

## PART 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In UMIR, unless the subject matter or context otherwise requires:

**“Access Person”** means a person other than a Participant who is:

- (a) a subscriber; or
- (b) a user.

**“arbitrage account”** means an account in which the holder makes a usual practice of buying and selling:

- (a) securities in different markets to take advantage of differences in prices available in each market; or
- (b) securities which are or may become convertible or exchangeable by the terms of the securities or operation of law into other securities in order to take advantage of differences in prices between the securities.

**“Basis Order”** means an order for the purchase or sale of listed securities or quoted securities:

- (a) where the intention to enter the order has been reported by the Participant or Access Person to a Market Regulator prior to the entry of the order;
- (b) that will be executed at a price which is determined in a manner acceptable to a Market Regulator based on the price achieved through the execution on that trading day of one or more transactions in a derivative instrument that is listed on an Exchange or quoted on a QTRS; and
- (c) that comprise at least 80% of the component security weighting of the underlying interest of the derivative instruments subject to the transaction or transactions described in clause (b).

**“basket trade”** means a simultaneous purchase of at least 10 listed securities or quoted securities, provided that any restricted security comprises not more than 20% of the total value of the transaction.

**“best ask price”** means the lowest price of an order on any marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.

**“best bid price”** means the highest price of an order on any marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.

**“better price”** means, in respect of a particular security:

- (a) a price lower than the best ask price, in the case of a purchase; and
- (b) a price higher than the best bid price, in the case of a sale.

**“Board”** means the board of directors or other governing body of a Market Regulator.

**“Call Market Order”** means an order for the purchase or sale of one or more particular securities that is entered on a marketplace on a trading day to trade at a particular time or times established by the marketplace during that trading day at a price established by the trading system of the marketplace.

**“client order”** means an order for the purchase or sale of a security received or originated by a Participant for the account of a client of the Participant or a client of an affiliated entity of the Participant, but does not include a principal order or a non-client order.

**“Closing Price Order”** means an order for the purchase or sale of a listed security or a quoted security entered on a marketplace and subject to the conditions that the order trade at the closing sale price of that security on that marketplace for that trading day and that the trade is executed subsequent to the establishment of the closing price.

**“connected security”** means, in respect of an offered security:

- (a) a listed security or quoted security into which the offered security is immediately convertible, exchangeable or exercisable unless the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the listed security or quoted security at the commencement of the restricted period;
- (b) a listed security or quoted security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may significantly determine the value of the offered security;
- (c) if the offered security is a special warrant, a listed security or quoted security which would be issued on the exercise of the special warrant; and

- (d) if the offered security is an equity security, any other equity security of the issuer that is a listed security or quoted security.

**“consolidated market display”** means, in respect of a particular security, information on orders or trades from each marketplace on which such particular security trades that has been:

- (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or
- (b) if there is no information processor, produced by an information vendor in accordance with Part 7 of the Marketplace Operation Instrument.

**“dealer-restricted person”** means, in respect of a particular offered security:

- (a) a Participant that:
  - (i) is an underwriter, as defined in applicable securities legislation, in a prospectus distribution or a restricted private placement,
  - (ii) is participating, as agent but not as an underwriter, in a restricted private placement of securities and:
    - (A) the number of securities to be issued under the restricted private placement would constitute more than 10% of the issued and outstanding offered securities, and
    - (B) the Participant has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
  - (iii) has been appointed by an offeror to be the dealer-manager, manager or soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
  - (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining securityholder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law,

where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction;

- (b) a related entity of the Participant referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of the Participant if:

- (i) the Participant maintains and enforces written policies and procedures in accordance with Rule 7.1 that are reasonably designed to prevent the flow of information from the Participant regarding the offered security and the related transaction,
- (ii) the Participant has no officers or employees that solicit client orders or recommend transactions in securities in common with the related entity, department or division, and
- (iii) the related entity, department or division does not during the restricted period in connection with the restricted security:
  - (A) act as a market maker (other than pursuant to Market Maker Obligations),
  - (B) solicit client orders, or
  - (C) enter principal orders or otherwise engage in proprietary trading;
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity, of the Participant referred to in clause (a) or for a related entity of the Participant referred to in clause (b); or
- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

**“derivatives market maker”** means a person who performs the function ordinarily associated with a market maker or specialist on an Exchange or QTRS in connection with a derivative instrument.

**“document”** includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

**“employee”** includes any person who has entered into principal/agent relationship with a Participant in accordance with the terms and conditions established for such a relationship by any self-regulatory entity of which the Participant is a member.

**“equity security”** means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding-up of the issuer, in its assets.

**“Exchange”** means a person recognized by the applicable securities regulatory authority under securities legislation to carry on business as an exchange.

**“Exchange-traded Fund”** means a mutual fund:

- (a) the units of which are:
  - (i) a listed security or a quoted security, and
  - (ii) in continuous distribution in accordance with applicable securities legislation; and
- (b) designated by the Market Regulator.

**“hearing”** means a disciplinary and enforcement proceeding commenced by a Market Regulator to determine whether a person has contravened a Requirement or is liable for the contravention of a Requirement and includes any procedural applications or motions in relation to those proceedings.

**“Hearing Committee”** means a standing committee of a Market Regulator comprised of persons selected in accordance with Schedule C.1 to the Investment Industry Regulatory Organization of Canada’s Transition Rule 1 – Hearing Committees and Hearing Panels Rule.

**“Hearing Panel”** means the particular members of the Hearing Committee selected in accordance with Schedule C.1 to the Investment Industry Regulatory Organization of Canada’s Transition Rule 1 – Hearing Committees and Hearing Panels Rule to hear a particular disciplinary and enforcement proceeding.

**“hedge”** means the purchase or sale of a security by a person to offset, in whole or in part, the risk assumed on a prior purchase or sale or to be assumed on a subsequent purchase or sale of that security or a related security.

**“highly-liquid security”** means a listed security or quoted security that:

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day; or

- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” under that regulation.

“**insider**” means a person who is an insider of an issuer for the purpose of applicable securities legislation.

“**intentional cross**” means a trade resulting from the entry by a Participant or Access Person of both the order to purchase and the order to sell a security, but does not include a trade in which the Participant has entered one of the orders as a jitney order.

“**internal cross**” means an intentional cross between two accounts which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the holders of the accounts and includes a trade in respect of which the Participant or Access Person is acting as a portfolio manager in authorizing the trade between the two accounts.

“**issuer-restricted person**” means, in respect of a particular offered security:

- (a) the issuer of the offered security;
- (b) a selling securityholder of the offered security in connection with a prospectus distribution or restricted private placement;
- (c) an affiliated entity, an associated entity or insider of the issuer or selling securityholder of the offered security as determined in accordance with the provisions of applicable securities legislation but does not include a person who is an insider of an issuer by virtue of clause (c) of the definition of “insider” under the *Securities Act* (Ontario) and similar provisions of applicable securities legislation if that person:
  - (i) does not have, and has not had in the previous 12 months, any board or management representation in respect of the issuer or selling securityholder; and
  - (ii) does not have knowledge of any material information concerning the issuer or its securities that has not been generally disclosed; or

- (d) any person acting jointly or in concert with a person described in clause (a), (b) or (c) for a particular transaction.

**“jitney order”** means an order entered on a marketplace by a Participant acting for or on behalf of another Participant.

**“last independent sale price”** means the last sale price of a trade, other than a trade that a dealer-restricted person knows or ought reasonably to know has been executed by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person.

**“last sale price”** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is:

- (a) a Basis Order;
- (b) a Call Market Order;
- (c) a Closing Price Order;
- (d) a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or
- (e) a Volume-Weighted Average Price Order.

**“limit order”** means an order to:

- (a) buy a security to be executed at a specified maximum price; or
- (b) sell a security to be executed at a specified minimum price.

**“listed security”** means a security listed on an Exchange.

**“Market Integrity Official”** means an employee of a Market Regulator designated by the Market Regulator to exercise the powers of the Market Regulator under UMIR.

**“Market Maker Obligations”** means obligations imposed by Marketplace Rules on a member or user or a person employed by a member or user to guarantee:

- (a) a two-sided market for a particular security on a continuous or reasonably continuous basis; and

- (b) the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace.

**“Market-on-Close Order”** means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of calculating and executing at the closing price of the security on that marketplace on that trading day.

**“Market Operation Instrument”** means National Instrument 21-101 – Marketplace Operation as amended, supplemented and in effect from time to time.

**“market order”** means an order to:

- (a) buy a security to be executed upon entry to a marketplace at the best ask price; or
- (b) sell a security to be executed upon entry to a marketplace at the best bid price.

**“Market Regulator”** means:

- (a) an Exchange, unless such Exchange monitors the conduct of its members indirectly through a regulation services provider in which case, the regulation services provider;
- (b) a QTRS, unless such QTRS monitors the conduct of its users indirectly through a regulation services provider in which case, the regulation services provider; and
- (c) in respect of any other marketplace, the regulation services provider with whom that marketplace has entered an agreement in accordance with the requirements of the Trading Rules.

**“marketplace”** means:

- (a) an Exchange;
- (b) a QTRS; and



(c) an ATS.

**“Marketplace Rules”** means the rules, policies and other similar instruments adopted by an Exchange or a QTRS as approved by the applicable securities regulatory authority but not including any rules, policies or other similar instruments related solely to the listing of securities on an Exchange or to the quoting of securities on a QTRS.

**“net cost”** means the amount by which the sum of the total cost of the trade on the purchase of securities based on the purchase price on the marketplace and any commission charged to the client by the Participant exceeds the amount of any allowance, discount, rebate and any other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person.

**“net proceeds”** means the amount by which the sum of the total proceeds of the trade on the sale of securities based on the sale price on the marketplace and the amount of any allowance, discount, rebate and other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person exceeds any commission charged to the client by the Participant.

**“non-client order”** means an order for the purchase or sale of a security received or originated by a Participant for an account:

- (a) for a partner, director, officer or a person holding a similar position or acting in a similar capacity of the Participant or of a related entity of the Participant;
- (b) for an employee of the Participant or of a related entity of the Participant who holds approval from an Exchange or a self-regulatory entity; or
- (c) which is considered to be an employee account or a non-client account by a self-regulatory entity,

but does not include a principal account.

**“offered security”** means all securities of the class of security that is, or will be upon issuance, a listed security or a quoted security and:

- (a) is offered pursuant to a prospectus distribution or a restricted private placement;
- (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under securities legislation;
- (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under securities legislation; or
- (d) would be issuable to a securityholder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from securityholders that will receive the offered security in such

circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities legislation,

provided that, if the security described in clauses (a) to (d) is a unit comprised of more than one type or class, each security comprising the unit shall be considered to be an “offered security”.

**“Opening Order”** means an order for the purchase or sale of a security entered on a marketplace prior to the opening of trading on that marketplace on a trading day for the purpose of calculating and executing at the opening price of the security on that marketplace on that trading day provided an order shall cease to be an Opening Order if the order does not trade at the opening of trading of that security on that marketplace on that trading day.

**“Participant”** means:

- (a) a dealer registered in accordance with securities legislation of any jurisdiction and who is:
  - (i) a member of an Exchange,
  - (ii) a user of a QTRS, or
  - (iii) a subscriber of an ATS; or
- (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.

**“Policy”** means a policy statement adopted by a Market Regulator in connection with the administration or application of UMIR as such policy statement is amended, supplemented and in effect from time to time.

**“principal account”** means an account in which a Participant or a related entity of the Participant holds a direct or indirect interest other than an interest in the commission charged on a transaction.

**“principal order”** means an order for the purchase or sale of a security received or originated by a Participant for a principal account.

**“Program Trade”** means a trade resulting from a series of market orders for the purchase or sale of particular securities underlying an index that has been designated by a Market Regulator where such trade is undertaken in conjunction with a trade in a derivative the underlying interest of which is the index.

**“Protected Party”** means in respect of a Market Regulator:

- (a) the Market Regulator;

- (b) a director, officer or employee of the Market Regulator;
- (c) a member of the Hearing Committee or of a committee appointed by the Board; or
- (d) an independent contractor retained by the Market Regulator to provide services to the Market Regulator.

**“QTRS”** means a recognized quotation and trade reporting system.

**“quoted security”** means a security quoted on a QTRS.

**“Regular Session”** means the time period during a trading day when a marketplace is ordinarily open for trading, but does not include any extended or special trading facility of the marketplace.

**“Regulated Person”** means, in respect of the jurisdiction of a Market Regulator in connection with the conduct of a person:

- (a) any marketplace for which the Market Regulator is the regulation services provider or was the regulation services provider at the time of the conduct;
- (b) any Participant or Access Person of a marketplace for which the Market Regulator is the regulation services provider or was the regulation services provider at the time of the conduct;
- (c) any person to whom responsibility for compliance with UMIR by other persons are extended in accordance with Rule 10.3 or to whom responsibility had been extended at the time of the conduct;
- (d) any person to whom the application of UMIR are extended in accordance with Rule 10.4 or to whom UMIR had been extended at the time of the conduct; and
- (e) any person subject to a Marketplace Rule of a marketplace for which the Market Regulator is the regulation services provider or was the regulation services provider at the time of the conduct.

**“related entity”** means, in respect of a particular person:

- (a) an affiliated entity of the particular person which carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation; and
- (b) a person who has been designated by a Market Regulator in accordance with subsection (3) of Rule 10.4 as a person who acts in conjunction with the particular person.

**“related security”** means, in respect of a particular security:

- (a) a security which is convertible or exchangeable into the particular security;

- (b) a security into which the particular security is convertible or exchangeable;
- (c) a derivative instrument for which the particular security is the underlying interest;
- (d) a derivative instrument for which the market price varies materially with the market price of the particular security; and
- (e) if the particular security is a derivative instrument, a security which is the underlying interest of the derivative instrument or a significant component of an index which is the underlying interest of the derivative instrument.

**“Requirements”** means, collectively:

- (a) UMIR;
- (b) the Policies;
- (c) the Trading Rules;
- (d) the Marketplace Rules;
- (e) any direction, order or decision of the Market Regulator or a Market Integrity Official; and
- (f) securities legislation,

as amended, supplemented and in effect from time to time.

**“restricted period”** means, for a dealer-restricted person or an issuer-restricted person, the period:

- (a) in connection with a prospectus distribution or a restricted private placement of any offered security, commencing two trading days prior to the day the offering price of the offered security is determined and ending on the date the selling process has ended and all stabilization arrangements relating to the offered security are terminated provided that, if the person is a dealer-restricted person, the period shall commence on the date the Participant enters into an agreement or reaches an understanding to participate in the prospectus distribution or restricted private placement of securities, whether or not the terms and conditions of such participation have been agreed upon if that date is later;
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the securities exchange take-over bid circular or issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid; and

- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date for approval of the transaction by the securityholders that will receive the offered security or the termination of the transaction by the issuer or issuers.

