventory account or, if the position is to be accepted by the employee of the Participant who made the error, to the appropriate non-client account.

If the Participant attempts to unwind the position, the order entered on a marketplace should be marked as a “principal order”. If the Participant transfers the position from the error account to an appropriate inventory account by way of a journal entry, the Participant subsequently may trade the securities in the same manner as the Participant would any other inventory position.

Investment Industry Regulatory Organization of Canada (“IIROC”) would consider transactions to be “double printing” contrary to Rule 2.2 of UMIR if the Participant were to execute a cross on a marketplace to move the securities that were the subject of the error:

- from the client account to the error account; or
- from the error account to an inventory account or non-client account.

Extraordinary Circumstances

If the circumstances of an error are such that a Participant can not comply with the guidance set out in this Market Integrity Notice, the Participant should immediately contact the Market Surveillance Section of Market Regulation Services Inc. (at 416.646.7220 in Toronto or 604.643.6505 in Vancouver) for specific guidance based on the particular circumstances.

Guidance: The following is the relevant text of Market Integrity Notice 2006-004 issued on February 6, 2006 under the heading “**Guidance – Facilitation of a Client Special Settlement Trade and Double Printing**”:

Summary

This Market Integrity Notice provides guidance on the ability of a Participant to enter into an “off-marketplace” principal transaction with a client for settlement other than on the third business day following the trade (“special settlement”). The Participant must concurrently execute as principal a trade on a marketplace for the same price and volume for settlement on the third business day following the trade (“regular settlement”).

Prohibition on “Double Printing”

Investment Industry Regulatory Organization of Canada (“IIROC”) has issued Market Integrity Notice 2003-002 – Prohibition on

Double Printing and Market Integrity Notice 2005-004 – Double Printing and the Entry of Orders dealing with the subject of “double printing”. IIROC considers that double printing creates a false or misleading appearance of trading activity contrary to the provisions of Rule 2.2 of the Universal Market Integrity Rules (“UMIR”) that prohibits a manipulative or deceptive method of trading. The term “double printing” applies when two trades are made on a marketplace when only one trade was necessary to execute the order.

Facilitation of a Client Special Settlement Trade

In the ordinary course, if a client wishes to execute a special settlement trade, the order would be entered on a marketplace as a “Special Terms Order” as the settlement of any trade resulting from the execution of the Special Terms Order would occur on a date other than the third business day following the date of the trade. However, there is no guarantee that such an order would trade even if the price of the order was better than that offered in the regular market.

In order to ensure a timely execution of the trade, a client may ask a Participant to facilitate a special settlement on the purchase or sale of a security. To accomplish this, the Participant would execute the Special Terms Trade with the client as principal and then immediately unwind its position with a further principal trade in the regular market.

Rule 6.4 requires a Participant, acting as principal or agent, to trade in a listed security or a quoted security only by means of the entry of an order on a marketplace, unless the trade is specifically exempted under that Rule. Rule 6.4 would appear to require the Participant to print both the special settlement take-on trade from the client and the regular settlement unwinding trade to the marketplace.

In order to avoid the appearance of “double printing”, IIROC is of the view that a Participant should not execute the special settlement take-on trade on a marketplace if, concurrent with the execution of the special settlement trade, the Participant executes a regular settlement (T+3) trade as principal on a marketplace at the same price and volume. In these circumstances, the Participant must ensure that its audit trail reflects the concurrent nature of the trades. In practical terms, IIROC recognizes that the “unwinding” trade on the marketplace must be executed first in order to establish the price and volume for the “take-on” trade.

An exemption from Rule 6.4 of UMIR will not be required if a Participant executes the special settlement take-on trade from the client “off-marketplace” and the Participant executes an unwinding trade on a marketplace as principal provided the unwinding trade is:

- undertaken concurrent with the execution of the special settlement trade;
- at the same price as the special settlement trade; and
- for the same volume as the special settlement trade.

If the unwinding trade is not at the same time, price and volume, the Participant must execute the take-on trade on a marketplace as a Special Terms Order.

If the unwinding trade by the Participant involves the Participant selling as principal, the sale will not be considered a “short sale” if the special settlement trade will be settled prior to the settlement of the unwinding trade.

Guidance: The following is the relevant text of Market Integrity Notice 2006-008 issued on March 10, 2006 under the heading “**Guidance – Use of the Market-on-Close Facility**”:

Summary

This Market Integrity Notice provides guidance relating to the entry of a “market order” in the Market-on-Close Facility (“MOC Facility”) of the Toronto Stock Exchange (“TSX”) and the circumstances under which the subsequent entry of a limit order on the other side of the market may be considered a manipulative and deceptive activity by Investment Industry Regulatory Organization of Canada (“IIROC”) for the purposes of the Universal Market Integrity Rules (“UMIR”).

Background

The Market-on-Close Facility of the TSX permits the entry of market orders to trade at the closing price (“Market MOC Order”) from 7:00 a.m. to 3:40 p.m. At 3:40 p.m., the TSX calculates and broadcasts the order imbalance for each of the securities participating in the MOC Facility indicating whether the imbalance is on the buy or sell side and the size of the imbalance. After 3:40 p.m., only limit orders on the opposite side of the market as the imbalance (“Limit MOC Order”) may be entered into the MOC Facility. The MOC Facility is “blind” as there is no transparency with respect to particular orders entered as Market MOC Orders or Limit MOC Orders. A Market MOC Order entered prior to 3:40 p.m. may not be amended or cancelled at any time after 3:40 p.m. and any Limit MOC Order entered prior to 4:00 p.m. may not be amended or cancelled at any time after 4:00 p.m. At 4:00 p.m. the orders in the MOC Facility are combined with outstanding orders in the central limit order book of the TSX Regular Session to calculate the Closing Price.

It is expected that a Market MOC Order is essentially “price insensitive” and that the person entering such an order is prepared to trade at any price that may be as much as 10% higher or lower than the price of the last sale in the Regular Session of the TSX prior to 4:00 p.m. The primary consideration of the person entering such an order is the guarantee of being able to trade at the closing price. For example, in the case of a person who maintains a portfolio of securities that tracks the performance of an index, orders to buy and sell securities to reflect an index rebalancing need to be filled at the closing price so that the performance of the portfolio continues to match the performance of the index. Similarly, if a person will be entering into a swap contract that is based on the closing price that person is essentially “neutral” on the level of the closing price provided they are able to obtain that price. Persons who are essentially “price insensitive” for these or similar reasons should properly be the investors who determine the order imbalance in the MOC Facility that is broadcast at 3:40 p.m. Persons who are “sensitive” to the closing price would respond

to the imbalance and have the opportunity to provide liquidity through the entry of Limit MOC Orders following the broadcast of the imbalance till 4:00 p.m. A person who had entered a Market MOC Order but is “price sensitive” may be restricted or prohibited from entering an “off-setting” Limit MOC Order if the broadcast of the imbalance indicates that the closing price may move in the opposite direction to that which the person anticipated.

General Prohibition on Wash Trades in the MOC Facility

Rule 2.2(1) of UMIR prohibits any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace. A Participant or Access Person is prohibited from entering an order on a marketplace if the Participant or Access Person knows or ought reasonably to know that any resulting trade will be either fictitious or involve no change in beneficial or economic ownership (a “wash trade”).

Similarly, a Participant or Access Person will have contravened Rule 2.2(2) if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:

- a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
- an artificial ask price, bid price or sale price for the security or related security.

A Participant or an Access Person will be considered to have engaged in “wash trading”, a type of manipulative and deceptive activity, if the Participant or Access Person knows or ought reasonably to know that:

- orders for the purchase and for the sale of the same security are being entered on a marketplace;
- the orders are for the benefit of an account or accounts which have the same economic and beneficial owner or are under the direction or control of the same person; and
- the orders have the potential of trading with each other.