**“restricted person”** - repealed

**“restricted private placement”** means a distribution of offered securities made pursuant to clause 72(1)(b) of the *Securities Act* (Ontario) or section 2.3 of Ontario Securities Commission Rule 45-501 - *Exempt Distributions* or similar provisions of applicable securities legislation.

**“restricted security”** means:

- (a) the offered security; or
- (b) any connected security.

**“securities exchange take-over bid”** means a take-over bid where the consideration for the securities of the offeree is to be, in whole or in part, securities traded on a marketplace.

**“short sale”** means a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee and, for this purpose, a seller shall be considered to own a security if the seller:

- (a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;
- (b) has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security;
- (c) has an option to purchase the security and has exercised the option;
- (d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or
- (e) is making a sale of a security that trades on a when issued basis and the seller has entered into a contract to purchase such security which is binding on both parties and subject only to the condition of issuance of distribution of the security,

but a seller shall be considered not to own a security if:

- (f) the seller has borrowed the security to be delivered on the settlement of the trade and the seller is not otherwise considered to own the security in accordance with this definition;

- (g) the security held by the seller is subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or QTRS as a condition of the listing or quoting of the security; or
- (h) the settlement date or issuance date pursuant to:
  - (i) an unconditional contract to purchase,
  - (ii) a tender of a security for conversion or exchange,
  - (iii) an exercise of an option, or
  - (iv) an exercise of a right or warrant

would, in the ordinary course, be after the date for settlement of the sale.

**“significant shareholder”** means any person holding separately, or in combination with other persons, more than 20 per cent of the outstanding voting securities of an issuer.

**“Special Terms Order”** means an order for the purchase or sale of a security:

- (a) for less than a standard trading unit;
- (b) the execution of which is subject to a condition other than as:
  - (i) to price,
  - (ii) to the date of settlement; or
  - (iii) imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or
- (c) that on execution would be settled on a date other than:
  - (i) the third business day following the date of the trade, or
  - (ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS,

but does not include an order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.

**“standard trading unit”** means, in respect of:

- (a) a derivative instrument, 1 contract;
- (b) a debt security that is a listed security or a quoted security, \$1,000 in principal amount; or

- (c) any equity or similar security:
  - (i) 1,000 units of a security trading at less than \$0.10 per unit,
  - (ii) 500 units of a security trading at \$0.10 or more per unit and less than \$1.00 per unit, and
  - (iii) 100 units of a security trading at \$1.00 or more per unit.

**“trades on a when issued basis”** means purchases or sales of a security to be issued pursuant to:

- (a) a prospectus offering where a receipt for the final prospectus for the offering has been issued by the applicable securities regulatory authority but the offering has not closed and settled;
- (b) a proposed plan of arrangement, an amalgamation or a take-over bid prior to the effective date of the amalgamation or the arrangement or the expiry date of the take-over bid; or
- (c) any other transaction that is subject to the satisfaction of certain conditions,

and the trade is to be settled only if the security is issued and the trade in the security prior to the issuance would not contravene the applicable securities legislation.

**“trading day”** means a calendar day during which trades are executed on a marketplace.

**“Trading Rules”** means National Instrument 23-101 as amended, supplemented and in effect from time to time.

**“UMIR”** means those rules adopted by the Investment Industry Regulatory Organization of Canada and designated by the Investment Industry Regulatory Organization of Canada as the Universal Market Integrity Rules as amended, supplemented and in effect from time to time.

**“Volume-Weighted Average Price Order”** means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of executing trades at an average price of the security traded on that trading day on that marketplace or on any combination of marketplaces known at the time of the entry of the order.

## ***POLICY 1.1 - DEFINITIONS***

### ***Part 1 – Definition of “connected security”***

*The definition of a “connected security” includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may “significantly determine” the value of the offered security. The Market Regulator takes the view that, absent other mitigating factors, a connected security “significantly determines” the value of*

*the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.*

### ***Part 2 – Definition of “Exchange-traded Fund”***

*An “Exchange-traded Fund” is defined, in part, as a mutual fund designated by the Market Regulator as an exchange-traded fund for the purposes of UMIR. As guidance, an exchange-traded fund may be designated by the Market Regulator where it is determined that it would be difficult to manipulate the price of units of the mutual fund.*

*It would be the intention of the Market Regulator that the designation of a security would be done after consultation with the Ontario Securities Commission or other applicable securities regulatory authority. Acceptance of the designation by applicable securities regulatory authorities would be a pre-condition to any designation of a security as an “Exchange-traded Fund”. Other factors which the Market Regulator would take into account are:*

- *the liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);*
- *whether the units are redeemable at any time for a “basket” of the underlying securities in addition to cash;*
- *whether a “basket” of the underlying securities may be exchanged at any time for units of the fund;*
- *whether the fund tracks a recognized index on which information is publicly disseminated and generally available through the financial media; and*
- *whether derivatives based on units of the fund, the underlying index or the underlying securities are listed on a marketplace.*

*None of these additional five factors is determinative in and of itself and each security will be evaluated on its own merits before a request is made to the applicable securities regulatory authority to concur in the designation.*

## **1.2 Interpretation**

- (1) Unless otherwise defined or interpreted, every term used in UMIR that is:
  - (a) defined in subsection 1.1(3) of National Instrument 14-101 – Definitions has the meaning ascribed to it in that subsection;
  - (b) defined or interpreted in the Marketplace Operation Instrument has the meaning ascribed to it in that National Instrument; and
  - (c) a reference to a requirement of an Exchange or a QTRS shall have the meaning ascribed to it in the applicable Marketplace Rule.



- (2) For the purposes of UMIR, the following terms shall be as defined by applicable securities legislation except that:

**“person”** includes any corporation, incorporated association, incorporated syndicate or other incorporated organization.

**“trade”** includes a purchase or acquisition of a security for valuable consideration in addition to any sale or disposition of a security for valuable consideration.

- (3) In determining the value of an order for the purposes of Rule 6.3 and 8.1, the value shall be calculated as of the time of the receipt or origination of the order and shall be calculated by multiplying the number of units of the security to be bought or sold under the order by:
- (a) in the case of a limit order for the purchase of a security, the lesser of:
    - (i) the specified maximum price in the order, and
    - (ii) the best ask price;
  - (b) in the case of a limit order for the sale of a security, the greater of:
    - (i) the specified minimum price in the order, and
    - (ii) the best bid price;
  - (c) in the case of a market order for the purchase of a security, the best ask price; and
  - (d) in the case of a market order for the sale of a security, the best bid price.
- (4) For the purposes of determining the “last sale price”, if a sale of at least a standard trading unit of a particular security has not been previously displayed in a consolidated market display the last sale price shall be deemed to be the price:
- (a) of the last sale of the security on an Exchange, if the security is a listed security;
  - (b) of the last sale of the security on a QTRS, if the security is a quoted security;
  - (c) at which the security has been issued or distributed to the public, if the security has not previously traded on a marketplace; and
  - (d) that has been accepted by a Market Regulator, in any other circumstance.
- (5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a “standard trading unit”, the price shall be the last sale price of the particular security on the immediately preceding trading day.

- (6) For the purposes of the definition of “restricted period”:
- (a) the selling process shall be considered to end:
    - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus by the applicable securities regulatory authority and the Participant has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
    - (ii) in the case of a restricted private placement, the Participant has allocated all of its portion of the securities to be distributed under the offering; and
  - (b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a Participant after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the Participants that were party to the stabilization arrangements.
- (7) Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term “associate” in applicable securities legislation and also includes any person of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person.

## ***POLICY 1.2 - INTERPRETATION***

### ***Part 1 – Meaning of “acting jointly or in concert”***

*The definitions of a “dealer-restricted person” and “issuer-restricted person” include a person acting jointly or in concert with a person that is also a dealer-restricted person or an issuer-restricted person, as applicable, for a particular transaction. For the purposes of these definitions, “acting jointly or in concert” has a similar meaning to that phrase as defined in section 91 of the Securities Act (Ontario) or similar provisions of applicable securities legislation, with necessary modifications. In the context of these definitions only, it is a question of fact whether a person is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases any restricted security will be presumed to be acting jointly or in concert with such dealer- or issuer-restricted person.*

### ***Part 2 – Meaning of “selling process has ended”***

*The definition of “restricted period”, with respect to a prospectus distribution and a “restricted private placement”, refers to the end of the period as the date that the selling process ends and*

*all stabilization arrangements relating to the offered security are terminated. Rule 1.2(6)(a) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the Participant has distributed all securities allocated to it and, is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the Participant is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate's short position. If the Participant or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a Participant that are held and transferred to the inventory account of the Participant at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the inventory account of the Participant.*

### **Part 3 – “Ought Reasonably to Know”**

*Rule 2.2 prohibits a Participant or Access Person from doing various acts if the Participant or Access Person “knows or ought reasonably to know” that a particular method, act or practice was manipulative or deceptive or that the effect of entering an order or executing a trade would create or could reasonably be expected to create a false or misleading appearance of trading activity or interest or an artificial price. Rule 2.3 prohibits a Participant or Access Person from entering an order on a marketplace or executing a trade if the Participant or Access Person “knows or ought reasonably to know” that the entry of the order or the execution of the trade would result in the violation of various securities or regulatory requirements.*

*In determining what a person “ought reasonably to know” reference would be made to what a Participant or Access Person would know, acting honestly and in good faith, and exercising the care, diligence and skill that a reasonably prudent Participant or Access Person would exercise in comparable circumstances. In essence, the test becomes what could a Participant or Access Person have been expected to know if the Participant or Access Person had:*

- *adopted various policies and procedures as required by applicable securities legislation, self-regulatory entities, UMIR and the Policies; and*
- *conscientiously followed or observed the policies and procedures.*

### **Part 4 - Applicable Regulatory Standards**

*Rule 7.1 requires each Participant prior to the entry of an order on a marketplace to comply with applicable regulatory standards with respect to the review, acceptance and approval of orders. Each Participant that is a dealer must be a member of a self-regulatory entity. Each Participant will be subject to the by-laws, regulations and policies as adopted from time to time by the applicable self-regulatory entity. These requirements may include an obligation on the member to “use due diligence to learn and remain informed of the essential facts relative to*

*every customer and to every order or account accepted.” While knowledge by a Participant of “essential facts” of every customer and order is necessary to determine the suitability of any investment for a client, such requirement is not limited to that single application. The exercise of due diligence to learn essential facts “relative to every customer and to every order” is a central component of the “Gatekeeper Obligation” embodied within the trading supervision obligation under Rule 7.1 and 10.16. In addition, securities legislation applicable in a jurisdiction may impose review standards on Participants respecting orders and accounts. The regulatory standards that may apply to a particular order may vary depending upon a number of circumstances including:*

- *the requirements of any self-regulatory entity of which the Participant is a member;*
- *the type of account from which the order is received or originated; and*
- *the securities legislation in the jurisdiction applicable to the order.*

## **PART 2 - ABUSIVE TRADING**

### **2.1 Just and Equitable Principles**

- (1) A Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when:
  - (a) trading on a marketplace; or
  - (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.
- (2) An Access Person shall transact business openly and fairly when:
  - (a) trading on a marketplace; or
  - (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

### ***POLICY 2.1 – JUST AND EQUITABLE PRINCIPLES***

#### ***Part 1 – Examples of Unacceptable Activity***

*Rule 2.1 provides that a Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities that are eligible to be traded on a marketplace. The Rule also provides that an Access Person shall transact business openly and fairly. As such, the Rule operates as a general anti-avoidance provision.*

*Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is contrary to the just and equitable principles of trade. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who “uses” another person to make a trade off of a marketplace (in circumstances where an “off-market exemption” is not available) to be violating just and equitable principles of trade.*

*Certain patterns of activity that can be undertaken that affect the marketplace but do not reach the level of manipulative and deceptive trading practices are nonetheless unavailable to Participant and Access Persons. For example, Rule 4.1 dealing with frontrunning is specifically tied to misuse of information when a Participant knows a client order will be entered. Somewhere between the Participant who acts on certain knowledge of a client order and the Participant who acts despite a single, uncertain expression of interest are the Participants that repeatedly take advantage of expressions of interest in particular securities. Such Participants are not conducting business openly and fairly and in accordance with just and equitable principles of trade. The “just and equitable principles” clause and the requirement to transact business openly and fairly prevent such activity.*

*Without limiting the generality of the Rule, the following are examples of activities by a Participant that would be considered to be in violation of just and equitable principles of trade:*

- (a) without the specific consent of the client, entering client and principal orders in such a manner as to attempt to obtain execution of a principal order in priority to the client order; (See Part 2 of Policy 5.3 – Client Priority for examples of the prohibition on “intentional trading ahead”.)*
- (b) without the specific consent of the client, to vary the instructions of the client to indicate that securities held by the client are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the client for the dividend in cash;*
- (c) without the specific consent of the lender of securities, to vary the arrangements in respect of securities borrowed by the Participant to indicate that the borrowed securities are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the lender for the dividend in cash; and*
- (d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:
  - (i) execute with one or more of the orders, or*
  - (ii) purchase at a higher price or sell at a lower price with one or more of the orders**

*in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.*

## ***Part 2 – Moving Markets to Execute a Trade***

*A Participant or Access Person intending to execute a trade or a cross that will cause, during the course of a single trading day, a change in the price that is above the prevailing offer or below the prevailing bid by an amount greater than \$1 in a security selling below \$20, or greater than \$2 in a security selling at or above \$20, shall obtain the prior approval of the Market Regulator. The Participant or Access Person shall move the market to the price of the cross or the final trade of a one-sided order (the “clean-up price”) in an orderly manner over a time period as directed by the Market Regulator. The length of time required to move the market will depend on the circumstances and the particular security involved. As a guideline, 10 to 15 minutes will be required for each movement of \$1 in price. Particular securities may require a longer period of time.*

*If the Market Regulator is given notice of a proposed trade or cross under this Policy shortly before the close of trading on marketplaces or the principal market for the security, the Market Regulator may disallow the trade if, in the opinion of the Market Regulator, there is not sufficient time to move the market to the clean-up price in an orderly manner before the close.*

## **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 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.

### ***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;*
- (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.*

*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.*

### **2.3 Improper Orders and Trades**

A Participant or Access Person shall not enter an order on a marketplace or execute a trade if the Participant or Access Person knows or ought reasonably to know that that the entry of the order or the execution of the trade would not comply with or would result in the violation of:

- (a) applicable securities legislation;
- (b) applicable requirements of any self-regulatory entity of which the Participant or Access Person is a member;
- (c) the Marketplace Rules of the marketplace on which the order is entered;
- (d) the Marketplace Rules of the marketplace on which the trade is executed; and
- (e) UMIR and the Policies.