Market Integrity Notice 2004-021 – Entry of Off-Setting Market-on-Close Orders issued on August 26, 2004 sets out the position of IIROC that the entry by a Participant or Access Person into the MOC Facility of a Limit MOC Order to “off-set” a Market MOC Order entered by that Participant or Access Person constitutes a “wash trade”.

Exceptions from the General Prohibition

IIROC recognizes that a particular trader can be trading multiple strategies at the same time. For example, the trader may have orders that are benchmarked to the closing price (such as for the purpose of the index rebalancing or swap contract described above) while trading an inventory for “fundamental” reasons (e.g. buy low/sell high). In these circumstances, the trader could enter Market MOC Orders prior to 3:40 p.m. and then enter Limit MOC Orders in reaction to the broadcast of a large imbalance. However, the entry of the Limit MOC Order would prompt IIROC to contact the trader who would have to demonstrate that the Limit MOC Order was not entered simply to “off-set” a Market MOC Order (that might otherwise trade at a “bad” price) but to achieve a valid investment strategy. If time permits, a trader who wishes to enter a Limit MOC Order in these circumstances is urged to contact the Market Surveillance Section of IIROC (at 416.646.7220 in Toronto) to confirm that the entry of such an order would be viewed as acceptable by IIROC.

On the other hand, a fundamental trader would have a hard time demonstrating that a Market MOC Order was, in fact, price insensitive. If a fundamental trader entered a Market MOC Order then off-set the order following the broadcast of the MOC imbalance with the entry of a Limit MOC Order, that trader would not be able to claim to be working two different strategies. Instead, IIROC would take the position that the order pattern would create inaccurate or misleading MOC imbalance messages in a manner which is manipulative and deceptive for the purposes of UMIR.

Market Integrity Notice 2005-029 set out a number of circumstances in which IIROC will not consider a Participant or Access Person to be engaging in a manipulative or deceptive activity if a “wash trade” occurs. With particular reference to the MOC Facility, Market Supervision may in some cases specifically authorize the entry of an off-setting Limit MOC Order for a Market MOC Order to correct an erroneous Market MOC Order that would not otherwise be capable of amendment or cancellation after 3:40 p.m. In determining whether to permit the entry of an off-setting order for the amount of an error or a lesser amount, Market Supervision will consider:

- the possible impact of the erroneous Market MOC Order on the closing price;
- the extent to which trading activity may have already occurred in the affected security based on the MOC imbalance report; and
- whether there is sufficient time to issue a notice to the market of the adjustment to the imbalance report.

Guidance: The following is the relevant text of Market Integrity Notice 2007-015 issued on August 10, 2007 under the heading “**Guidance – Specific Questions Related to Trading on Multiple Marketplaces**”. Additional text is set out under Rules 3.1, 5.1, 5.2 and 7.1

Summary

This Market Integrity Notice provides guidance on specific questions related to the obligations of a Participant or Access Person under the rules and policies of the Universal Market Integrity Rules (“UMIR”) with respect to trading on multiple marketplaces.

Background

Investment Industry Regulatory Organization of Canada (“IIROC”) issued Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006) which provides general guidance on the obligations of a

Participant or Access Person under UMIR with respect to trading activity in a security that trades on more than one marketplace. In particular, that Notice provides guidance on:

- the determination of “last sale price” for the purpose of Rule 3.1 of UMIR (and “last independent sale price” for the purpose of Rule 7.7 of UMIR) and the lowest price at which a Participant or Access Person may make a short sale;
- the best execution obligation of a Participant under Rule 5.1 of UMIR and when a Participant is expected to consider possible liquidity on a marketplace that does not provide pre-trade transparency;
- the best price obligation of a Participant under Rule 5.2 of UMIR, including marketplaces that must be considered in determining “best price”; and
- compliance with the client priority rule under Rule 5.3 of UMIR.

IIROC also issued Market Integrity Notice – 2006-020 – Guidance - Compliance Requirements for Trading on Multiple Marketplaces (October 30, 2006) which provided guidance on the various compliance requirements of a Participant under UMIR with respect to the handling of orders and trades in a security that trades on more than one marketplace. In particular, that Notice provided guidance on:

- audit trail requirements for orders transmitted to a “manual” marketplace;
- compliance testing for orders entered and trades executed on multiple marketplaces;
- handling of “Day”, “Good Till Cancelled” and “Market” orders in the context of different hours of operation of marketplaces;
- entry of client orders that are not immediately tradable;
- whether a Participant is required to consider orders on a marketplace that is not then open for trading;
- order marking requirements on marketplaces that do not support certain marker type;
- the “best price” obligation of a Participant with respect to orders entered by a client with “direct market access”; and
- the obligation of a Participant to monitor marketplaces for trading opportunities that have historically not provided liquidity for a particular security.

This Market Integrity Notice addresses specific questions related to trading on multiple marketplaces and supplements the guidance already provided in these two Market Integrity Notices.

Questions and Answers

The following is a list of questions regarding the obligations of a Participant or an Access Person with respect to trading in a security that trades on more than one marketplace. UMIR defines a marketplace as a recognized exchange (“Exchange”), a recognized quotation and trade reporting system (“QTRS”) or an alternative trading system (“ATS”) that carries on business in Canada.

2. How is a Participant to test for potential “high closing” and artificial bids or offers when marketplaces have differing hours of operation?

Part 7.1 of UMIR requires that a Participant adopt policies and procedures that are adequate to ensure compliance with the requirements of UMIR. In accordance with Policy 7.1, a Participant must determine the level and nature of testing which is appropriate based on the size and type of business conducted by the Participant. “High closing” and the entry of an ask price or bid price on a marketplace that is not justified by the real demand or supply in a security are examples of artificial pricing. One of the relevant considerations in determining whether a price is artificial is if the Participant, Access Person or account involved in the order has a motivation to establish an artificial price. For example, if the valuation of a particular portfolio is based on the closing sale or bid prices of the “principal marketplace”, IIROC would expect that the compliance testing appropriate for that account would be to monitor sales or orders on the “principal marketplace”, since orders or trades, as applicable, on that marketplace may be susceptible to artificial pricing. Similarly, if margin requirements are based on the closing sale price on the marketplace that last trades a particular security, IIROC would expect that a Participant would have appropriate compliance testing of last sale prices on the “last marketplace”.

Guidance: The following is the relevant text of IIROC Rules Notice 11-0043 issued on February 1, 2011 under the heading “Guidance Note – UMIR – Guidance on “Locked” and “Crossed” Markets”:

Questions and Answers

The following are questions relating to the obligations of a Participant under UMIR in the context of a “locked” or “crossed” market and IIROC’s response to each question:

4. May an order to purchase a security be entered on a marketplace if an order to sell the same security at the same price has been entered on another marketplace by the same person or group of persons?

No. Not only is the market being intentionally locked contrary to the Locked and Crossed Order Provisions but Rule 2.2 of UMIR prohibits a Participant or Access Person from entering an order on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order will create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of the security. If the orders for purchase and sale had been entered on the same marketplace, the orders would have executed and the

resulting trade would be considered a “wash trade”. In the view of IIROC, a Participant or Access Person that enters an order on one marketplace for the purchase of a security and enters another order for the sale of the same security at the same price on another marketplace for the benefit of the same person or group of persons has engaged in a manipulative and deceptive activity contrary to Rule 2.2.¹

4. Are all “rebate arbitrage” strategies acceptable?

No. Under a “make-or-take” trading fee model, a marketplace rewards persons who post limit orders on its marketplace by paying a “make” or “liquidity providing” rebate fee. Conversely, a marketplace charges a “take” fee for an order that interacts with the posted limit orders. The marketplace generally profits from the spread on the price it pays for liquidity and charges for orders that trade with such liquidity. Currently, each marketplace may establish the fees it pays or charges for orders that either “make” or “take” liquidity.²

If a market participant intentionally creates or continues a “locked” market in an attempt to maximize the amount of liquidity rebates that the market participant earns, such behaviour is not in compliance with the Locked and Crossed Order Provisions and is therefore not in compliance with Rule 2.3 of UMIR dealing with improper orders and trades. In addition, Rule 2.2 of UMIR prohibits a Participant or Access Person from entering an order on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order will create or could reasonably be expected to create a false or misleading appearance of trading activity in or interest in the purchase or sale of the security. In the view of IIROC, a Participant or Access Person is engaging in an activity analogous to “double printing” contrary to Rule 2.2 of UMIR if the Participant or Access Person enters orders on a protected marketplace that, upon execution, is followed immediately by the entry on a protected marketplace of an order for the same security at the same price on the other side of the market which has the effect of creating or continuing a “locked” market.

Guidance: The following is the relevant text of IIROC Rules Notice 13-0053 issued on February 14, 2013 under the heading “**Guidance Note – UMIR – Guidance on Certain Manipulative and Deceptive Trading Practices**”:

Risks to Market Integrity from Certain Strategies Using Automated Order Systems

An important development related to technology’s impact on market integrity is the advent of various trading strategies effected by automated order systems at high speed and including activity commonly referred to as “algorithmic trading” or “high frequency trading” (“HFT”). The increase in the use of automated order systems in the trading of securities has been valued by some market participants for its perceived benefits to market efficiency, but it has also led to concerns that such high velocity trading may enable abusive practices in the securities markets on a larger scale and pose systemic risks to market integrity.

The submission of large numbers of orders across multiple marketplaces in Canada, often with the use of direct electronic access to marketplaces, presents significant challenges for monitoring trading activity and enforcing existing securities regulations. IIROC recognizes that many complex trading strategies that may be potentially abusive and manipulative may be facilitated by the sophisticated technological infrastructure and communication systems often employed by users of automated order systems. Active focus is being placed by the regulators on monitoring for and pursuing illegal practices, including strategies linked to algorithmic and HFT trading that are of a manipulative nature whether in a known or novel form.

While market abuse may be facilitated as a result of technological developments, it is the abusive nature of the practice, not the means through which the practice is conducted, that produces deleterious impacts to market integrity. The manipulative and deceptive trading strategies enumerated in this Rules Notice are not an exhaustive list and there may be other forms of abusive trading practices that contravene UMIR. Manipulative and deceptive trading practices are prohibited whether such activities are conducted manually or electronically and whether conducted with or without the use of automated order systems and direct electronic access. An Access Person, Participant or any client that manipulates the market by any means has engaged in misconduct that is prohibited under UMIR or otherwise under securities legislation.

Participants are further reminded that as gatekeepers to the securities market, they must develop and implement appropriate policies and procedures to effectively address, detect, prevent and report manipulative and deceptive activity, in accordance with the requirements of Policy 7.1, failing which disciplinary action may be taken against the firm, its management and its directors. As part of each trade desk review undertaken by staff of IIROC, the policies and procedures that have been adopted by a Participant will be reviewed in regard to their adequacy to detect and prevent violations of Requirements in light of the type and volume of business undertaken by the Participant. As applicable, this would include assessing whether firms have adequate testing and controls related to trading strategies that may be implemented by users of an automated order system to detect and prevent potential trading abuses. The review of the policies and procedures does not, however, constitute an approval of the policies and procedures by IIROC.

¹ Reference should also be made to Part 3 of the Trading Rules which sets out activities by a client that may be considered manipulation and fraud.

² Fees established by a marketplace must comply with the access requirements in National Instrument 21-101. See section 5.1 of National Instrument 21-101 and section 7.1 of Companion Policy 21-101CP for provisions related to exchanges and quotation and trade reporting systems and section 6.13 of National Instrument 21-101 and section 8.2 of Companion Policy 21-101 CP for provisions related to alternative trading systems.

2. Questions and Answers

The following is a list of questions regarding the obligations of a Participant or Access Person under UMIR with respect to manipulative or deceptive acts or practices in the context of the use of automated order systems and direct electronic access to marketplaces together with IIROC's response to each question:

1. Are there trading strategies which could be employed through an automated order system that IIROC considers manipulative and deceptive practices?

Yes. Use of the following strategies through an automated order system as part of "algorithmic trading", "high frequency trading" or any other means of trading will be considered by IIROC to be manipulative and deceptive activities that contravene Rule 2.2 or otherwise violate securities legislation:

- **Layering:** It is the position of IIROC that placing a bona fide order on one side of the market while simultaneously "layering" orders in the consolidated market display on the other side of the market without intention to trade is a contravention of Rule 2.2(2) and Policy 2.2, Parts 2 and 3 as inducing a false or misleading appearance of trading activity or artificial price. In this case, the purpose of the "layering" is to "bait" other market participants to react and trade with the bona fide order on the other side of the market at an artificial price.
- **Quote Stuffing:** It is the position of IIROC that the input by a Participant or Access Person of excessive market data messages with the intent to "flood" systems and create "information arbitrage" opportunities for itself, is a contravention of Rule 2.2(1) as an activity which, by its very nature, will be considered to be a manipulative or deceptive method, act or practice.
- **Quote Manipulation:** IIROC is concerned about potential manipulative activity intended to affect the price at which dark orders that are tied to prices on visible markets, trade in dark pools or visible markets. It is the position of IIROC that entering non-bona fide orders on visible markets in an attempt to change the best bid price and/or the best ask price and affect the price calculation at which a trade will occur with a dark order, contravenes Rule 2.2(1), (2)(b) and Policy 2.2, Part 2(e). This activity (which may be combined with liquidity detection) results in a trade with a dark order at an improved price, following which orders are removed from the visible market.
- **Spoofing:** It is the position of IIROC that the entry of non-bona fide orders in the pre-opening on a marketplace that displays a "Calculated Opening Price" (indicating the price at which trading would commence based on the orders entered to that point on the marketplace), with the intent of affecting the Calculated Opening Price to the advantage of the party that entered the order, contravenes Rule 2.2(2) and Policy 2.2, Part 2(f).
- **Abusive Liquidity Detection:** IIROC is of the view that strategies which enter orders (disclosed or iceberg during the pre-open, or "pinging"³) to detect the existence of a large buyer or seller with the intention to trade ahead of, rather than with, the large buyer or seller, is a manipulative and deceptive practice contrary to Rule 2.2(1). This strategy harms the large trading interest when after a profitable price movement, the trades are reversed, or in the event the price moves contrary to the position taken, the trading interest of the large buyer or seller may be viewed as a free option to trade against.

3. Is there an exception from the prohibition on manipulative and deceptive trading available for persons with Marketplace Trading Obligations?

Rule 2.2 confirms that the entry of an order or the execution of a trade on a marketplace by a person in accordance with the Marketplace Trading Obligations shall not be considered a violation of prohibitions on manipulative and deceptive activities provided such order or trade complies with applicable Marketplace Rules or marketplace requirements and the order or trade was required to fulfill applicable Marketplace Trading Obligations. However, a person with Marketplace Trading Obligations that manipulates the market in any way for personal financial purposes without the intention of fulfilling their obligations would be considered to contravene Rule 2.2. In addition, a person with Marketplace Trading Obligations that "takes advantage" of a party to a trade would be considered not to be trading "openly and fairly" and such trades would be subject to regulatory intervention by cancellation.⁴

4. What are some examples of acceptable algorithmic or high frequency trading strategies?

In the view of IIROC, the regulatory initiatives that have been undertaken are targeted only to curbing potentially harmful and manipulative trading behaviours, without restraint on legitimate trading activity and strategies that do not put market integrity at risk. Algorithmic and HFT trading are components of the current market structure and some of the strategies may benefit market quality even while others do not.

For example, passive market making strategies consisting of the submission of limit orders that provide liquidity to the marketplace at specified prices are an important source of liquidity. While the firm engaging in passive market making may sometimes take liquidity if necessary to liquidate a position rapidly, the primary sources of profits are from earning the

³ A "pinging" order is a tradeable order that can be used to search for and access all types of non-displayed liquidity, including in dark pools and dark orders on displayed marketplaces.