## **PART 3 - SHORT SELLING**

### **3.1 Restrictions on Short Selling**

- (1) Except as otherwise provided, a Participant or Access Person shall not make a short sale of a security on a marketplace unless the price is at or above the last sale price.
- (2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:
  - (a) a Program Trade in accordance with Marketplace Rules;
  - (b) made in furtherance of the applicable Market Maker Obligations in accordance with the Marketplace Rules;
  - (c) for an arbitrage account and the seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available and the seller intends to accept such offer immediately;
  - (d) for the account of a derivatives market maker and is made:
    - (i) in accordance with the market making obligations of the seller in connection with the security or a related security, and
    - (ii) to hedge a pre-existing position in the security or a related security;
  - (e) the first sale of the security on any marketplace made on an ex-dividend, ex-rights or ex-distribution basis and the price of the sale is not less than the last sale price reduced by the cash value of the dividend, right or other distribution;
  - (f) the result of:
    - (i) a Call Market Order,
    - (ii) a Market-on-Close Order,
    - (iii) a Volume-Weighted Average Price Order,
    - (iv) a Basis Order, or
    - (v) a Closing Price Order; or
  - (g) a trade in an Exchange-traded Fund.

### **POLICY 3.1 – RESTRICTIONS ON SHORT SELLING**

#### ***Part 1 – Entry of Short Sales Prior to the Opening***

*Prior to the opening of a marketplace on a trading day, a short sale may not be entered on that marketplace as a market order and must be entered as a limit order and have a limit price at or above the last sale price of that security as indicated in a consolidated market display (or at or above the previous day's close reduced by the amount of a dividend or distribution if the security will commence ex-trading on the opening).*

#### ***Part 2 – Short Sale Price When Trading Ex-Distribution***

*When reducing the price of a previous trade by the amount of a distribution, it is possible that the price of the security will be between the trading increments. (For example, a stock at \$10 with a dividend of \$0.125 would have an ex-dividend price of \$9.875. A short sale order could only be entered at \$9.87 or \$9.88.) Where such a situation occurs, the price of the short sale order should be set no lower than the next highest price. (In the example, the minimum price for the short sale would be \$9.88, being the next highest price at which an order may be entered to the ex-dividend price of \$9.875).*

*In the case of a distribution of securities (other than a stock split) the value of the distribution is not determined until the security that is distributed has traded. (For example, if shareholders of ABC Co. receive shares of XYZ Co. in a distribution, an initial short sale of ABC on an ex-distribution basis may not be made at a price below the previous trade until XYZ Co. has traded and a value determined).*

*Once a security has traded on an ex-distribution basis, the regular short sale Rule applies and the relevant price is the previous trade.*

## **PART 4 - FRONTRUNNING**

### **4.1 Frontrunning**

- (1) A Participant with knowledge of a client order that on entry could reasonably be expected to affect the market price of a security, shall not, prior to the entry of such client order,
  - (a) enter a principal order or a non-client order on a marketplace, stock exchange or market, including any over-the-counter market, for the purchase or sale of the security or any related security;
  - (b) solicit an order from any other person for the purchase or sale of the security or any related security; or
  - (c) inform any other person, other than in the necessary course of business, of the client order.
  
- (2) A Participant does not contravene subsection (1) if:
  - (a) no director, officer, partner, employee or agent of the Participant who made or participated in making the decision to enter a principal order or non-client order or to solicit an order had actual knowledge of the client order;
  - (b) an order is entered or trade made for the benefit of the client for whose account the order is to be made;
  - (c) an order is solicited to facilitate the trade of the client order;
  - (d) a principal order is entered to hedge a position that the Participant had assumed or agreed to assume before having actual knowledge of the client order provided the hedge is:
    - (i) commensurate with the risk assumed by the Participant, and
    - (ii) entered into in accordance with the ordinary practice of the Participant when assuming or agreeing to assume a position in the security;
  - (e) a principal order is made to fulfil a legally binding obligation entered into by the Participant before having actual knowledge of the client order; or
  - (f) the order is entered for an arbitrage account.

## **POLICY 4.1 – FRONTRUNNING**

### **Part 1 – Examples of Frontrunning**

*Rule 4.1 provides that no Participant shall trade in equities or derivatives to take advantage of information concerning a client order that has not been entered on a market place that reasonably can be expected to change the prices of the equities or the related options or futures contracts. Without limiting the generality of the Rule, the following are examples of transactions covered by the prohibition:*

- (a) a transaction in an option, including an option where the underlying interest is an index, when the Participant has knowledge of the unentered client order for the underlying securities;*
- (b) a transaction in a future where the underlying interest is an index when the Participant has knowledge of the unentered client order that is a program trade or index option transaction; and*
- (c) a transaction in an index option when the Participant has knowledge of the unentered client order that is a program trade or an index futures transaction.*

*Rule 10.4 extends the prohibition to cover orders entered by a related entity of the Participant or a director, officer, partner or employee of the Participant or a related entity of the Participant.*

### **Part 2 – Specific Knowledge Required**

*In order to constitute frontrunning contrary to Rule 4.1, the person must have specific knowledge concerning the client order that, on entry, could reasonably be expected to affect the market price of a security. A person with knowledge of such a client order must insure that the client order has been entered on a marketplace before that person can:*

- enter a principal order or non-client order for the security or any related security;*
- solicit an order for the security or any related security; or*
- inform any other person about the client order, other than in the necessary of course of business.*

*Trading based on non-specific pieces of market information, including rumours, does not constitute frontrunning.*

## **PART 5 - BEST EXECUTION OBLIGATION**

### **5.1 Best Execution of Client Orders**

A Participant shall diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions.

#### ***POLICY 5.1 – BEST EXECUTION OF CLIENT ORDERS***

*“Best execution” refers to a reasonable period of time during which the order is handled, not merely the precise moment in time that it is executed. The price of the principal transaction must also be justified by the condition of the market. Participants should consider such factors as:*

- *prices and volumes of the last sale and previous trades;*
- *direction of the market for the security;*
- *posted size on the bid and offer;*
- *the size of the spread; and*
- *liquidity of the security.*

*For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.*

*Of course, if a client expressly consents to a principal trade a fully informed basis, following the client’s instructions will be reasonable.*

#### ***Part 2 – Factors to be Considered***

*In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:*

- *any specific client instructions regarding the timeliness of the execution of the order*
- *whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada);*

- *whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order; and*
- *whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:*
  - *the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and*
  - *the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.*

## **5.2 Best Price Obligation**

- (1) A Participant shall make reasonable efforts prior to the execution of a client order to ensure that:
  - (a) in the case of an offer by the client, the order is executed at the best bid price; and
  - (b) in the case of a bid by the client, the order is executed at the best ask price.
- (2) Subsection (1) does not apply to the execution of an order which is:
  - (a) required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4 to be executed other than on a marketplace in order to maintain a fair or orderly market;
  - (b) a Special Terms Order unless:
    - (i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or
    - (ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display; or
  - (c) directed or consented to by the client to be entered on a marketplace as:
    - (i) a Call Market Order,
    - (ii) a Volume-Weighted Average Price Order,
    - (iii) a Market-on-Close Order,



- (iv) an Opening Order,
  - (v) a Basis Order, or
  - (vi) a Closing Price Order.
- (d) For the purposes of subsection (1), the Participant may take into account any transaction fees that would be payable to the marketplace in connection with the execution of the order as set out in the schedule of transaction fees disclosed in accordance with Marketplace Operation Instrument.

## **POLICY 5.2 – BEST PRICE OBLIGATION**

### **Part 1 – Qualification of Obligation**

*The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that a client order receives the best price. In determining whether a Participant has made “reasonable efforts”, the Market Regulator will consider:*

- *the transactions costs and other costs that would be associated with executing the trade on a marketplace; and*
- *whether a “better-priced” order is on another marketplace that:*
  - *disseminates order data in real-time and electronically through one or more information vendors,*
  - *permits dealers to have access to trading in the capacity as agent,*
  - *provides fully-automated electronic order entry, and*
  - *provides fully-automated order matching and trade execution.*

### **Part 2 – Trade-Through of Marketplaces**

*Subject to the qualification of the “best price obligation” as set out in Part 1, Participants may not intentionally trade through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on a stock exchange or other organized market. This Policy applies even if the client consents to the trade on the other stock exchange or other organized market at the inferior price. Participants may make the trade on that other exchange or organized market if the better bids or offers, as the case may be, on marketplaces are filled first, or coincidentally with the trade on the other stock exchange or organized market. The time of order entry is the time that is relevant for determining whether there is a better price on a marketplace.*

*This Policy applies to “active orders”. An “active order” is an order that may cause a trade-through by executing against an existing bid or offer on another stock exchange or*

*organized market at a price that is inferior to the bid or ask price on a marketplace at the time. This Policy applies to trades for Canadian accounts and Participants' principal (inventory) accounts. The Policy also applies to Participants' principal trades on foreign over-the-counter markets made pursuant to the outside-of-Canada exemption in clause (e) of Rule 6.4. Trades for foreign accounts are not subject to this Policy because they are exempt from Rule 6.4 pursuant to the "outside-of-Canada" exemption set out in clause (e) of Rule 6.4. For example, an order to sell from a non-Canadian account on the New York Stock Exchange at a price below the bid price on a marketplace may be executed by the Participant.*

### **Part 3 – Foreign Currency Translation**

*If a trade is to be executed on a foreign market, the Participant shall determine whether there is in fact a better price on a marketplace. The foreign trade price shall be converted to Canadian dollars using the mid-market spot rate or 7-day forward exchange rate in effect at the time of the trade, plus or minus 15 basis points. A better price on a marketplace must be "taken out" if there is more than a marginal difference between the price on the marketplace and the price on the other stock exchange or organized market. The Market Regulator regards a difference of one-half of a tick or less as "marginal" because the difference would be attributable to currency conversion.*

### **5.3 Client Priority**

- (1) A Participant shall not enter on a marketplace or an organized regulated market a principal order or a non-client order of the Participant that, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order for the same security that is:
  - (a) at the same price or a lower price than the client order in the case of a purchase or the same or a higher price than the client order in the case of a sale; and
  - (b) on the same side of the market.
- (2) Despite subsection (1) but subject to Rule 4.1, a Participant is not required to give priority to a client order if:
  - (a) the client specifically has consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same settlement terms;
  - (b) the principal order or non-client order is:
    - (i) automatically generated by the trading system of an Exchange or QTRS in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations,

- (ii) automatically generated by a system operated by the Participant or on behalf of the Participant based on pre-determined order and trading parameters established, programmed and enabled for trading prior to the receipt of the client order,
  - (iii) for a managed account and the client order is for a managed account under the direction of the same person and in respect of which executions are allocated between the various managed accounts on an equitable basis in accordance with the established practices of the Participant, or
  - (iv) a Basis Order;
- (c) the client order has been entered directly by the client of the Participant on a marketplace;
- (d) the principal order or non-client order is executed pursuant to an allocation by the trading system of a marketplace and:
- (i) either:
    - (A) the security which is the subject of the order trades on no marketplace other than that marketplace,
    - (B) the principal order or non-client order is a Call Market Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order,
    - (C) each of the client order and the principal order or non-client order was entered on the same marketplace,
    - (D) the client has instructed the Participant to enter the client order on a particular marketplace, or
    - (E) the client has instructed the Participant to enter the client order in a manner that does not disclose the identifier of the Participant in a consolidated market display,
  - (ii) the client order was entered by the Participant on that marketplace immediately upon receipt by the Participant, and
  - (iii) if the client order was varied or changed by the Participant at any time after entry, the variation or change was on the specific instructions of the client;
- (e) either the client order or the principal order or non-client order is a Special Terms Order and the client order would not have executed in the

transaction or transactions involving the principal order or non-client order due to the terms and conditions of at least one Special Terms Order; or

- (f) a Market Integrity Official requires or permits the principal order or non-client order to be executed in priority to a client order.
- (3) For the purposes of clause (2)(a), a client shall be deemed to have consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same conditions and settlement terms if the client order, in accordance with the specific instructions of the client, is to be executed in part at various times during the trading day or at various prices during the trading day.

### ***POLICY 5.3 – CLIENT PRIORITY***

#### ***Part 1 – Background***

*Rule 5.3 restricts a Participant and its employees from trading in the same securities as a client of the Participant. The restriction is designed to minimize the conflict of interest that occurs when a Participant or its employee compete with the firm’s clients for execution of orders. The Rule governs:*

- *trading ahead of a client order, which is taking out a bid or offering that the client could have obtained had the client order been entered first. By trading ahead, the pro order obtains a better price at the expense of the client order.*
- *trading along with a client, or competing for fills at the same price.*

*The application of the Rule can be quite complex given the diversity of professional trading operations in many firms, which can include such activities as block facilitation, market making, derivative and arbitrage trading. In addition, firms may withhold particular client orders in order to obtain for the client a better execution than the client would have received if the order had been entered directly on a marketplace. Each firm must analyze its own operations, identify risk areas and adopt compliance procedures tailored to its particular situation.*

***A Participant has overriding agency responsibilities to its clients and cannot use technical compliance with the Rule to establish fulfillment of its obligations if the Participant has not otherwise acted reasonably and diligently to obtain best execution of its client orders.***

#### ***Part 2 – Prohibition on Intentional Trading Ahead***

*A Participant can never intentionally trade ahead of a client order that is either a market order or tradeable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client. Examples of “intentional trades” include, but are not limited to:*

- *withholding a client order from entry on a marketplace (or removing an order already entered on a marketplace) to permit the entry of a competing principal or non-client order ahead of the client order;*
- *entering a client order on a relatively illiquid market (other than on the instructions of the client) and entering a principal or non-client order on a more liquid marketplace where the principal or non-client order is likely to obtain faster execution;*
- *adding terms or conditions to a client order (other than on the instructions of the client) so that the client order ranks behind principal or non-client orders at that price;*
- *putting terms or conditions on a principal or non-client order for the purpose of differentiating the principal or non-client order from a client order that would otherwise have priority at that price; and*
- *entering a principal order or non-client order as an “anonymous order” (without the identifier of the Participant) which results in an execution in priority to a previously entered client order that discloses the identifier of the Participant.*

### ***Part 3 – No Knowledge of Client Order***

*The Participant must have reasonable procedures in place to ensure that information concerning client orders is not used improperly within the firm. These procedures will vary from firm to firm and no one procedure will work for all firms. If a firm does not have reasonable procedures in place, it cannot rely on the exceptions. Reference should be made to Policy 7.1 – Policy on Trading Supervision Obligations, and in particular Part 4 – Specific Procedures Respecting Client Priority and Best Execution.*

*If a client has instructed a Participant to withhold an order or has granted a Participant discretion with respect to the entry of an order, details of the instruction or grant of discretion must be retained for a period of seven years from the date of the instruction or grant of discretion and, for the first two years, the consent must be kept in a readily accessible location.*

### ***Part 4 – Client Consent***

*A Participant does not have to provide priority to a client order if the client specifically consents to the Participant trading alongside or ahead of the client. The consent of the client must be specific to a particular order and details of the agreement with the client must be noted on the order ticket. A client cannot give a blanket form of consent to permit the Participant to trade alongside or ahead of any future orders the client may give the Participant.*

*If the client order is part of a pre-arranged trade that is to be completed at a price below the best bid price or above the best ask price as indicated on a consolidated market display, the Participant will be under an obligation to ensure that “better-priced” orders on a marketplace are filled prior to the execution of the client order. Prior to executing the client order, the*

*Participant must ensure that the client is aware of the better-priced orders and has consented to the Participant executing as against them in priority to the client order. The consent of the client must be noted on the order ticket.*

*If the client has given the Participant an order that is to be executed at various times during a trading day (e.g. an “over-the-day” order) or at various prices (e.g. at various prices in order to approximate a volume-weighted average price), the client is deemed to have consented to the entry of principal and non-client orders that may trade ahead of the balance of the client order. Unless the client has provided standing written instructions that all orders are to be executed at various times during the trading day or at various prices during the trading day, the client instructions should be treated as specific to a particular order and the details of the instructions by the client must be noted on the order ticket. However, if the un-entered portion of the client order would reasonably be expected to affect the market price of the security, the Participant may be precluded from entering principal or non-client orders as a result of the application of the frontrunning rule.*

*In certain circumstances, a client may provide a conditional consent for the Participant to trade alongside or ahead of the client order. For example, a client may consent to a principal order of Participant sharing fills with the client order provided the client order is fully executed by the end of the trading day. If the client’s order is not fully executed, the client may expect that the Participant “give up” its fills to the extent necessary to complete the client order. In this situation, the Participant should mark its orders as “principal” throughout the day. Any part of the execution which is given up to the client should not be re-crossed on a marketplace but should simply be journalled to the client (since the condition of the consent has not been met, the fills in question could be viewed as properly belonging to the client rather than the principal order). To the extent that a Participant “gives up” part of a fill of a principal order to a client based on the conditional consent, the Participant shall report the particulars of the “give up” to the Market Regulator not later than the opening of trading on marketplaces on the next trading day. The conditional consent of the client must be specific to a particular order. The details of the agreement with the client must be noted on the order ticket.*

## **PART 6 - ORDER ENTRY AND EXPOSURE**

### **6.1 Entry of Orders to a Marketplace**

- (1) No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of a cent other than an increment of one-half of one cent in respect of an order with a price of less than \$0.50.
- (2) Each order to purchase or sell a listed security or a quoted security entered to trade on a marketplace shall be subject to any special rule or direction issued by the Exchange on which the security is listed or by the QTRS on which the security is quoted with respect to:
  - (a) clearing and settlement; and
  - (b) entitlement of the purchaser to receive a dividend, interest or any other distribution made or right given to holders of that security.

### ***POLICY 6.1 – ENTRY OF ORDERS TO A MARKETPLACE***

#### ***Part 1 – Exceptions for Certain Types of Orders***

*Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Basis Order, Call Market Order or a Volume-Weighted Average Price Order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment.*

### **6.2 Designations and Identifiers**

- (1) Each order entered on a marketplace shall contain:
  - (a) the identifier of:
    - (i) the Participant or Access Person entering the order as assigned to the Participant or Access Person in accordance with Rule 10.15,
    - (ii) the marketplace on which the order is entered as assigned to the marketplace in accordance with Rule 10.15, and
    - (iii) the Participant for or on behalf of whom the order is entered, if the order is a jitney order; and

- (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:
  - (i) a Call Market Order,
  - (ii) an Opening Order,
  - (iii) a Market-on-Close Order,
  - (iv) a Special Terms Order,
  - (v) a Volume-Weighted Average Price Order,
  - (v.1) a Basis Order,
  - (v.2) a Closing Price Order,
  - (vi) part of a Program Trade,
  - (vii) part of an intentional cross or internal cross,
  - (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1,
  - (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1,
  - (x) a non-client order,
  - (xi) a principal order,
  - (xii) a jitney order,
  - (xiii) for the account of a derivatives market maker,
  - (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order,
  - (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or
  - (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.
  
- (2) If the order entered on a marketplace is a Special Terms Order, the order shall contain, in addition to all designations and identifiers required by subsection (1), information in such form as is acceptable to the Market Regulator of the marketplace on which the order is entered respecting:



- (a) any condition on the execution of the order; and
  - (b) the settlement date.
- (3) If following the entry of an order on a marketplace for the sale of security that has not been designated as a short sale such order would become a short sale on execution, the order shall be modified to include the short sale designation required by subsection (1).
- (4) Each order entered on a marketplace including all designations and identifiers required by subsection (1) shall be disclosed to each Market Regulator.
- (5) The marketplace on which the order is entered shall determine if the identifier of the Participant or the marketplace shall be displayed in a consolidated market display.
- (6) Unless otherwise permitted or directed by the Market Regulator, a marketplace shall:
- (a) disclose for display in a consolidated market display any designation attached to an order that is required by subclause (i) to (vii) inclusive of clause (1)(b); and
  - (b) not disclose for display in a consolidated market display any designation attached to an order that is required by subclause (viii) to (xvi) inclusive of clause (1)(b).

### **6.3 Exposure of Client Orders**

- (1) A Participant shall immediately enter on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:
- (a) the client has specifically instructed the Participant to deal otherwise with the particular order;
  - (b) the Participant executes the order upon receipt at a better price;
  - (c) the Participant returns the order for confirmation of the terms of the order;
  - (d) the Participant withholds the order pending confirmation that the order complies with applicable securities requirements or, if applicable, the Marketplace Rules of any Exchange on which the security is listed or of any QTRS on which the security is quoted;
  - (e) the Participant determines based on market conditions that entering the order would not be in the best interests of the client;

- (f) the order has a value of more than \$100,000;
  - (g) the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace; or
  - (h) the client has directed or consented to the order being entered on a marketplace as:
    - (i) a Call Market Order,
    - (ii) an Opening Order,
    - (iii) a Special Terms Order,
    - (iv) a Volume-Weighted Average Price Order,
    - (v) a Market-on-Close Order,
    - (vi) a Basis Order, or
    - (vii) a Closing Price Order.
- (2) If a Participant withholds a client order from entry based on market conditions in accordance with clause (1)(e), the Participant may enter the order in parts over a period of time or adjust the terms of the order prior to entry but the Participant must guarantee that the client receives:
- (a) a price at least as good as the price the client would have received if the client order had been executed on receipt by the Participant; and
  - (b) if the Participant executes the client order against a principal order or non-client order, a better price than the price the client would have received if the client order had been executed on receipt by the Participant.

### ***POLICY 6.3 – EXPOSURE OF CLIENT ORDERS***

#### ***Part 1 – Reviewing Small Orders for Market Impact***

*Rule 6.3 requires a Participant to immediately enter client orders for the purchase or sale of 50 standard trading units or less on a marketplace. This requirement is subject to certain exceptions. The Participant may withhold the order based on a determination that market conditions were such that immediate entry of the order would not be in the best interests of the client. If the order is withheld the Participant must guarantee that the client receives a price at least as good as the price the client would have received had the client order been executed on receipt by the Participant. If the order is executed against a principal order or non-client order the client must receive a better price.*

## ***Part 2 – Confirmation of Order Terms***

*Pursuant to Rule 6.3, a Participant may withhold entry of the order and return the order to its source for confirmation of its terms. For example, a Participant who receives an order to sell a security at \$3 in a stock trading at \$20 may return the order to the branch, as it is likely that either the price or the stock symbol is wrong.*

## ***Part 3 – Client Request to Withhold Order***

*A Participant does not have to immediately enter a client order on a marketplace if the client has requested that the order be withheld (for example, the client does not want the order executed in the open market but wishes to do a tax-related trade with their spouse). Any request must be specific to that order. A client cannot give a blanket request to withhold any future orders the client may give the Participant. Furthermore, the Participant may not solicit a request to withhold the order. A Participant must keep a record of the client's request to withhold orders for seven years from the date of the instruction and, for the first two years, the request must be kept in a readily accessible location.*

## **6.4 Trades to be on a Marketplace**

A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:

- (a) **Unlisted or Non-Quoted Security** - in a security which is not a listed security or a quoted security;
- (b) **Regulatory Exemption** – required or permitted by a Market Regulator to be executed other than on a marketplace in order to maintain a fair or orderly market and provided, in the case of a listed security or quoted security, the Market Regulator requiring or permitting the order to be executed other than on a marketplace shall be the Market Regulator of the Exchange on which the security is listed or of the QTRS on which the security is quoted;
- (c) **Error Adjustment** - to adjust by a journal entry an error in connection with a client order;
- (d) **On Another Market** – on another exchange or organized regulated market that publicly disseminates details of trades in that market;
- (e) **Outside of Canada** – as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided such trade is reported to a marketplace or to a stock exchange or organized regulated market that publicly disseminates details of trades in that market;
- (f) **Term of Securities** – as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security;

- (g) **Options** – as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement; or
- (h) **Prospectus and Exempt Distributions** – pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction including any distribution of previously unissued securities by an issuer.

## **POLICY 6.4 – TRADES TO BE ON A MARKETPLACE**

### ***Part 1 – Trades Outside of Marketplace Hours***

*In accordance with section 6.1 of National Instrument 23-101, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise where Participants wish to make an agreement to trade as principal with a Canadian client, or to arrange a trade between a Canadian client and a non-Canadian client, outside of the trading hours of marketplaces.*

*Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. This Policy clarifies the procedure to be followed when a Participant wishes to make such a transaction. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on another exchange or organized regulated market, provided that the exchange or market publicly disseminates details of trades in that market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.*

*Participants may make agreements to trade in listed or quoted securities with Canadian accounts as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on a stock exchange or organized market where the security is listed or quoted. There is no trade until such time as there is an execution on a marketplace, stock exchange or organized market. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. Participants may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.*

### ***Part 2 – Application to Foreign Affiliates and Others***

*The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the just and equitable principles of trade.*

*Although certain related entities of Participants, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the*

*Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions. Foreign branch offices of Participants are not separate from the Participant and as such are subject to Requirements.*

### ***Part 3 – Non-Canadian Accounts***

*Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal or as agent with non-Canadian accounts. A “non-Canadian account” is considered to be an account for a client who is not resident in Canada. There may be certain situations arising where a Participant is uncertain whether a particular account is a “non-Canadian account” for the purpose of this exemption. A trade by or on behalf of an individual normally resident in Canada, or an organization located in Canada, is considered to be a trade for a Canadian account. The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account’s status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.*

*For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.*

### ***Part 4 – Reporting Foreign Trades***

*Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade made outside of Canada, unless the trade is reported to another stock exchange or an organized regulated market that disseminates details of trades in that market.*

*Participants shall report such trades to a marketplace no later than the close of business on the next trading day. The report shall identify the stock, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.*

## **PART 7 - TRADING IN A MARKETPLACE**

### **7.1 Trading Supervision Obligations**

- (1) Each Participant shall adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with UMIR and each Policy.
- (2) Prior to the entry of an order on a marketplace by a Participant, the Participant shall comply with:
  - (a) applicable regulatory standards with respect to the review, acceptance and approval of orders;
  - (b) the policies and procedures adopted in accordance with subsection (1); and
  - (c) all requirements of UMIR and each Policy.
- (3) Each Participant shall appoint a head of trading who shall be responsible to supervise the trading activities of the Participant in a marketplace.
- (4) The head of trading together with each person who has authority or supervision over or responsibility to the Participant for an employee of the Participant shall fully and properly supervise such employee as necessary to ensure the compliance of the employee with UMIR and each Policy.

### ***POLICY 7.1 – TRADING SUPERVISION OBLIGATIONS***

#### ***Part 1 – Responsibility for Supervision and Compliance***

*For the purposes of Rule 7.1, a Participant shall supervise its employees, directors and officers and, if applicable, partners to ensure that trading in securities on a marketplace (an Exchange, QTRS or ATS) is carried out in compliance with the applicable Requirements (which includes provisions of securities legislation, UMIR, the Trading Rules and the Marketplace Rules of any applicable Exchange or QTRS). An effective supervision system requires a strong overall commitment on the part of the Participant, through its board of directors, to develop and implement a clearly defined set of policies and procedures that are reasonably designed to prevent and detect violations of Requirements. The board of directors of a Participant is responsible for the overall stewardship of the firm with a specific responsibility to supervise the management of the firm. On an ongoing basis, the board of directors must ensure that the principal risks for non-compliance with Requirements have been identified and that appropriate supervision and compliance procedures to manage those risks have been implemented.*

*Management of the Participant is responsible for ensuring that the supervision system adopted by the Participant is effectively carried out. The head of trading and any other person to whom supervisory responsibility has been delegated must fully and properly supervise all employees under their supervision to ensure their compliance with Requirements. If a supervisor has not*

*followed the supervision procedures adopted by the Participant, the supervisor will have failed to comply with their supervisory obligations under Rule 7.1(4).*

*When the Market Regulator reviews the supervision system of a Participant (for example, when a violation occurs of Requirements), the Market Regulator will consider whether the supervisory system is reasonably well designed to prevent and detect violations of Requirements and whether the system was followed.*

*The compliance department is responsible for monitoring and reporting adherence to rules, regulations, requirements, policies and procedures. In doing so, the compliance department must have a compliance monitoring system in place that is reasonably designed to prevent and detect violations. The compliance department must report the results from its monitoring to the Participant's management and, where appropriate, the board of directors, or its equivalent. Management and the board of directors must ensure that the compliance department is adequately funded, staffed and empowered to fulfil these responsibilities.*

*The obligation to supervise applies whether the order is entered on a marketplace:*

- *by a trader employed by the Participant,*
- *by an employee of the Participant through an order routing system,*
- *directly by a client and routed to a marketplace through the trading system of the Participant, or*
- *by any other means.*

*In performing the trading supervision obligations, the Participant will act as a “gatekeeper” to help prevent and detect violations of applicable Requirements.*

*Where an order is entered on a marketplace without the involvement of a trader (for example by a client with a systems interconnect arrangement in accordance with Policy 2-501 of the Toronto Stock Exchange), the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by clients than the percentage of orders sampled in other circumstances.*

*In addition, the “post order entry” compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a direct access client may restrict the ability of the Participant to detect orders that are not in compliance with specific rules. For example, “post order entry” compliance testing may be focused on whether an order entered by a direct access client:*