⁴ See IIROC Notice 12-0112 – Rules Notice – Request for Comments – Proposed Guidance on Regulatory Intervention for the Variation or Cancellation of Trades (March 30, 2012) at p. 14.

spread by buying at the bid and selling at the offer and capturing any liquidity rebates offered by marketplaces to liquidity-supplying orders.⁵

As well, some HFT arbitrage strategies seek to capture pricing inefficiencies between related products or markets such as discrepancies between the price of an Exchange-traded Fund and the underlying basket of stocks, and may involve trading with a firm using a passive market making strategy, in which case both firms profit from the trade.

Some “directional” HFT strategies also exist which may be straightforward and contribute to the quality of price discovery in a stock, such as establishing a position in the belief that the price of a stock has moved away from its “fundamental value” and will return to such value.

3. Impact on Existing Guidance

This Rules Notice supplements earlier guidance on manipulative and deceptive trading practices and guidance related to trading supervision obligations. In particular, reference should be made to the guidance issued on the following topics:

- “double printing”: Market Integrity Notice 2003-002 – Guidance - Prohibition on Double Printing (January 13, 2003); Market Integrity Notice 2005-004 – Guidance - Double Printing and the Entry of Orders (March 4, 2005); Market Integrity Notice 2005-030 – Guidance - Avoiding Double Printing in the Use of an Error Account (September 1, 2005); Market Integrity Notice 2006-004 – Guidance - Facilitation of a Client Special Settlement Trade and Double Printing (February 6, 2006) and IROC Notice 11-0043 – Rules Notice – Guidance Note - Guidance on “Locked” and “Crossed” Markets – Question 4 (February 1, 2011);
- “wash trades”: Market Integrity Notice 2004-021 – Guidance - Entry of Off-Setting Market-on-Close Orders (August 26, 2004); Market Integrity Notice 2005-029 – Guidance - Entering Orders on Both Sides of the Market (September 1, 2005); Market Integrity Notice 2006-008 – Guidance - Use of the Market-on-Close Facility (March 10, 2006); and IROC Notice 11-0043 – Rules Notice Guidance Note - Guidance on “Locked” and “Crossed” Markets – Question 3 (February 1, 2011);
- “artificial prices”: Market Integrity Notice 2002-021 – Guidance - Prohibition Against Establishing Artificial Prices (December 16, 2002) and Market Integrity Notice 2007-015 – Guidance - Specific Questions Related to Trading on Multiple Marketplaces- Question 2 (August 10, 2007);
- “improper orders and trades”: IROC Notice 11-0043 – Rules Notice Guidance Note - Guidance on “Locked” and “Crossed” Markets explaining that the entry of an order that does not comply with the Locked and Crossed Order Provisions in the CSA Trading Rules will constitute a violation of Rule 2.3 and may constitute a violation of other provisions of UMIR; and
- “trading supervision”: Market Integrity Notice 2005-006 – Guidance - Obligations of an “Access Person” and Supervision of Persons with “Direct Access” (March 4, 2005); Market Integrity Notice 2007-010 – Guidance - Compliance Requirements for Dealer Sponsored Access (April 20, 2007); Market Integrity Notice 2007-011 – Guidance - Compliance Requirements for Order Execution Services (April 20, 2007); Market Integrity Notice 2008-003 – Guidance – Supervision of Algorithmic Trading (January 18, 2008), and IROC Notice 09-0081 – Rules Notice – Guidance Note – UMIR - Specific Questions Related to Supervision of Algorithmic Trading (March 20, 2009).

Disciplinary Proceedings: In the Matter of Douglas Christie (“Christie”) (September 5, 2002) OOS 2002-002

Facts – Christie was employed as a Registered Trader (“RT”). One of his stocks of responsibility was Mosaid Technologies (“Mosaid”). Christie’s compensation was based on trading profits and was calculated based on the closing month’s inventory balance with all long positions written to the posted bid. On February 28, 2001 and between June 22 to 29, 2001, Christie engaged in a pattern of entering buy orders for Mosaid moments before the close of trading which had the effect of increasing the bid price. In all cases the bids expired unfilled at the end of the day.

Disposition – During the relevant periods, Christie entered bids in a listed security on behalf of a principal or non-client account when the effect of such action was to establish an artificial quotation or a high closing quotation in the listed security. Christie knew that his firm calculated the value of his inventory account based on the closing bids on all long positions, and in entering the high closing bids, he did so for his own financial purposes without the intention of buying or fulfilling his responsibilities as an RT.

Requirements Considered – TSX Rule 4-202 and Policy 4-202. Comparable UMIR Provision - Rule

⁵ See, however, IROC Notice 11-0043 - Guidance on “Locked” and “Crossed” Markets (February 1, 2011) where it is discussed at Question 4 that If a market participant intentionally creates or continues a “locked” market in an attempt to maximize the amount of liquidity rebates that the market participant earns, such behaviour is not in compliance with the Locked and Crossed Order Provisions and is therefore not in compliance with Rule 2.3 of UMIR dealing with improper orders and trades. In addition, in the view of IROC, a Participant or Access Person is engaging in an activity analogous to “double printing” contrary to Rule 2.2 of UMIR if the Participant or Access Person enters orders on a protected marketplace that, upon execution, is followed immediately by the entry on a protected marketplace of an order for the same security at the same price on the other side of the market which has the effect of creating or continuing a “locked” market.

2.2 and Policy 2.2

Sanction - \$15,000 fine and costs of \$6,000

Disciplinary Proceedings: In the Matter of Erica Fearn ("Fearn") (October 28, 2002) OOS 2002-007

Facts – From October 1997 to November 1998, Fearn, an investment advisor, engaged in a pattern of non-economic trading in client accounts which had a pre-existing debit positions in their accounts. Fearn's practice involved buying, and immediately thereafter selling the same share positions in the client's account for the sole purpose of causing the clients' account debit position to be re-aged, thereby postponing payment for the debits in the client accounts.

Disposition – Fearn effected or participated in trades when her client did not have the ability of bona fide intention to properly settle the transactions and for the purpose of deferring payment for the securities traded. As a result of this trading, the normal market price for those securities was unduly disturbed and created an abnormal market condition.

Requirements Considered – VSE By-law 5.02(4)(a). Comparable UMIR Provision - Rule 2.2 and Policy 2.2

Sanction - \$7,000 voluntary payment and \$3,000 for costs

Disciplinary Proceedings: In the Matter of John Andrew Scott ("Scott") (November 13, 2003) OOS 2003-010

Facts – Between February 1, 2000 and July 5, 2000, Scott and his sales assistant entered orders on behalf of a group of clients who actively traded a material amount of shares of a particular company. The trading conducted on behalf of these clients created a false and misleading appearance of trading activity in the particular stock and in certain instances, created artificial prices for the stock. Scott also engaged in improper off-marketplace transactions in shares of the stock for his own personal account.

Disposition – Scott used or knowingly participated in the use of a manipulative or deceptive method of trading in connection with the purchase and sale of stock which created a false or misleading appearance of trading activity or an artificial price for the security.

Requirements Considered – Sections 11.01 and 11.26 of the General By-law of the TSX, Part XIV of the Rulings and Directions of the Board of the TSX, Rule 4-202 and Policy 4-202 of the TSX. Comparable UMIR Provision - Rule 2.2 and Policy 2.2

Sanction - \$125,000 fine and costs of \$35,000; disgorgement of \$53,765.85; Suspension from RS regulated marketplaces for a period of 2 years

Disciplinary Proceedings: Rule 2.2 was considered In the Matter of Kai Tolpinrud ("Tolpinrud") (January 16, 2006) OOS 2004-001. See Disciplinary Proceedings under Rule 2.1.

Disciplinary Proceedings: In the Matter of UBS Securities Canada Inc. ("UBS Canada") (October 8, 2004) SA 2004-006

Facts – Despite warnings by RS and the release of Market Integrity Notices on the issue of double-printing UBS Canada continued to engage in a pattern of double printing from September 2003 to July 2004, whereby instead of buying or selling in to the market to fill client orders, UBS bought or sold through its inventory account and subsequently crossed inventory buys and sells to fill client orders. UBS Canada also failed to develop and implement appropriate policies and procedures, and test such policies and procedures, in relation to its trading on marketplaces regulated by RS, despite repeated deficiencies being identified by RS through its Trade Desk Review program.