- *has created an artificial price contrary to Rule 2.2;*

- *is part of a “wash trade” (in circumstances where the client has more than one account with the Participant);*
- *is an unmarked short sale (if the trading system of the Participant does not automatically code as “short” any sale of a security not then held in the account of the client); and*
- *has complied with order marking requirements and in particular the requirement to mark an order as from an insider or significant shareholder (unless the trading system of the Participant restricts trading activities in affected securities).*

## ***Part 2 – Minimum Element of a Supervision System***

*For the purposes of Rule 7.1, a supervision system consists of both policies and procedures aimed at preventing violations from occurring and compliance procedures aimed at detecting whether violations have occurred.*

*The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, Participants are reminded that, in accordance with subsection (2) of Rule 10.1, the entry of orders must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed. (For example, for Participants that are Participating Organizations of the TSE, reference should be made to the Policy on “Connection of Eligible Clients of Participating Organizations”).*

*Participants must develop and implement supervision and compliance procedures that exceed the elements identified in this Policy where the circumstances warrant. For example, previous disciplinary proceedings, warning and caution letters from the Market Regulator or the identification of problems with the supervision system or procedures by the Participant or the Market Regulator may warrant the implementation of more detailed or more frequent supervision and compliance procedures.*

*Regardless of the circumstances of the Participant, however, every Participant must:*

1. *Identify the relevant Requirements, securities laws and other regulatory requirements that apply to the lines of business in which the Participant is engaged (the “Trading Requirements”).*
2. *Document the supervision system by preparing a written policies and procedures manual. The manual must be accessible to all relevant employees. The manual must be kept current and Participants are advised to maintain a historical copy.*



3. *Ensure that employees responsible for trading in securities are appropriately registered and trained and that they are knowledgeable about the Trading Requirements that apply to their responsibilities. Persons with supervisory responsibility must ensure that employees under their supervision are appropriately registered and trained. The Participant should provide a continuing training and education program to ensure that its employees remain informed of and knowledgeable about changes to the rules and regulations that apply to their responsibilities.*
4. *Designate individuals responsible for supervision and compliance. The compliance function must be conducted by persons other than those who supervised the trading activity.*
5. *Develop and implement supervision and compliance procedures that are appropriate for the Participant's size, lines of business in which it is engaged and whether the Participant carries on business in more than one location or jurisdiction.*
6. *Identify the steps the Participant will take when a violation or possible violation of a Requirement or any regulatory requirement has been identified. These steps shall include the procedure for the reporting of the violation or possible violation to the Market Regulator if required by Rule 10.16. If there has been a violation or possible violation of a Requirement identify the steps that would be taken by the Participant to determine if:*
  - *additional supervision should be instituted for the employee, the account or the business line that may have been involved with the violation or possible violation of a Requirement; and*
  - *the written policies and procedures that have been adopted by the Participant should be amended to reduce the possibility of a future violation of the Requirement.*
7. *Review the supervision system at least once per year to ensure it continues to be reasonably designed to prevent and detect violations of Requirements. More frequent reviews may be required if past reviews have detected problems with supervision and compliance. Results of these reviews must be maintained for at least five years.*
8. *Maintain the results of all compliance reviews for at least five years.*
9. *Report to the board of directors of the Participant or, if applicable, the partners, a summary of the compliance reviews and the results of the supervision system review. These reports must be made at least annually. If the Market Regulator or the Participant has identified significant issues concerning the supervision system or compliance procedures, the board of directors or, if applicable, the partners, must be advised immediately.*

***Part 3 - Minimum Compliance Procedures for Trading on a Marketplace***

*A Participant must develop and implement compliance procedures for trading in securities on a marketplace that are appropriate for its size, the nature of its business and whether it carries on business in more than one location or jurisdiction. Such procedures should be developed having regard to the training and experience of its employees and whether the firm or its employees have been previously disciplined or warned by the Market Regulator concerning the violations of the Requirements.*

*In developing compliance procedures, Participants must identify any exception reports, trading data and/or other documents to be reviewed. In appropriate cases, relevant information that cannot be obtained or generated by the Participant should be sought from sources outside the firm including from the Market Regulator.*

*The following table identifies minimum compliance procedures for monitoring trading in securities on a marketplace that must be implemented by a Participant. The compliance procedures and the Rules identified below are not intended to be an exhaustive list of the Rules and procedures that must be complied with in every case. Participants are encouraged to develop compliance procedures in relation to all provisions of UMIR that apply to their business activities.*

*The Market Regulator recognizes that the requirements identified in the following table may be capable of being performed in different ways. For example, one Participant may develop an automated exception report and another may rely on a physical review of the relevant documents. The Market Regulator recognizes that either approach may comply with this Policy provided the procedure used is reasonably designed to detect violations of the relevant provision of UMIR. The information sources identified in the following table are therefore merely indicative of the types of information sources that may be used.*

**Minimum Compliance Procedures for Trading Supervision**

<i>UMIR and Policies</i>	<i>Compliance Review Procedures</i>	<i>Potential Information Sources</i>	<i>Frequency and Sample Size</i>
Synchronization of Clocks Rule 10.14	<ul style="list-style-type: none"> <li>• confirm accuracy of clocks and computer network times</li> <li>• remove unused or non-functional machines</li> </ul>	<ul style="list-style-type: none"> <li>• time clocks</li> <li>• Trading Terminal system time</li> <li>• OMS system time</li> </ul>	<ul style="list-style-type: none"> <li>• Daily</li> </ul>
Audit Trail Requirements Rule 10.11	<ul style="list-style-type: none"> <li>• ensure the presence of:               <ul style="list-style-type: none"> <li>- time stamp</li> <li>- quantity</li> <li>- price (if limit order)</li> <li>- security name or symbol</li> <li>- identity of trader (initial or sales code) -client name or account number-special instructions from any client</li> <li>- information required by audit trail requirements</li> </ul> </li> <li>• for CFOd orders, ensure the presence of second time stamp and clear quantity or price changes</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the Diary List</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• check 25 original client tickets selected randomly over the quarter</li> </ul>
Electronic Records Rule 10.11	<ul style="list-style-type: none"> <li>• verify that electronic order information is:               <ul style="list-style-type: none"> <li>- being stored</li> <li>- retrievable</li> <li>- accurate</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• firm and service bureau systems</li> </ul>	<ul style="list-style-type: none"> <li>• annually</li> </ul>
Manipulative and Deceptive Trading Rule 2.2(1), (2) Policy 2.2	<ul style="list-style-type: none"> <li>• review trading activity for:               <ul style="list-style-type: none"> <li>- wash trading</li> <li>- unrelated accounts that may display a pattern of crossing securities</li> <li>- off-market transactions which require execution on a Marketplace</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• new client application forms</li> <li>• monthly statements</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• review sampling period should extend over several days</li> </ul>

<i>UMIR and Policies</i>	<i>Compliance Review Procedures</i>	<i>Potential Information Sources</i>	<i>Frequency and Sample Size</i>
Establishing Artificial Prices Rule 2.2(1), (3) Policy 2.2	<ul style="list-style-type: none"> <li>• review tick setting trades entered at or near close</li> <li>• look for specific account trading patterns in tick setting trades</li> <li>• review accounts for motivation to influence the price</li> <li>• review separately, tick setting trades by Market on Close (MOC) or index related orders</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• Equity History Report (available on TSE market data website for TSE-listed securities)·</li> <li>• closing report from Market Regulator (delivered to Participants)·</li> <li>• new client application forms</li> </ul>	<ul style="list-style-type: none"> <li>• monthly</li> <li>• emphasis on trades at the end of month, quarter or year (for trades not on MOC or index related)·</li> <li>• for MOC or index related orders, check for reasonable price movement</li> </ul>
Grey or Watch List Rule 2.2	<ul style="list-style-type: none"> <li>• review for any trading of Grey or Watch List issues done by proprietary or employee accounts</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• trading blotters·</li> <li>• firm Grey List or Watch List</li> <li>• monthly statements</li> </ul>	<ul style="list-style-type: none"> <li>• daily</li> </ul>
Restricted List Rule 2.2 Rule 7.8 Rule 7.9	<ul style="list-style-type: none"> <li>• review for any trading of restricted list issues done by proprietary or employee accounts</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• trading blotters</li> <li>• firm Restricted List</li> <li>• monthly statements</li> </ul>	<ul style="list-style-type: none"> <li>• daily</li> </ul>
Frontrunning Rule 4.1	<ul style="list-style-type: none"> <li>• review trading activity of proprietary and employee accounts prior to:·               <ul style="list-style-type: none"> <li>- large client orders</li> <li>- transactions that would impact the market</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• equity history report</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• sample period should extend over several days</li> </ul>

<b><i>UMIR and Policies</i></b>	<b><i>Compliance Review Procedures</i></b>	<b><i>Potential Information Sources</i></b>	<b><i>Frequency and Sample Size</i></b>
Sales from Control Blocks Securities legislation incorporated by Rule 10.1	<ul style="list-style-type: none"> <li>• review all known sales from control blocks to ensure regulatory requirements have been met</li> <li>• review large trades to determine if they are undisclosed sales from control block</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• trading blotter</li> <li>• new client application form</li> <li>• OSC bulletin</li> <li>• Exchange company bulletins</li> </ul>	<ul style="list-style-type: none"> <li>• as required</li> <li>• sample trades over 250,000 shares</li> </ul>
Order Handling Rules Rule 5.1 Rule 5.3 Rule 6.3 Rule 8.1	<ul style="list-style-type: none"> <li>• review client-principal trades of 50 standard trading units or less for compliance with order exposure and client principal transactions rules.</li> <li>• verify that orders of 50 standard trading units or less are not arbitrarily withheld from the market</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• equity history report</li> <li>• trading blotters</li> <li>• the diary list</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• sample, specifically: - trader managed orders of 50 standard trading units</li> </ul>
Order Markers Rule 6.2 Marketplace Rules incorporated by Rule 10.1 (for marketplaces on which the order is entered or executed)	<ul style="list-style-type: none"> <li>• verify that appropriate client, employee, and proprietary trade markers are being employed</li> <li>• ensure that client orders are not being improperly entered with pro markers</li> <li>• verify that appropriate order designations are included on orders</li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• trading blotters</li> <li>• the diary list</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• samples should include one full day of trading for orders not entered through the OMS system</li> </ul>
Trade Disclosures Securities legislation incorporated by Rule 10.1	<ul style="list-style-type: none"> <li>• verify appropriate trade disclosures are made on client confirmations                             <ul style="list-style-type: none"> <li>- principal</li> <li>- average price</li> <li>- related Issuer</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• trading blotters</li> <li>• client confirmations</li> <li>• the diary list</li> <li>• order tickets</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> <li>• sample should include non-OMS trades</li> </ul>

<b><i>UMIR and Policies</i></b>	<b><i>Compliance Review Procedures</i></b>	<b><i>Potential Information Sources</i></b>	<b><i>Frequency and Sample Size</i></b>
Normal Course Issuer Bids Marketplace Rules (e.g. Rule 6-501 and Policy 6-501 of TSE and Policy 5.6 of CDNX)	<ul style="list-style-type: none"> <li>• review NCIBs for:               <ul style="list-style-type: none"> <li>- maximum stock purchase limits of 5% in 1 year or 2% in 30 days are observed</li> <li>- purchases for NCIBs are not occurring while a sale from control is being made</li> <li>- purchases are not made on upticks</li> <li>- trade reporting to Exchange (if the firm reports on behalf of issuer)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• order tickets</li> <li>• the diary list</li> <li>• trading blotters</li> <li>• new client application form</li> </ul>	<ul style="list-style-type: none"> <li>• quarterly</li> </ul>

***Part 4 – Specific Procedures Respecting Client Priority and Best Execution***

*Participants must have written compliance procedures reasonably designed to ensure that their trading does not violate Rule 5.3 or 5.1. At a minimum, the written compliance procedures must address employee education and post-trade monitoring.*

*The purpose of the Participant’s compliance procedures is to ensure that pro traders do not knowingly trade ahead of client orders. This would occur if a client order is withheld from entry into the market and a person with knowledge of that client order enters another order that will trade ahead of it. Doing so could take a trading opportunity away from the first client. Withholding an order for normal review and order handling is allowed under Rules 5.3 and 5.1, as this is done to ensure that the client gets a good execution. To ensure that the Participants’ written compliance procedures are effective they must address the potential problem situations where trading opportunities may be taken away from clients.*

***Potential Problem Situations***

*Listed below are some of the potential problem situations where trading opportunities may be taken away from clients.*

1. *Retail brokers or their assistants withholding a client order to take a trading opportunity away from that client.*
2. *Others in a brokerage office, such as wire operators, inadvertently withholding a client order, taking a trading opportunity away from that client.*
3. *Agency traders withholding a client order to allow others to take a trading opportunity away from that client.*

4. *Proprietary traders using knowledge of a client order to take a trading opportunity away from that client.*
5. *Traders using their personal accounts to take a trading opportunity away from a client.*

### **Written Compliance Procedures**

*It is necessary to address in the written compliance procedures the potential problem situations that are applicable to the Participant. Should there be a change in the Participant's operations where new potential problem situations arise then these would have to be addressed in the procedures. At a minimum, the written compliance procedures for employee education and post-trade monitoring must include the following points.*

#### **Education**

- *Employees must know UMIR and understand their obligation for client priority and best execution, particularly in a multiple market environment.*
- *Participants must ensure that all employees involved with the order handling process know that client orders must be entered into the market before non-client and proprietary orders, when they are received at the same time.*
- *Participants must train employees to handle particular trading situations that arise, such as, client orders spread over the day, and trading along with client orders.*

#### **Post-Trade Monitoring Procedures**

- *All brokers' trading must be monitored as required by Rule 7.1.*
- *Complaints from clients and Registered Representatives concerning potential violations of UMIR must be documented and followed-up.*
- *All traders' personal accounts and those related to them, must be monitored daily to ensure no apparent violations of client priority occurred.*
- *At least once a month, a sample of proprietary inventory trades must be compared with contemporaneous client orders.*
- *In reviewing proprietary inventory trades, Participants must address both client orders entered into order management systems and manually handled orders, such as those from institutional clients.*
- *The review of proprietary inventory trades must be of a sample size that sufficiently reflects the trading activity of the Participant.*

- *Potential problems found during these reviews must be examined to determine if an actual violation of Rule 5.3 or 5.1 occurred. The Participant must retain documentation of these potential problems and examinations.*
- *When a violation is found, the Participant must take the necessary steps to correct the problem.*

### ***Documentation***

- *The procedures must specify who will conduct the monitoring.*
- *The procedures must specify what information sources will be used.*
- *The procedures must specify who will receive reports of the results.*
- *Records of these reviews must be maintained for five years.*
- *The Participant must annually review its procedures.*

### ***Part 5 – Specific Procedures Respecting Manipulative and Deceptive Activities and Reporting and Gatekeeper Obligations***

*Each Participant must develop and implement compliance procedures that are reasonably well designed to ensure that orders entered on a marketplace by or through a Participant are not part of a manipulative or deceptive method, act or practice nor an attempt to create an artificial price or a false or misleading appearance of trading activity or interest in the purchase or sale of a security. The minimum compliance procedures for trading supervision in connection with Rule 2.2 and Policy 2.2 are set out in the table to Part 3 of this Policy.*

*In particular, the procedures must address:*

- *the steps to be undertaken to determine whether or not a person entering an order is:*
  - *an insider,*
  - *an associate of an insider, and*
  - *part of or an associate of a promotional group or other group with an interest in effecting an artificial price, either for banking and margin purposes, for purposes of effecting a distribution of the securities of the issuer or for any other improper purpose;*
- *the steps to be taken to monitor the trading activity of any person who has multiple accounts with the Participant including other accounts in which the person has an interest or over which the person has direction or control;*



- *those circumstances when the Participant is unable to verify certain information (such as the beneficial ownership of the account on behalf of which the order is entered, unless that information is required by applicable regulatory requirements);*
- *the fact that orders which are intended to or which effect an artificial price are more likely to appear at the end of a month, quarter or year or on the date of the expiry of options where the underlying interest is a listed security; and*
- *the fact that orders which are intended to or which effect an artificial price or a false or misleading appearance of trading activity or investor interest are more likely to involve securities with limited liquidity.*

*A Participant will be able to rely on information contained on a “New Client Application Form” or similar know-your-client record maintained in accordance with requirements of securities legislation or a self-regulatory entity provided such information has been reviewed periodically in accordance with such requirements and any additional practices of the Participant.*

*While a Participant cannot be expected to know the details of trading activity conducted by a client through another dealer, nonetheless, a Participant that provides advice to a client on the suitability of investments should have an understanding of the financial position and assets of the client and this understanding would include general knowledge of the holdings by the client at other dealers or directly in the name of the client. The compliance procedures of the Participant should allow the Participant to take into consideration, as part of its compliance monitoring, information which the Participant has collected respecting accounts at other dealers as part of the completion and periodic updating of the “New Client Application Form”.*

## **7.2 Proficiency Obligations**

- (1) No order to purchase or sell a security shall be entered by a Participant on a marketplace unless the Participant or the director, officer, partner or employee of the Participant entering the order or responsible for the order has:
  - (a) completed the Trader Training Course of the Canadian Securities Institute or such course, examination or other means of demonstrating proficiency in UMIR and Policies as may be acceptable to the Market Regulator of the marketplace on which the order is entered or the applicable securities regulatory authority; or
  - (b) received approval of an Exchange or QTRS for the entry of orders to the trading system of that Exchange or QTRS.
- (2) A marketplace shall ensure that each Access Person with access to that marketplace is trained in such provisions of UMIR and such Policies as may be applicable to an Access Person.

### **7.3 Liability for Bids, Offers and Trades**

- (1) All bids and offers for securities made and accepted on a marketplace shall be binding and all contracts thereby effected shall be subject to the exercise by the marketplace on which the trade is executed of the powers vested in the marketplace and the Market Regulator of that marketplace.
- (2) A Participant shall be responsible for all bids and offers that are entered into, or arise by operation of the trading system of a marketplace and that originate from any terminal or computer system allowing access to trading on the marketplace that is operated by or is under the control of that Participant whether or not the Participant has authorized the entry of the order.
- (3) Subject to the obligation of an Access Person for compliance with applicable provisions of UMIR and the Policies, an ATS shall be responsible for all bids and offers that are entered into, or arise by operation of the trading system of the ATS and that originate from any terminal or computer system allowing access to trading on the ATS that is operated by or is under the control of the Access Person of that ATS whether or not the Access Person has authorized the entry of the order.

### **7.4 Contract Record and Official Transaction Record**

- (1) The electronic record of an order or a trade in a security as provided by a marketplace to an information processor or an information vendor in accordance with the Marketplace Operation Instrument is the official transaction record for the purpose of determining:
  - (a) best ask price;
  - (b) best bid price; and
  - (c) last sale price.
- (2) Despite subsection (1), the electronic record of a trade in a security as maintained by the marketplace on which the trade occurred shall be the record of the contract made on that trade and in the event of a dispute between parties to the contract or discrepancy with the records of the clearing agency effect shall be given to the record of the marketplace.
- (3) Each marketplace shall provide to the information processor or information vendor information respecting each cancellation, variation or correction of a trade as soon as practicable after the cancellation, variation or correction has been made to the record of the contract as maintained by the marketplace and the information processor or information vendor shall amend the transaction record accordingly.

## 7.5 Recorded Prices

- (1) No Participant acting as agent shall execute a transaction through a marketplace in which the price recorded on the marketplace is:
  - (a) in the case of a purchase by a client, higher than the net cost to the client;  
or
  - (b) in the case of a sale by a client, lower than the net proceeds to the client.
- (2) No Participant acting as principal shall execute a transaction through a marketplace in which the price recorded on the marketplace is:
  - (a) in the case of a sale to a client, lower than the net cost to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size; and
  - (b) in the case of a purchase from a client, higher than the net proceeds to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size.

## 7.6 Cancelled Trades

If a trade is cancelled, a subsequent trade on any marketplace which was:

- (a) executed as a result of the price of the cancelled trade; or
- (b) permitted only as a result of the price of the cancelled trade,

shall stand unless cancelled by the consent of the buyer and the seller or by a Market Integrity Official who is of the opinion that the cancellation of the subsequent trade is appropriate under the circumstances.

## 7.7 Trading During Certain Securities Transactions

- (1) **Prohibitions** - Except as permitted, a dealer-restricted person shall not at any time during the restricted period:
  - (a) bid for or purchase a restricted security for an account:
    - (i) of a dealer-restricted person, or
    - (ii) over which the dealer-restricted person exercises direction or control; or
  - (b) attempt to induce or cause any person to purchase a restricted security.
- (2) **Prohibitions on Acting for Issuer-Restricted Persons** - Except as permitted, if a dealer-restricted person knows or ought reasonably to know that a person is an

issuer-restricted person, the dealer-restricted person shall not at any time during the restricted period applicable to a particular issuer-restricted person bid for or purchase a restricted security for the account of that issuer-restricted person or an account over which that issuer-restricted person exercises direction or control.

- (3) **Deemed Resumption of a Restricted Period** - If a Participant appointed to be an underwriter in a prospectus distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the Participant in connection with the prospectus distribution or the restricted private placement then a restricted period shall be deemed to have commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the Participant has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.
- (4) **Exemptions** - Subsection (1) does not apply to a dealer-restricted person in connection with:
- (a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:
    - (i) in the case of an offered security:
      - (A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined, and
      - (B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,
    - (ii) in the case of a connected security:
      - (A) the last independent sale price at the commencement of the restricted period, and
      - (B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,

provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on an organized regulated market outside of Canada that publicly disseminates details of trades executed on that market other than a trade that the dealer-restricted person knows or ought reasonably to

know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;

- (b) a restricted security that is:
  - (i) a highly-liquid security,
  - (ii) a unit of an Exchange-traded Fund, or
  - (iii) a connected security of a security referred to in subclause (i) or (ii);
- (c) a bid or purchase by a dealer-restricted person on behalf of a client, other than a client that the dealer-restricted person knows or ought reasonably to know is an issuer-restricted person provided that:
  - (i) the client order has not been solicited by the dealer-restricted person, or
  - (ii) if the client order was solicited, the solicitation by the dealer-restricted person occurred prior to the commencement of the restricted period;
- (d) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into by the dealer-restricted person prior to the commencement of the restricted period;
- (e) a bid for or purchase of a restricted security is made pursuant to a Small Securityholder Selling and Purchase Arrangement undertaken in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
- (f) the solicitation of a tender of securities to a securities exchange take-over bid or issuer bid;
- (g) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement;
- (h) a bid or purchase of a restricted security to cover a short position entered into prior to the commencement of the restricted period;
- (i) a bid or purchase of a restricted security is solely for the purpose of rebalancing a portfolio, the composition of which is based on an index as designated by the Market Regulator, to reflect an adjustment made in the composition of the index;
- (j) a purchase that is or a bid that on execution would be:
  - (i) a basket trade, or

- (ii) a Program Trade; or
  - (k) a bid for a purchase of a restricted security for an arbitrage account and the dealer-restricted person knows or has reasonable grounds to believe that a bid enabling the dealer-restricted person to cover the purchase is then available and the dealer-restricted person intends to accept such bid immediately.
- (5) **Exemptions on Acting for an Issuer-restricted Person** - Subsection (2) does not apply to a dealer-restricted person in connection with:
  - (a) the exercise by an issuer-restricted person of an option, right, warrant, or a similar contractual arrangement held or entered into by the issuer-restricted person prior to the commencement of the restricted period;
  - (b) a bid or purchase by an issuer-restricted person of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
  - (c) an issuer bid described in clauses 93(3)(a) through (d) of the Securities Act (Ontario) or similar provisions of applicable securities legislation if the issuer did not solicit the sale of the securities sold under those provisions;
  - (d) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid; or
  - (e) a subscription for or purchase of an offered security pursuant to a prospectus distribution or a restricted private placement.
- (6) **Compilations and Industry Research** - Despite subsection (1), a dealer-restricted person may, if permitted under applicable securities legislation, publish or disseminate any information, opinion or recommendation relating to the issuer of a restricted security, if the information, opinion or recommendation is in a publication that is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person and:
  - (a) the restricted security is a highly-liquid security; or
  - (b) the publication:
    - (i) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person, and

- (ii) gives no materially greater space or prominence to the information, opinion or recommendation related to the restricted security or the issuer of the restricted security than that given to other securities or issuers.
  
- (7) **Transactions by Person with Market Maker Obligations** - Despite subsection (1), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account:
  - (a) with the prior approval of a Market Integrity Official, enter a bid to move the calculated opening price of a restricted security to a more reasonable level;
  - (b) purchase a restricted security pursuant to their Market Maker Obligations; and
  - (c) bid for or purchase a restricted security:
    - (i) that is traded on another market for the purpose of matching a higher-priced bid posted on such market,
    - (ii) that is convertible, exchangeable or exercisable into another listed security for the purpose of maintaining an appropriate conversion, exchange or exercise ratio, and
    - (iii) to cover a short position resulting from sales made under their Market Maker Obligations.
  
- (8) **Transactions by the Derivatives Market Maker** – Despite subsection (1), a dealer-restricted person who is a derivatives market maker with responsibility for a derivative security the underlying interest of which is a restricted security may, for their derivatives market making trading account, bid for or purchase a restricted security if:
  - (a) the restricted security is the underlying security of the option for which the person is the specialist;
  - (b) there is not otherwise a suitable derivative hedge available; and
  - (c) such bid or purchase is:
    - (i) for the purpose of hedging a pre-existing options position,
    - (ii) reasonably contemporaneous with the trade in the option, and
    - (iii) consistent with normal market-making practice.

- (9) **Application of Exemptions to a Dealer-Restricted Person and Issuer-Restricted Person** - Where a dealer-restricted person is also an issuer-restricted person the exemptions in subsections (4), (6), (7) and (8) continue to be available to the dealer-restricted person.

## **POLICY 7.7 – TRADING DURING CERTAIN SECURITIES TRANSACTIONS**

### **Part 1 – Manipulative or Deceptive Activity**

*Provisions prohibiting manipulative or deceptive activities, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets, are contained in Rule 2.2. Rule 7.7 generally prohibits purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. Rule 7.7 also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low possibility of manipulation. However, the Market Regulator is of the view that notwithstanding that certain trading activities are permitted under Rule 7.7, these activities continue to be subject to the general provisions relating to manipulative or deceptive activities in Rule 2.2 and the provisions on manipulation and fraud found in applicable securities legislation such that any activities carried out in accordance with Rule 7.7 must still meet the spirit of the general anti-manipulation provisions.*

### **Part 2 - Market Stabilization and Market Balancing**

*Rule 7.7(4)(a) provides a dealer-restricted person with an exemption from the prohibitions in subsection (1) for market stabilization and market balancing activities subject to price limitations. Market stabilization and market balancing activities should be engaged in for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security.*

*The Market Regulator considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where dealer knows or should reasonably know that the market price is not fairly and properly determined by supply and demand. This might exist where, for example, the dealer is aware that the market price is a result of inappropriate activity by a market participant or that there is undisclosed material information regarding the issuer.*

*Market balancing activities should contribute to a fair and orderly market by contributing to price continuity and depth and by minimizing supply-demand disparity. Market balancing does not seek to prevent or unduly retard any price movements, but merely to prevent erratic or disorderly changes in price.*

### **Part 3 – Short Position Exemption**

*Rule 7.7(4)(h) provides an exemption from the prohibitions in subsection (1) for a dealer-restricted person in connection with a bid for or purchase to cover a short position provided that short position was entered into before the commencement of the restricted period. Short positions entered into during the restricted period may be covered by purchases made in reliance upon the market stabilization exemption in Rule 7.7(4)(a), subject to the price limits set*



out in that exemption. (See “Part 5 – Trading Pursuant to Market Maker Obligations” for a discussion of the ability of persons with Market Maker Obligations to cover short positions arising during the restricted period pursuant to their Market Maker Obligations.)

#### **Part 4 – Research**

The Market Regulator is of the view that although sections 4.1 and 4.2 of OSC Rule 48-501 do permit a dealer-restricted person to disseminate research reports, this dissemination continues to be subject to the usual restrictions that are applicable to a dealer-restricted person in possession of material information regarding the issuer that has not been generally disclosed.

Rule 7.7(6) provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. The Rule requires that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Market Regulator considers that it is a question of fact whether a publication was disseminated “with reasonable regularity” and whether it was in the “normal course of business”. A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers’ earnings and revenues would likely only be permitted if they had previously been included on a regular basis. The Market Regulator may consider the distribution channels for the dissemination of the publication when considering whether a publication was “in the normal course of business”. The research should be distributed through the dealer-restricted person’s usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.

Rule 7.7(6)(b) requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer’s industry. In this context, reference should be made to the relevant industry when determining what constitutes a “substantial number of issuers”. Generally, the Market Regulator would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report, and in any event the number of issuers should not be less than three.