Disposition – The practice of double printing violated the UMIR prohibition against manipulative and deceptive methods of trading. In allowing a continued pattern of double printing despite the issuance by RS of market integrity notices regarding double printing and for its failure to develop and implement appropriate policies and procedures in relation to its trading on marketplaces regulated by RS, UBS Canada failed to fulfill its compliance and supervisory obligations.

Requirements Considered – Rules 2.2(1), 10.11(3), 7.1(1) and Policy 7.1

Sanction - \$2,000,000 fine and costs of \$100,000; retainer of an independent consultant to review existing supervisory and compliance systems

Disciplinary Proceedings: In the Matter of W. Scott Leckie (July 19, 2005) SA 2005-005

Facts – Between April and June of 2003, the trader employed a short selling strategy on behalf of a client by trading through Dealer One. When the trader was unable to borrow shares to cover the client's short position, he opened an account on behalf of the client at another Participant ("Dealer Two") where he believed he could borrow the shares. When he was subsequently unable to borrow the shares at Dealer Two, he sold short shares in the client's account at Dealer Two and bought the shares in the client's account at Dealer One to cover the outstanding short position. During the relevant period the trader engaged in a practice of entering into, and covering short positions, by

trading between the two client accounts at Dealers One and Two.

Disposition – Effecting trades in securities which involved no change in beneficial or economic ownership was “wash trading” and constituted a manipulative and deceptive method of trading.

Requirements Considered – Rules 2.2(2)(b) and 10.4(1)(a)

Sanction - \$100,000 fine and costs of \$20,000

Disciplinary Proceedings: In the Matter of Ian Macdonald, Edward Boyd, Peter Dennis and David Singh (July 28, 2005) SA 2005-006

Facts – In August of 2004, RBC DS and another Participant agreed to execute trades in two securities in the Market-on-Close facility (“MOC”) of the TSX by the entry of market orders on opposite sides of the market. RBC DS entered its required orders for RBC DS inventory accounts. The other Participant subsequently failed to enter the agreed counterparty orders. This resulted in a MOC imbalance, which was broadcast at 3:40 pm. RBC DS then entered offsetting limit MOC orders for RBC DS inventory accounts to limit its potential liability created by the MOC imbalance.

Disposition - Entry by employees of a Participant of limit MOC orders to off-set market MOC orders entered by those employees for that Participant, even in circumstances where the employees are trying to “correct” an existing MOC imbalance, were “wash trades” and constituted a manipulative and deceptive method of trading.

Requirements Considered – Rules 2.2(1), 2.2(2)(b) and 10.4(1)(a)

Sanction –

Ian Macdonald \$90,000 fine and costs of \$35,000

Edward Boyd \$60,000 fine and costs of \$20,000

David Singh \$60,000 fine and costs of \$20,000

Peter Dennis \$20,000 fine and costs of \$7,000

Disciplinary Proceedings: In the Matter of Alfred Simon Gregorian (“Gregorian”) (April 12, 2006) DN 2006-003

Facts – Between September 1, 2002 and May 31, 2003, and between November 1, 2003 and January 12, 2004, Gregorian, an investment advisor at Research Capital Corporation, participated in his clients’ use of manipulative methods of trading in connection with the purchase and sale of securities in International Wex Technologies Inc (“WXI”), a TSXV listed issuer. Between September 1, 2002 and May 31, 2003, Gregorian placed 801 orders for shares of WXI for the accounts of two clients from orders provided by insiders of WXI who held trading authorizations over the clients’ accounts. The pattern of order entry and trading involved placing bids in the market when the share price of WXI was under pressure and executing uptick purchases to “correct” intra-day downticks in the price of WXI in an effort to improperly support the price of the WXI shares.

Between November 1, 2003 and January 12, 2004, Gregorian participated in his client’s use of manipulative methods of trading in connection with the purchase of shares of WXI by engaging in a pattern of trading which was not consistent with a bona fide effort to accumulate shares of WXI over time at the most favourable prices and represented an overall pattern of trading at prices higher than would otherwise been dictated by market forces.

Disposition – The nature and extent of the trading in the clients’ accounts coupled with the extraordinary commission charges and frequency of uneconomic trading evidences Gregorian’s knowing participation in the manipulative and deceptive methods of trading that occurred in the clients’ accounts.

Requirements Considered – Rule 2.2

Sanction - \$39,000 fine and disgorgement of \$16,260 of financial benefit to Gregorian; suspension from RS regulated marketplaces for 5 years

Disciplinary Proceedings: In the Matter of Michael Bond (“Bond”) and Sesto DeLuca (“DeLuca”) (June 4, 2007) DN 2007-003

Facts – Between April 4, 2005 and July 29, 2005, Bond, an inventory trader employed by W.D. Latimer Co. Limited, created an artificial bid price for the shares of three thinly traded TSX Venture Exchange listed issuers (the “Securities”) when he entered several buy orders late in the trading session for the Stocks that were unlikely to be filled.

Between April 2005 and July 2005, DeLuca was the person responsible for supervising trading at W.D. Latimer, which including supervising Bond. DeLuca failed to review unfilled orders placed by Bond, thereby allowing Bond to create an artificial bid price for the Securities.

Disposition – By entering orders to buy the Securities when he knew or ought reasonably to have known that the entry of such orders could create or could reasonably be expected to create an

artificial bid price for the Securities Bond breached UMIR 2.2(2)(b). Deluca, by failing to review unfilled orders placed by Bond breached Rule 7.1(4) Policy 7.1 of UMIR.

Requirements Considered – Rules 2.2(2)(b), 7.1(4) and Policy 7.1

Sanction – Bond – \$100,000 fine, costs of \$25,000 and suspension from access to all marketplaces regulated by RS for a period of two years

DeLuca – reprimanded for his conduct

Disciplinary Proceedings: In the Matter of Luc St. Pierre (“St. Pierre”) (December 31, 2007) DN 2007-006

Facts – Between February 2, 2005 and May 19, 2005, St. Pierre, acting on behalf of a client entered 31 orders to purchase shares of Halo Resources Ltd. (“HLO”), an issuer whose shares trade on the TSX Venture Exchange (“TSXV”). All of the orders entered by St. Pierre (which were generally for one or two board lots) were executed at a price which was higher than the preceding independent transaction for shares of HLO, and in case of 16 orders, their execution was the last trade of the day for HLO shares.

Further, St. Pierre administered accounts for three clients who were either associated with each other or associated with Golden Hope Mines Ltd. (“GNH”), an issuer whose shares are traded on the TSXV. Through St. Pierre, these three clients executed trades representing 56% of the total trading volume in GNH on the TSXV, of which forty-five trades, or 46% of the total trading volume in GNH, were between the three clients and were submitted to St. Pierre within seconds of each other. In addition to the majority of such trades not being properly marked as “crosses”, sale orders entered by the three clients were systematically entered prior to purchase orders in order to facilitate the transfer of debit and credit positions between the clients’ accounts.

Disposition – By entering orders on a marketplace when he knew or ought to have known that the entry of such orders could create an artificial price for the securities, St Pierre breached Rule 2.2 and Policy 2.2 of UMIR

Requirements Considered – Rule 2.2 and Policy 2.2.

Sanction – A Hearing Panel imposed a fine of \$40,000, costs in the amount of \$70,000, suspension of access to all marketplaces regulated by IROC for a period of 5 years, successful completion of the Conduct and Practices Handbook examination before the Respondent may be employed with a Participant, and heightened supervision for the length of the 5 year suspension if employed with a Participant.