#### **Part 5 – Trading Pursuant to Market Maker Obligations**

Under Rule 7.7(7)(b), a dealer-restricted person with Market Maker Obligations for a restricted security may, for their market making trading account, purchase a restricted security pursuant to their Market Making Obligations. Not every purchase of a restricted security by a Market Maker will be considered to undertaken pursuant to their Market Making Obligations. For

*example, if a market making system of a marketplace permits a Market Maker to voluntarily participate in trades that participation may only result in purchases that are:*

- *made at prices which are permitted by Rule 7.7(4)(a); or*
- *to cover a short position resulting from sales made under their Market Maker Obligations.*

*Use of a voluntary participation feature in other circumstances, may result in the Market Maker not complying with the prohibitions or restrictions on trading under Rule 7.7.*

*“Market Maker Obligations” are defined as the obligations imposed by the rules of an Exchange or a QTRS on a member or user or a person employed by a member or user to guarantee:*

- *a two-sided market for a particular security on a continuous or reasonably continuous basis; and*
- *the execution of orders for the purchase or sale of a particular security which are less than a minimum number of units of the security as designated by the marketplace.*

## **7.8 Restrictions on Trading During a Securities Exchange Take-over Bid**

- repealed

## **7.9 Trading in Listed or Quoted Securities by a Derivatives Market Maker**

A Participant who is a derivatives market maker shall comply when trading on any marketplace with such additional requirements as may be required by:

- (a) an Exchange when trading on that Exchange in listed securities; and
- (b) a QTRS when trading on that QTRS in quoted securities.

## **PART 8 - PRINCIPAL TRADING**

### **8.1 Client-Principal Trading**

- (1) A Participant that receives a client order for 50 standard trading units or less of a security with a value of \$100,000 or less may execute the client order against a principal order or non-client order at a better price provided the Participant has 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 that time.
- (2) Subsection (1) does not apply if the client has directed or consented that the client order be:
  - (a) a Call Market Order;
  - (b) an Opening Order;
  - (c) a Market-on-Close Order;
  - (d) a Volume-Weighted Average Price Order;
  - (e) a Basis Order; or
  - (f) a Closing Price Order.
- (3) Subsection (1) does not apply if the client order has been entered directly by the client of the Participant on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display and the director, officer, partner, employee or agent of the Participant who enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order.

### ***POLICY 8.1 – CLIENT PRINCIPAL TRADING***

#### ***Part 1 - General Requirements***

*Rule 8.1 governs client-principal trades. It provides that, for trades of 50 standard trading units or less, a Participant trading with one of its clients as principal must give the client a better price than the client could obtain on a marketplace. A Participant must take reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market. If the security is inter-listed, the Rule extends to all Canadian markets on which the security is listed. This means that if the Participant is buying, the client must receive a higher price than is bid on any Canadian marketplace, and, if the Participant is selling, the client must pay a lower price than the lowest offering.*

*For client-principal trades greater than 50 standard trading units, the Participant may do the trade provided the client could not obtain a better price on a marketplace in accordance with the*

*best execution obligations under Rules 5.1 and 5.2. The Participant must take reasonable steps to ensure that the best price is obtained and the price to the client is justified by the condition of the market.*

## **Part 2 – Legal Aspects of the Client-Principal Relationship**

*A Participant owes a fiduciary duty to its clients. This duty and investors' trust in our Participants are fundamental to investor confidence in the integrity of the market. In the Market Regulator's view, this relationship of trust arises where there is reliance by the client on the Participant's expertise in securities matters. From the point of view of both the client and the Participant, the fiduciary responsibility exists regardless of the legal form of the transaction. In other words, an investor who relies on the expertise of a Participant expects the Participant to act in the investor's best interests regardless of whether the Participant is acting as agent or as principal. The legal framework underpinning client-principal trades was stated in the 1965 report of the Royal Commission on the Windfall Co. scandal:*

*An agent must conduct himself so that the interest of the person in whose behalf he is acting is not brought into conflict with his personal interest. An agent may not make for himself any deal which could have been made for his client within the scope of the client's instructions; if he does, he is assumed to have been acting on his client's behalf and the client is entitled to the benefit of the transaction. An agent must disclose to the client any fact known to the agent which would be likely to operate on the client's judgment. An agent may not, in connection with his client's business, make a secret profit for himself.*

*These restrictions flow from the recognition of the serious conflicts inseparable from the agency relationship, and from a corresponding recognition that every such conflict must be resolved in favour of the client. A principal trade may be subject to attack if it appears that the Participant did not act to the best advantage of its client even if the Participant complies with the technical requirements of the Rule. For example, if the principal account profited from the trade by unwinding the position again soon after the principal trade was made, or if the Registered Representative receives a higher commission than for agency transactions of a similar size involving similar securities, the Participant will find it more difficult to justify its actions. Participants should obtain their own legal advice as to the propriety of their client-principal trading practices. The following are considerations in any client-principal trade:*

**Consent** — *At common law, the prior informed consent of the client must be obtained before the agent may act as principal. This is impractical in the context of trading securities on a marketplace, where at the time of receipt of the client's order the Participant will likely not know who will be on the other side. If the Participant, through the Registered Representative or other employee knows that the firm or a non-client of the firm will or probably will take the other side, the client's consent should be obtained. In particular, if the Registered Representative wishes to take the other side of the trade with their client, the client must be informed and consent to the trade in advance. Such consent must be specific to that trade and cannot be in a general consent to any future trades with the Registered Representative. As promptly as possible following the execution of a principal trade, the client should be advised that all or part of the securities taken*

*or supplied were from an account in which the Participant or a non-client of the Participant has an interest. This advice would form part of the usual discussion that occurs when a Registered Representative confirms to the client that the client's order has been filled. In addition, the written confirmation must disclose that the order has been filled in a principal transaction.*

***Nature of the Client*** — *Some clients are in greater need of protection from the potential conflict of interest in client-principal trades. The onus on the Participant usually will be reduced if the client is a fully informed institutional client with regard to the state of the market. Sophisticated institutional clients are able to judge whether a specific net price is appropriate in the context of the market. If there was no prior discussion with the client concerning executing the client's order in a client-principal trade, or if there are no standing instructions on handling of orders, the Participant must judge whether any steps need be taken, taking into account the size of the order and other circumstances, to ensure that a better price is not available. To a large degree this will depend on the depth of the market and normal liquidity of the security.*

***Suitability*** — *Compliance with the client-principal trading rules does not relieve a Participant of its suitability and "know your client" obligations. As with any other trade, Participants must ensure that the trade is suitable for the client, even if the best possible price has been obtained.*

***Facilitation Accounts*** — *The rules do not apply to a client-principal trade where the inventory account was used solely to facilitate the execution or confirmation of a client order (for example, an inventory accumulation account used to give an institutional client a single average-price confirmation). In these cases, the client is the beneficial owner of the position in the inventory account at all times.*

***Refusal by Client*** — *Participants should ensure that procedures are in place to identify orders that should not be effected on a principal basis. This is necessary to deal with situations where clients notify a Participant that they do not consent to principal trading generally or to particular principal trades.*

## **PART 9 - TRADING HALTS, DELAYS AND SUSPENSIONS**

### **9.1 Regulatory Halts, Delays and Suspensions of Trading**

- (1) **Regulatory Halts and Suspensions** - No order for the purchase or sale of a security shall be executed on a marketplace or over-the-counter, at any time while:
  - (a) an order of a securities regulatory authority to cease trading in the security remains in effect;
  - (b) in the case of a listed security, the Market Regulator of the Exchange on which the security is listed has halted or suspended trading in the security while such halt or suspension remains in effect;
  - (c) in the case of a quoted security, the Market Regulator of the QTRS has halted or suspended trading in the security while such halt or suspension remains in effect; and
  - (d) in the case of any security other than a listed security or a quoted security, a Market Regulator of an ATS on which such security may trade has halted trading for the purposes of the public dissemination of material information respecting such security or the issuer of such security.
- (2) **Regulatory Delay** - No order for the purchase or sale of a security shall be executed on a marketplace or over-the-counter, at any time while:
  - (a) in the case of a listed security, the Market Regulator of the Exchange on which the security is listed has delayed trading in the security while such delay remains in effect; and
  - (b) in the case of a quoted security, the Market Regulator of the QTRS has delayed trading in the security while such delay remains in effect.
- (3) **Exceptions for Non-Regulatory Purposes** - Despite subsections (1) and (2), an order may be entered on a marketplace or an order may trade on a marketplace, if the Exchange or QTRS has:
  - (a) suspended trading in the security by reason only that the issuer of the security has:
    - (i) ceased to meet listing or quotation requirements established by the Exchange or QTRS, or
    - (ii) failed to pay to the Exchange or QTRS any fees in respect of the listing or quotation of securities of the issuer; or

- (b) delayed or halted trading in the security as a result of:
  - (i) technical problems affecting only the trading system of the Exchange or QTRS, or
  - (ii) the application of a Marketplace Rule.
  
- (4) **Trading Outside Canada During Regulatory Halts, Delays and Suspensions -**  
If trading in a security has been prohibited on a marketplace in accordance with clauses (1)(b), (c) or (d) or subsection (2), a Participant may execute a trade in the security, if permitted by applicable securities legislation, outside of Canada on an exchange or organized regulated market that publicly disseminates details of trades in that market.

## **PART 10 - COMPLIANCE**

### **10.1 Compliance Requirement**

- (1) Each Participant and Access Person shall comply with applicable Requirements.
- (2) For the purposes of subsection (1), a Participant or Access Person shall, with respect to a particular order, comply with the Marketplace Rules of:
  - (a) the marketplace on which the particular order is entered; and
  - (b) the marketplace on which the particular order is executed.
- (3) Each marketplace shall comply with the applicable Requirements, the Market Operation Instrument and any other applicable securities regulatory requirements.
- (4) The Market Regulator shall promptly report to the applicable securities regulatory authorities, if the Market Regulator believes that a marketplace has failed to comply with the requirements of subsection (3) or has otherwise engaged in misconduct or apparent misconduct.
- (5) A Regulated Person shall not do any act that the Regulated Person knows or could have known after the exercise of reasonable diligence would impede or obstruct the ability of:
  - (a) the Market Regulator to conduct an investigation pursuant to Rule 10.2;
  - (b) the Market Regulator to conduct a hearing to make a determination pursuant to Rule 10.6; or
  - (c) a Market Integrity Official to exercise a power under Rule 10.9.
- (6) Without limiting the generality of subsection (5), a Regulated Person shall be considered to have impeded or obstructed the ability of the Market Regulator to conduct an investigation or a hearing or a Market Integrity Official to exercise a power if the Regulated Person:
  - (a) destroys or renders inaccessible any document in the possession or control of the Regulated Person, whether or not the document is of the form or type that must be retained in accordance with Rule 10.12, that is relevant to the investigation or hearing or to the exercise of power;
  - (b) provides any information, document, record or statement to the Market Regulator in connection with the investigation or hearing or to a Market Integrity Official in connection with the exercise of a power that is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the information, document, record or statement not misleading; or



- (c) persuades or attempts to persuade any person by whatever means to:
- (i) destroy or render inaccessible any document in the possession or control of that other person relevant to the investigation or hearing or to the exercise of power, or
  - (ii) provide any information, document, record or statement to the Market Regulator in connection with the investigation or hearing or to a Market Integrity Official in connection with the exercise of a power that would be misleading or untrue or would not state a fact that is required to be stated or that is necessary to make the information, document, record or statement not misleading.
- (7) Without limiting the availability of other defences, a Regulated Person shall not be considered to have breached subsection (5) or (6) if the Regulated Person did not know or could not have known after the exercise of reasonable diligence that:
- (a) the document was relevant to the investigation or hearing or the exercise of a power; or
  - (b) the information, document, record or statement was or would be misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the information, document, record or statement not misleading in light of the circumstance in which it was made or would be made.

## ***POLICY 10.1 – COMPLIANCE REQUIREMENT***

### ***Part 1 – Monitoring for Compliance***

*Rule 10.1 requires each Participant and Access Person to comply with applicable Requirements. The term “Requirements” is defined as meaning:*

- *UMIR;*
- *the Policies;*
- *the Trading Rules;*
- *the Marketplace Rules;*
- *any direction, order or decision of the Market Regulator or a Market Integrity Official; and*
- *securities legislation,*

*as amended, supplemented and in effect from time to time.*

*The Market Regulator will monitor the activities of Regulated Persons for compliance with each aspect of the definition of Requirements and the Market Regulator will use the powers under Rule 10.2 to conduct any investigation into possible non-compliance. If the Regulated Person has not complied with:*

- *UMIR, the Policies or any direction, order or decision of the Market Regulator or a Market Integrity Official, the Market Regulator may undertake a disciplinary proceeding pursuant to Rule 10.5;*
- *the Trading Rules or securities legislation, the Market Regulator may, pursuant to the exchange of information provided for under Rule 10.13, refer the matter to the applicable securities regulatory authority to be dealt with in accordance with applicable securities legislation; and*
- *Marketplace Rules, the Market Regulator may undertake a disciplinary proceeding pursuant to Rule 10.5 if the marketplace has retained the Market Regulator to conduct disciplinary proceedings on behalf of the marketplace in accordance with an agreement with the Market Regulator contemplated by Part 7 of the Trading Rules, otherwise the Market Regulator may refer the matter to the marketplace to be dealt with in accordance with the Marketplaces Rules of that marketplace.*

## **10.2 Investigations**

- (1) The Market Regulator may, at any time, whether or not on the basis of a complaint or other communication in the nature of a complaint, investigate the conduct of a Regulated Person other than an Exchange or QTRS and upon the commencement of such investigation, the Market Regulator may provide written notice to the Regulated Person which outlines the subject matter of the investigation and the period or periods of time which are covered by the investigation.
- (2) Upon the written or electronic request of the Market Regulator, a Regulated Person shall, within such time period specified by the Market Regulator:
  - (a) provide any information, document or records in the possession or control of the person that the Market Regulator determines may be relevant to a matter under investigation and such information, document or records shall be provided in such manner and form, including electronically, as may be required by the Market Regulator;
  - (b) allow the inspection of, and permit copies to be taken of, any information, document or records in the possession or control of the person that the Market Regulator determines may be relevant to a matter under investigation; and

- (c) provide a statement, in such form and manner and at a time and place specified by the Market Regulator on such issues as the Market Regulator determines may be relevant to a matter under investigation provided that in the case of a person other than an individual, the statement shall be made by an appropriate officer, director, partner or employee or other individual associated with the person as is acceptable to the Market Regulator.
- (3) For the purposes of subsection (2), the Market Regulator may specify that a statement be given in writing or by an electronic recorded means and that any statement be given under oath.
- (4) If a Market Regulator has provided notice to a Regulated Person pursuant to subsection (1), the Regulated Person shall, notwithstanding any policy or procedure of the Regulated Person with respect to the retention of information, documents or records, retain any document or record in the possession or control of the Regulated Person that is relevant to the investigation by the Market Regulator until the later of:
  - (a) the first date the document could be destroyed in accordance with the policies of the Participant or Access Person;
  - (b) the date on which an order of a Hearing Panel in respect of a hearing for which the document is relevant becomes final and may not be subject to any further review or appeal by any person, body or court; and
  - (c) 7 years following the date on which the document or record was created unless the Market Regulator notifies the Regulated Person in writing that no proceeding pursuant to Rule 10.5 shall be commenced by the Market Regulator.