Disciplinary Proceedings: In the Matter of Kevin Moorhead (“Moorhead”) (May 22, 2008) DN 2008-001

Facts – Between August 29, 2005 and October 27, 2005, Moorhead and/or his assistant, on Moorhead’s instructions, entered orders on a marketplace for certain securities with the intention of establishing an artificial and/or a high closing bid price in order to improve the daily profit and loss position of shares held in Moorhead’s inventory account and/or to assist a trader at another firm to increase the daily profit or reduce the daily loss in his inventory account.

Disposition – By entering orders on a marketplace that were not justified by any real demand for the securities Moorhead knew that his order entry activity would create, or could reasonable be expected to create, an artificial price for the securities contrary to Rule 2.2 and Policy 2.2 of UMIR.

Requirements Considered – Rule 2.2(1), 2.2(2)(b) and Policy 2.2

Sanction – \$40,000 fine and costs of \$10,000 and suspension from all RS regulated marketplaces for three months.

Disciplinary Proceedings: In the Matter of Martin Fabi (“Fabi”) (October 27, 2008) DN 08-0159

Facts – On December 31, 2007 Fabi, a Registered Representative with MF Global Canada Co., acting on instructions from a client, executed trades on the TSX Venture Exchange for 6 listed equities at or near the end of the trading day resulting in the “up-ticking” of the closing price of the securities. The client, a fund manager, managed a portfolio of securities that included the 6 securities, and which represented approximately 68% of the market value of the fund’s portfolio.

Disposition – The purpose of Rule 2.2 and Policy 2.2 is to protect the marketplace from manipulative and deceptive trading activity and artificial pricing. Given the timing and circumstances surrounding the entry of the orders at or near the end of the trading day, and based on conversations Fabi had with the fund manager prior to the entry of the orders, Fabi ought to have known that the fund manager had a motivation to effect a high closing sale price for the securities. By entering orders and executing trades on a marketplace that Fabi ought to have known would create an artificial price for the securities Fabi failed to fulfill his gatekeeper obligation and acted contrary to Rule 2.2 and Policy 2.2.

Requirements Considered – Rules 2.2(2)(b) and 10.4(1) and Policy 2.2.

Sanction – \$15,000 fine and costs of \$5,000

Disciplinary Proceedings: **In the Matter of Luc St. Pierre (“St Pierre”) (November 18, 2008) DN 08-0195**

Sanction – \$30,000 fine and costs of \$70,000; suspension of access to all IIROC regulated marketplaces for 5 years; successful completion of the Conduct and Practices Handbook examination; and heightened supervision for a period of 5 years if employed by a Participant.

Disciplinary Proceedings: Rule 2.2 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: **In the Matter of Francesco Mauro (“Mauro”) and Scott Fraser Harding (“Harding”) (May 25, 2010) DN 10-0149**

Facts – Between December 14, 2006 and January 24, 2007 (the “Relevant Period”), Mauro was employed with CIBC World Markets Inc. (“CIBC”) as a registered representative, branch manager, and officer (trading securities) and Harding worked as an associate investment advisor with Mauro and entered most orders for Mauro’s clients. During the Relevant Period, Harding entered unsolicited orders and executed trades on behalf of a client in the shares of a listed company on the TSX Venture Exchange that was the subject of a private placement at \$1.00 per unit, facilitated by CIBC. Harding entered 46 buy orders in the client’s account when the price of the security fell below \$1.00 and traded below \$1.00 for 20 trading days, of which 24 were active orders that traded at or above the posted offer price upon entry, 14 were entered in the last hour of trading and restored the share price of the security to close at or near \$1.00 after a price decline, 13 established the closing price of the shares, 12 established the closing price at \$1.00, 6 had a limit price of \$1.00 and traded entirely at the posted offer price of \$1.00; and 7 had a limit price of \$1.00 and traded entirely at successive prices up to \$1.00. Mauro had a duty to supervise Harding’s execution of trades. In conducting his reviews, while his computer terminal permitted him to review up-to-the-minute trading in his branch, including trade times, Mauro did not actively monitor this.

Disposition – Under the terms of a Settlement Agreement, Harding admitted that between December 14, 2006 and January 24, 2007 he failed in his role as a gatekeeper. He entered orders and executed trades on behalf of a client for a listed company on the TSX Venture Exchange that he ought to have known could reasonably be expected to create an artificial price for the security contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 (e), for which he is liable under UMIR 10.4(1). Mauro admitted under the terms of the Settlement Agreement, that during the Relevant Period he did not meet the standard required of him in his role as a supervisor by failing to fully and properly supervise Harding as necessary, to ensure that he complied with UMIR and its Policies, contrary to UMIR 7.1 (4) and Policy 7.1.

Requirements Considered – Rules 2.1, 2.2(2)(b), 10.4(1), 10.16(1)(b), 7.1(4) and Policy 2.2(e) and 7.1.

Sanctions – Harding agreed to a \$40,000 fine and \$10,000 in costs. Mauro agreed to \$25,000 fine and \$5,000 in costs.

Disciplinary Proceedings: **In the Matter of James Martin MacMenamin (“MacMenamin”) (June 3, 2010) DN 10-0162**

Facts – MacMenamin, while a trader employed by Jones, Gable & Company Limited, was paid 50% of any profits (realized and unrealized) that he generated in a proprietary inventory account that he operated. On a monthly basis, for compensation purposes, the long positions in the proprietary inventory account were valued at their closing bid price. For the month of April 2008, the valuation day for the proprietary inventory account was April 25, 2008, on which date MacMenamin placed a day buy order late in the day for shares of a security trading on the TSX Venture Exchange at a limit price \$0.07 greater than the previous trade, and \$0.07 higher than the prevailing best bid price. The day buy order became the closing bid price for April 25, 2008, creating an unrealized profit in the proprietary inventory account, which otherwise would have incurred an unrealized loss.

MacMenamin further entered orders on behalf of the proprietary inventory account between November 19 and December 9, 2008, that he did not intend to execute in order to entice an algorithmic trading program to join or displace him from the best displayed bid or offer price for the shares of certain securities. When the algorithm joined or displaced his order, MacMenamin cancelled his order and then bought or sold from the algorithm order that had joined or displaced his order. This activity enabled MacMenamin to purchase shares at a lower cost and to sell shares at a higher price.

Disposition – Under the terms of a Settlement Agreement, MacMenamin admitted that on April 25, 2008, he entered an order on behalf of a proprietary inventory account that he knew or ought to have known would create or could reasonably be expected to create an artificial closing bid price for the shares, contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2, for which he is liable under UMIR

10.4(1); and that between November 19 and December 9, 2008, he entered orders on behalf of a proprietary inventory account that he knew or ought to have known he did not intend to execute, contrary to UMIR 2.2(2)(a) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

Requirements Considered – Rules 2.1, 2.2(2)(a),(b), 10.4(1) and Policy 2.2.

Sanctions – MacMenamin agreed to a \$25,000 fine and \$5,000 in costs.

Disciplinary Proceedings: In the Matter of TD Securities Inc. (“TDSI”), Kenneth Nott (“Nott”), Aidin Sadeghi (“Sadeghi”), Christopher Kaplan (“Kaplan”), Robert Nemy (“Nemy”) and Jake Poulstrup (“Poulstrup”) (collectively, the “Individual Respondents”) (December 20, 2010) DN 10-0338

Facts – The Individual Respondents were all TSX Registered Traders hired by TDSI to work as Inventory Traders (also called Proprietary Traders). Between May 1 to October 31, 2005 (the “Relevant Period”), each of the Individual Respondents entered high closing bids on either NEX, TSX-V or TSX to purchase one or more of five illiquid stocks (collectively, the “Five Stocks”). The collective trading pattern of the Individual Respondents revealed that orders in the illiquid stocks were placed very late in the day in small lots that set the closing bids day after day, week after week, and month after month. TDSI had at its disposal a number of display “tools” that could be selected to assist in monitoring and supervising the traders, however, there was no tool available in the Relevant Period to monitor real time orders (i.e. bids and offers). TDSI was only provided with reports (e.g. high month end closings) that did not include any information regarding bids and offers. Consequently, TDSI did not have a systematic procedure to review orders.

Disposition – An artificial bid price results when there is an intention to establish a price that is not justified by real demand or supply in a security. In the Relevant Period, the Individual Respondents made closing bids in the context of the market with the intention that the bids would not trade but instead would stand as the closing bid at the end of the trading day thereby increasing the value of their inventory positions (which were calculated on the basis of the closing bids) and increasing their compensation and access to capital. The circumstantial evidence of motive and trading patterns (the frequency of setting the closing bids, late time of the closing bid orders, bidding in small lots and the illiquid nature of the stocks), supported an inference on a balance of probabilities that the Individual Respondents intended to engage in the improper practice of entering artificial closing bids in the Five Stocks. This finding was buttressed by direct evidence of instant messages and telephone calls between the Individual Respondents which showed concern for monthly ranking, the value of the adjusted cost base in a month other than a pay period month end and a willingness to manipulate the market for personal reasons. In the Relevant Period, Nott entered 230 artificial closing bids; Sadeghi entered 3 artificial closing bids; Kaplan entered 37 artificial closing bids; Nemy entered 38 artificial closing bids; and Poulstrup entered 14 artificial closing bids, all of which were in contravention of UMIR 2.2(2)(b) and UMIR Policy 2.2.

There was no proof, however, that TDSI failed to comply with its UMIR Rule 7.1 and UMIR Policy 7.1 trading supervision obligations and this allegation was dismissed. TDSI did not have a real time software surveillance system during the Relevant Period to detect the time and sequence of bids and offers in the marketplace. Demonstrating a pattern of late bids by a trader was one of the factors relied on in drawing an inference of artificial closing bids, however the time required to do so was beyond the capacity of TDSI as the end of the day trading of a stock would have to be printed from the Firm Book every day for sufficient days to reveal a pattern of late bids. In the circumstances, the random review approach employed by TDSI was reasonable and realistic. Moreover, TDSI deserved credit for the manner in which it monitored and detected bidding improprieties in one of the Five Stocks and for the prompt filing of a Gatekeeper Report after the discovery of a wash trade between Nott and Sadeghi. While there was a fundamental flaw in the TDSI compliance monitoring system employed following the Relevant Period to evaluate whether there had been improper trading, as it had not been configured to generate alerts for late bids that were below the last sale and thus made within the “context of the market”, (as was the case with the Individual Respondents), this was due to an honest but erroneous interpretation of UMIR Policy. The correct interpretation is that the process of bidding within the context of the market in order to maintain the value of a stock contravenes UMIR and bidding must be in accordance with true market supply and demand.

Requirements Considered – Rule 2.2(2)(b), 7.1 and Policy 2.2, 7.1.

Sanction – The Hearing Panel determined in the case of all the Individual Respondents that there be no order of suspension as they had not obtained employment at all, or for a significant period of time, since September, 2008, and that except for Sadeghi, they be under close supervision for six months, the terms of which would be determined by an employer. Additional penalties and orders were imposed as follows:

- Nott: (a) a fine of \$15,000.00; and (b) costs of \$5,000.00.

- *Sadeghi: (a) a fine of \$5,000.00. The Hearing Panel noted that there would be no order for supervision and strongly recommended that the close supervision order in effect be rescinded.*
- *Kaplan: (a) a fine of \$35,000.00; and (b) costs of \$15,000.00. In addition, the Hearing Panel ordered that the trade restrictions in effect cease to apply to Kaplan immediately.*
- *Nemy: (a) a fine of \$75,000.00; and (b) costs of \$37,500.00.*
- *Poulstrup: (a) a fine of \$20,000.00; and (b) costs of \$10,000.00. In addition, the Hearing Panel ordered that trade restrictions in effect cease to apply to Poulstrup immediately.*

Review – IIROC staff has filed a Notice of Request for Hearing and Review to the Ontario Securities Commission for a review of the decision of the IIROC Hearing Panel, dated November 30, 2010, relating to TDSI.

Disposition – The Review application was dismissed by the OSC on July 19, 2013 as there was no error of law or principle in the IIROC Hearing Panel's decision. The OSC concluded that the IIROC Hearing Panel's statement regarding the erroneous understanding of UMIR was not central to its finding with respect to TDSI's supervision of the TDSI traders and noted that the decision makes clear the obligation of Participants to supervise both trades and orders, including orders that are in the context of the market, so as to comply with their obligations under UMIR Rule 7.1 and Policy 7.1.

Disciplinary Proceedings: In the Matter of Gary John Williamson ("Williamson") (February 28, 2011) DN 11-0085

Facts – Between January 1, 2008 and February 29, 2008, Williamson, a trader employed by Global Maxfin Capital Inc. ("Global Maxfin"), entered numerous bid orders on the TSX Venture Exchange ("TSXV") for an illiquid security very late in the trading day. All the orders were entered as day orders, none of the orders were filled and all increased the closing bid price. Given the illiquidity of the security and the short length of time the orders were open, Williamson's bid orders had virtually no prospect of being filled. Global Maxfin earned revenue through proprietary trading. Williamson was assigned an individual inventory account and was the only person who entered orders in his inventory account. Williamson's inventory account was valued daily for all the long positions at the closing bid and all short positions at the closing offer. Williamson was aware of his profit and loss position and was compensated based on commissions earned as well as profits and losses within his inventory account. Prior to the impugned trading activity, Williamson was indebted to Global Maxfin in excess of \$32,000 as a result of a foreign exchange error and trading losses in his inventory account. Williamson's monthly compensation was partially reduced to pay down his indebtedness to Global.

Disposition – Pursuant to a Settlement Agreement, Williamson admitted that between January 1, 2008 and February 29, 2008, he entered orders on the TSXV that he knew or ought reasonably to have known would create or could reasonably be expected to create an artificial bid price contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable under UMIR 10.4(1). Williamson entered orders to purchase securities of an issuer without any intention that the orders would be executed and for no bona fide purpose. Williamson entered the orders with the intention of establishing a high closing bid price in order to improve the unrealized daily profit and loss position of the shares held in his inventory account and thereby to misrepresent the performance of the security. The high closing bid prices were artificial in that they were not justified by any real demand for the securities, and misrepresented the performance and actual demand for the securities to the market and to other market participants. The impugned transactions served to overstate the unrealized profits or understate the unrealized losses for the security in his inventory account.

Requirements Considered – Rule 2.2(2)(b), 10.4(1) and Policy 2.2

Sanction – Williamson agreed to pay a fine of \$40,000; to a suspension of access to an IIROC-regulated marketplace for a period of 6 months; and to pay costs in the amount of \$5,000.

Disciplinary Proceedings: In the Matter of Donald Dean MacKenzie ("MacKenzie") (May 12, 2011) DN 11-0152

Facts – Between September 2007 and June 2008, MacKenzie, a registered representative with RBC Dominion Securities Inc. ("RBCDS"), entered numerous late bid orders for an illiquid security on the Toronto Stock Exchange ("TSX"), in various non-arm's length accounts at RBCDS. MacKenzie entered the orders with the intention of establishing a high closing bid price to narrow the spread between the closing bid and ask prices because he felt the assigned market maker was not discharging his Market Maker Obligations and maintaining a fair and orderly market for the security. Upon detecting the pattern of late bid orders, RBCDS internally disciplined the MacKenzie.

Disposition – Pursuant to a Settlement Agreement, MacKenzie admitted that between September, 2007 and June 2008, he entered orders on the TSX that he knew or ought reasonably to have known would create or could reasonably be expected to create an artificial bid price contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable under UMIR 10.4(1). The closing bid

orders had no bona fide purpose and were entered to establish a high closing bid price in order to narrow the spread between the bid price and the ask price. In so doing, MacKenzie misrepresented the performance and actual demand for the security to the market and to other market participants.

Requirements Considered – Rule 2.2(2)(b), 10.4(1) and Policy 2.2

Sanction – MacKenzie agreed to pay a fine of \$20,000; to a prohibition on seeking re-registration approval with any Dealer Member of IIROC for a period of 3 months; and to pay costs in the amount of \$5,000.

Disciplinary Proceedings: In the Matter of David Charles Parkinson (“Parkinson”) (February 22, 2012) DN 12-0061

Facts – Between November and December 2007, and in March, 2008, (the “Relevant Period”) Parkinson, a Registered Representative employed by CIBC World Markets Inc. (“CIBC WM”), entered orders and executed trades on the TSX Venture Exchange (“TSXV”) for two securities on behalf of a client, that maintained and supported the price of the securities at a level predetermined by Parkinson’s client. In particular, Parkinson entered closing trades and closing bids in the securities for the client’s accounts causing end of day upticks in the sale price and bid price. Margin was granted on the securities at Parkinson’s request on behalf of the client, which was calculated by CIBC WM using a stock’s closing bid price. Parkinson’s client entered a settlement agreement with the Ontario Securities Commission admitting that between June 2007 and April 2008 he engaged in trading that had the effect of maintaining and/or increasing the closing price of one of the securities which was traded in the CIBC WM account.

Disposition – Pursuant to a Settlement Agreement, Parkinson admitted that in the Relevant Period he entered orders and trades on behalf of a client that he ought reasonably have known would create or could reasonably be expected to create an artificial price for two TSXV securities, contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable under UMIR 10.4(1). Parkinson had a gatekeeper obligation to be aware of and alert to potential or known manipulative and deceptive activity.

Requirements Considered – Rule 2.2(2)(b), 10.4(1) and Policy 2.2

Sanction – Parkinson agreed to pay a fine of \$30,000; to a suspension of access to an IIROC-regulated marketplace for a period of 6 months from termination of his employment; and to pay costs in the amount of \$10,000.

Disciplinary Proceedings: In the Matter of William Geddes (“Geddes”) (March 15, 2012) DN 12-0098

Facts – Between December 2007 and October, 2008, (the “Relevant Period”) Geddes, a Registered Representative with National Bank Financial Ltd. (“NBF”) entered buy orders for a security listed on the Toronto Stock Exchange (TSX) in his and his wife’s accounts (the “Geddes Accounts”), to increase the closing price of the security as its share price was generally in decline. Geddes’ client accounts also held positions in the same security. The orders Geddes placed were uneconomic due to the high commission costs which they generated. Geddes sold few of the shares in the Geddes Accounts, however, and did not profit from the increase in the value of his clients’ monthly account statements caused by the entry of the buy orders for the security.

Disposition – Pursuant to a Settlement Agreement, Geddes admitted that in the Relevant Period he entered buy orders he ought reasonably to have known would create or could reasonably be expected to create an artificial sale price for the security, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4.

Requirements Considered – Rule 2.2(2), 10.4 and Policy 2.2

Sanction – Geddes agreed to pay a fine of \$30,000, a 60 day suspension from registration, successful completion of the Conduct and Practices Handbook Course and to pay costs in the amount of \$1,500.

Disciplinary Proceedings: In the Matter of Vinh-Phat Nguyen-Qui (“Nguyen-Qui”) (October 11, 2012) DN 12-0298

Facts – Between October and December 2009 (the “Relevant Period”), Nguyen-Qui, a Registered Representative employed by W.D. Latimer Co. Limited, entered buy and sell orders on the TSX in the pre-opening market and cancelled them prior to market opening for the sole objective of acquiring a better chronological position once the market opened. Nguyen-Qui also entered short sale orders in the pre-opening market without designating them as short sales and/or at a price below the last sale price as indicated in the consolidated market display.

Disposition – In the Relevant Period, Nguyen-Qui entered orders he knew or ought to reasonably have known would create or could reasonably be expected to create, a false or misleading appearance of trading activity or interest in the purchase or sale of the security, contrary to UMIR 2.2(2)(a); entered short sale orders in the pre-opening market without proper designation contrary to UMIR 6.2(1)(b)(viii); and entered short sale orders in the pre-opening market below the last sale

price, contrary to UMIR 3.1(1).

Requirements Considered – Rule 2.2(2)(a), 3.1(1) and 6.2(1)(b)(viii).

Sanction – The Hearing Panel imposed a prohibition on Nguyen-Qui from accessing the market as a Registered Representative for a period of two months and a fine of \$10,000 for the first violation plus fines of \$5,000 for each of the two additional violations; Nguyen-Qui was also required to take the Trader Training Course again and pay costs in the amount of \$10,000.

Disciplinary Proceedings: In the Matter of James William Watson (“Watson”) (October 29, 2012) DN 12-0319

Facts – Between November 2010 and April 2011 (the “Relevant Period”), Watson, a trader employed by Jones Gable & Company Limited, entered orders for a security listed on the TSXV to effect a high closing bid price that misrepresented the performance and actual demand for the security and artificially increased the value of the position in the security held in Watson’s inventory account.

Disposition – Pursuant to a Settlement Agreement Watson admitted that in the Relevant Period, he entered orders on the TSXV that he knew or ought to reasonably have known would create or could reasonably be expected to create, a false or misleading appearance of trading activity or interest in the purchase or sale of the security or an artificial bid price for the security, contrary to UMIR 2.2(2) and Policy 2.2.

Requirements Considered – Rule 2.2(2) and Policy 2.2.

Sanction – Watson agreed to pay a \$10,000 fine, to a suspension of access to IIROC-regulated marketplaces for a period of 14 days, as well as to pay costs in the amount of \$1,500.

Disciplinary Proceedings: Rule 2.2 and Policy 2.2 were considered In the Matter of Alexey Eydelman (“Eydelman”) and Questrade Inc. (“Questrade”) (May 24 2013) DN 13-0140. See Disciplinary Proceeding under Rule 7.1.

Disciplinary Proceedings: In the Matter of Jean-François Lemay (“Lemay”) (June 5 2013) DN 13-0150

Facts – Between September and October 2008 (the “Relevant Period”), Lemay, a registered representative at Union Securities Ltd, entered buy and sell orders on the TSXV when he knew that identical buy and sell orders were being entered simultaneously, with no change of beneficial ownership, creating fictitious buy and sell transactions involving the same securities.

Disposition – In the Relevant Period, Lemay entered orders or executed transactions when he knew, or ought reasonably to have known, that the entry of such orders or the execution of the transactions would create, or could reasonably be expected to create, a false or misleading appearance of trading activity with respect to the security, contrary to UMIR 2.2(2)(a) and Policy 2.2.

Requirements Considered – Rule 2.2(2)(a) and Policy 2.2.

Sanction – The Hearing Panel imposed a suspension from access to the marketplaces for a period of six months and a fine of \$35,000 on Lemay. Lemay was also subject to strict supervision by his employer for a period of 12 months should he return to employment with an IIROC-regulated firm, and to successfully complete the Conduct and Practices Handbook Course. Lemay was also required to pay costs in the amount of \$25,000.

Disciplinary Proceedings: In the Matter of Yufeng Zhang (“Zhang”) (June 7 2013) DN 13-0155

Facts – Between July and December 2010 (the “Relevant Period”), Zhang, a proprietary trader employed by Wolverton Securities Ltd, entered orders in the pre-opening session in several TSXV-listed securities in order to identify the depth of the market and more particularly to detect the size of iceberg orders entered on the opposite side of the market.

Disposition – Pursuant to a Settlement Agreement Zhang admitted that in the Relevant Period, he engaged in a manipulative or deceptive practice in the pre-opening on a marketplace contrary to UMIR 2.2(1) and Policy 2.2.

Requirements Considered – Rule 2.2(1) and Policy 2.2.

Sanction – Zhang agreed to pay a \$10,000 fine, to a suspension of access to IIROC-regulated marketplaces for 1 month, and to pay costs in the amount of \$1,500.

Disciplinary Proceedings: Rule 2.2 and Policy 2.2 were considered In the Matter of JitneyTrade Inc. (“JitneyTrade”) (July 23, 2013) DN 13-0196. See Disciplinary Proceedings under Rule 7.1.