### **10.3 Extension of Responsibility**

- (1) A Participant or Access Person may be found liable by the Market Regulator for the conduct of any director, officer, partner, employee or individual holding a similar position with the Participant or Access Person and be subject to any penalty or remedy as if the Participant or Access Person had engaged in that conduct.
- (2) Any partner or director of a Participant or Access Person may be found liable by the Market Regulator for the conduct of the Participant or Access Person and be subject to any penalty or remedy as if such person had engaged in that conduct.
- (3) Any officer or employee of a Participant or Access Person who has authority over, supervises or is responsible for an employee may be found liable by the Market Regulator for the conduct of the supervised employee and be subject to any penalty or remedy as if such person had engaged in that conduct.

- (4) Any officer or employee of a Participant or Access Person or any individual holding a similar position with a Participant or Access Person who engages in conduct that results in the Participant or Access Person contravening a Requirement may be found liable by the Market Regulator for the conduct and be subject to any penalty or remedy as if such person was the Participant or Access Person.
- (5) The imposition of any penalty or remedy against any person who engaged in conduct that contravened a Requirement or against any person to whom responsibility for the conduct has been extended by this section does not prevent or limit in any manner the imposition by the Market Regulator of any penalty or remedy against any other person who engaged in the conduct or to whom responsibility for the conduct has been extended by this section.

#### **10.4 Extension of Restrictions**

- (1) A related entity of a Participant and a director, officer, partner or employee of the Participant or a related entity of the Participant shall:
  - (a) comply with the provisions of UMIR and any Policies with respect to just and equitable principles of trade, manipulative and deceptive activities, short sales and frontrunning as if references to “Participant” in Rules 2.1, 2.2, 2.3, 3.1 and 4.1 included reference to such person; and
  - (b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to penalties and remedies set out in this Part.
- (2) A related entity of an Access Person and a director, officer, partner or employee of the Access Person or a related entity of the Access Person shall in respect of trading on a marketplace on behalf of the Access Person or related entity of the Access Person:
  - (a) comply with the provisions of UMIR and any Policies with respect to just and equitable principles of trade, manipulative and deceptive activities and short sales as if references to “Access Person” in Rules 2.1, 2.2 2.3 and 3.1 included reference to such person; and
  - (b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to the penalties and remedies set out in this Part.
- (3) If, in the opinion of a Market Regulator, a particular person to whom UMIR applies, including any particular person to whom UMIR has been extended in accordance with subsection (1) and (2), has organized their business and affairs for the purpose of avoiding the application of any provision of UMIR, the Market Regulator may designate any person involved in such business and affairs as a person acting in conjunction with the particular person.

- (4) Upon a Market Regulator making a designation in accordance with subsection (3), the Market Regulator shall provide notice of such designation to:
  - (a) the particular person;
  - (b) the designated person;
  - (c) each Market Regulator; and
  - (d) each applicable securities regulatory authority.

## **10.5 Powers and Remedies**

- (1) The Market Regulator may, following a hearing and a determination that a Regulated Person, other than a marketplace for which the Market Regulator is or was the regulation services provider, has contravened a Requirement or is liable for the contravention of a Requirement in accordance with Rule 10.3, by an order impose on such person one or more of the following penalties or remedies as the Market Regulator considers appropriate in the circumstances:
  - (a) a reprimand;
  - (b) a fine not to exceed the greater of:
    - (i) \$1,000,000, and
    - (ii) an amount equal to triple the financial benefit which accrued to the person as a result of committing the contravention;
  - (c) the restriction of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;
  - (d) the suspension of access to the marketplace for such period and upon such terms and conditions, if any, considered appropriate;
  - (e) the revocation of access to the marketplace; and
  - (f) any other remedy determined to be appropriate under the circumstances.
- (2) If the Market Regulator has determined that a Regulated Person, other than a marketplace for which the Market Regulator is or was the regulation services provider, has engaged in, or may engage in, any course of conduct that is or may be a contravention of a Requirement, the Market Regulator may, if the Market Regulator considers it is necessary for the protection of the public interest by an interim order without notice or hearing, order the restriction or suspension of access to the marketplace upon such terms and conditions, if any, considered appropriate provided such interim order shall expire 15 days after the date on which the interim order is made unless:

- (a) a hearing is commenced within that period of time to confirm or set aside the interim order;
  - (b) the person against which the interim order is made consents to an extension of the interim order until a hearing of the matter is held; or
  - (c) an applicable securities regulatory authority directs that the interim order be rescinded or extended.
- (3) For the purposes of this section, the restriction, suspension or revocation of access of a person to a marketplace may be imposed directly on the person and, if the person is an individual, the restriction, suspension or revocation of access may also be imposed in respect of their capacity as a director, officer, partner, employee or associate of a person with access to a marketplace.
- (4) For greater certainty, any enforcement or disciplinary proceeding or any order or interim order as against a person by a Market Regulator for contravention of a Requirement shall not affect or limit any enforcement or disciplinary action as against the person by any securities regulatory authority, self-regulatory entity or other Market Regulator with jurisdiction over the person.
- (5) If a Market Regulator restricts, suspends or revokes the access of any person to a marketplace in accordance with this section, such person shall be denied access to any other marketplace and shall have any access to any other marketplace automatically restricted, suspended or revoked unless the applicable securities regulatory authority otherwise determines in a review or appeal of the order or interim order of the Market Regulator undertaken in accordance with Rule 11.3.
- (6) If a Market Regulator restricts, suspends or revokes the access of any person to a marketplace, the Market Regulator shall provide notice forthwith of such restriction, suspension or revocation to:
- (a) the person whose access has been restricted, suspended or revoked;
  - (b) each marketplace;
  - (c) each Market Regulator; and
  - (d) each applicable securities regulatory authority.

## **10.6 Exercise of Authority**

A Hearing Panel shall make any determination, hold any hearing and make any order or interim order required or permitted of a Market Regulator under this Part.

## 10.7 Assessment of Expenses

- (1) Any order made under this Part may assess the person against whom the order is made any one or more of the following expenses incurred by the Market Regulator as a result of the investigation and the proceedings resulting in the order:
  - (a) recording or transcription fees;
  - (b) expenses of preparing transcripts;
  - (c) witness fees and reasonable expenses of witnesses;
  - (d) professional fees for services rendered by expert witnesses, legal counsel or accountants retained by the Market Regulator;
  - (e) expenses of staff time incurred by the Market Regulator;
  - (f) travel costs;
  - (g) disbursements; or
  - (h) any other expenses determined to be appropriate under the circumstances.
- (2) Where the Market Regulator conducts an investigation of a complaint or other communication in the nature of a complaint that was made by a Regulated Person and the Market Regulator, acting reasonably, determines that the complaint or other communication in the nature of a complaint was frivolous, the Market Regulator may assess the expenses incurred by the Market Regulator as a result of the investigation against that person.

## 10.8 Practice and Procedure

The practice and procedure governing hearings pursuant to this Part shall be made by a Policy.

### ***POLICY 10.8 - PRACTICE AND PROCEDURE***

#### ***Part 1 - General Procedure and Practice***

##### ***1.1 Definitions***

*In this Policy, unless the subject matter or context otherwise requires:*

***“applicant”*** means the party who instituted the proceedings for a written hearing.

***“document”*** - repealed

*“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another.*

*“oral hearing” means a hearing at which the parties or their counsel or agents attend before the Hearing Panel in person.*

*“party” includes the staff of the Market Regulator.*

*“Secretary” means the Secretary of the Market Regulator or other officer, employee or agent of the Market Regulator designated in writing from time to time by the Secretary to perform the functions of the Secretary for the purposes of this Policy as may be specified in the designation by the Secretary.*

*“written hearing” means a hearing held by means of the exchange of documents, whether in written form or by electronic means.*

## **1.2 Procedural Power of Hearing Panel**

(1) *A Hearing Panel may:*

- (a) *exercise any power under this Policy on its own initiative or at the request of a party;*
- (b) *issue general or specific procedural directions at any time before or during a hearing; and*
- (c) *waive any procedural requirement with the consent of the parties.*

(2) *A Hearing Panel may hear such evidence relating to a matter that the Hearing Panel deems relevant and the Hearing Panel is not bound by the legal or technical rules of evidence.*

(3) *If any provision of this Policy is inconsistent with any applicable statutory requirement, the Hearing Panel shall order such change in the practice and procedure as to comply with the applicable statutory requirement.*

## **1.3 Irregularity in Form**

*No determination, document, hearing, order or interim order is invalid by reason only of a defect or other irregularity in form.*

## **1.4 Language of Proceedings**

(1) *If, in accordance with any applicable statutory requirement, a person would have a right to a hearing conducted in the French language then, upon the request of such person in writing to the Secretary or in such other manner as provided by law, all documents prepared by or on behalf of the Market Regulator and served*



*or delivered on such person shall be in French and any hearing or other proceeding shall be conducted in French.*

- (2) *Despite subsection (1), any document to be disclosed in accordance with section 8.1(1) of this Policy shall be provided in the language that the document was originally written.*

### **1.5 Service and Filing**

- (1) **Service** - *A document required under this Policy to be served must be served by one of the following methods:*

- (a) *personal service on an individual, by leaving a copy of the document with the individual;*
- (b) *personal service on any corporation, by leaving a copy of the document with an officer or director of the corporation, or with an individual at any place of business of the corporation who appears to be in control or management of the place of business;*
- (c) *service by sending a copy of the document by mail, courier or telephone transmission to the last known address or fax number of the party to be served;*
- (d) *service on a party who is represented by a solicitor or an agent by,*
  - (i) *acceptance of a copy of the document on behalf of the solicitor or the agent,*
  - (ii) *sending a copy of the document by mail, courier or telephone transmission to the officer of the solicitor or agent, or*
  - (iii) *depositing a copy of the document at a document exchange of which the solicitor or agent is a member or subscriber; or*
- (e) *service by any other method permitted by the Hearing Panel.*

- (2) **Proof of Service** - *The Hearing Panel may accept proof of service of a document by an affidavit of the person who served it.*

- (3) **Filing** - *A document required to be filed with the Hearing Panel under this Policy must be filed by either personal delivery of a copy or sending a copy by mail, courier or telephone transmission to the Secretary.*

- (4) **Effective Date of Service or Filing** - *Service or filing of a document is deemed to be effective:*

- (a) *if served personally, on the same day as service;*

- (b) *if sent by mail, on the fifth day after the day of mailing;*
  - (c) *if sent by telephone transmission, on the same day as the transmission unless received after 5 p.m., in which case the document will be deemed to have been served or filed on the next day that is not a holiday;*
  - (d) *if sent by courier, on the second day after the day on which the document was given to the courier by the party serving or filing, unless the second day is a holiday, in which case the effective date is the next day which is not a holiday;*
  - (e) *if deposited at a document exchange, on the first day after the day on which the document was deposited, unless the first day is a holiday, in which case the effective date is the next day which is not a holiday; or*
  - (f) *as otherwise ordered by the Hearing Panel.*
- (5) **Required Information on Documents** - *A party serving or filing a document shall include the following information:*
- (a) *the party's name, address, telephone number and fax number;*
  - (b) *the style of cause of the hearing to which the document relates;*
  - (c) *the name, address, telephone and fax number of the party's solicitor or agent; and*
  - (d) *the name of the party or solicitor or agent with whom the document is being served or filed.*
- (6) **Extension or Abridgment of Time** - *Any time period prescribed by this Policy may be extended or abridged as follows:*
- (a) *upon order of the Hearing Panel or after expiration of a prescribed time period on such terms as the Hearing Panel considers appropriate; or*
  - (b) *on consent of the parties before the expiration of a prescribed time period.*

## **Part 2 – Statement of Allegations**

### **2.1 Provision of Statement of Allegations**

*If the Market Regulator is of the opinion that a person described in subsection (1) of Rule 10.2 has contravened a Requirement or a person is liable for the contravention of a Requirement in accordance with Rule 10.3, the Market Regulator may serve a Statement of Allegations on such person.*

## **2.2 Contents of Statement of Allegations**

*A Statement of Allegations must contain:*

- (a) *a reference to the Requirement that the Market Regulator is of the opinion has been contravened;*
- (b) *the facts alleged and intended to be relied upon by the Market Regulator; and*
- (c) *the conclusions drawn by the Market Regulator based on the alleged facts.*

## **Part 3 - Offers of Settlement and Settlement Agreements**

### **3.1 Provision of Offer of Settlement**

*If the Market Regulator has served a Statement of Allegations on any person, the Market Regulator may serve an Offer of Settlement on such person concurrent with or at any time after the serving of the Statement of Allegations.*

### **3.2 Contents of Offer of Settlement**

*An Offer of Settlement must:*

- (a) *be in writing;*
- (b) *be signed by the President of the Market Regulator or such other officer of the Market Regulator as is authorized to make an Offer of Settlement;*
- (c) *specify, that if the Offer of Settlement is accepted, the date on or before which the Settlement Agreement must be served on the Market Regulator provided that the date shall not be earlier than 20 days after the Offer of Settlement has been served;*
- (d) *contain a reference to the Statement of Allegations intended to be relied upon by the Market Regulator;*
- (e) *specify the penalties or remedies to be imposed by the Market Regulator pursuant to Rule 10.5 and the assessment of any expenses to be made pursuant to Rule 10.7; and*
- (f) *contain a statement that if the Offer of Settlement is accepted by the person on whom it is served:*
  - (i) *the resulting Settlement Agreement is conditional upon the approval of the Hearing Panel, and*
  - (ii) *the person shall waive all rights under UMIR and the other Requirements to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.*

### **3.3 Acceptance of Offer of Settlement**

*An Offer of Settlement may be accepted by a person upon whom it has been served by that person or such other individual authorized to sign on behalf of that person:*

- (a) executing the Offer of Settlement; and*
- (b) serving the executed document on the Market Regulator on or before the date specified in the Offer of Settlement.*

### **3.4 Submission of Settlement Agreement for Approval**

*A Settlement Agreement shall be submitted to a Hearing Panel within 20 days following the acceptance of the Offer of Settlement and the Hearing Panel may:*

- (a) approve the Settlement Agreement; or*
- (b) reject the Settlement Agreement.*

### **3.5 Without Prejudice Negotiations**

*All negotiations of an Offer of Settlement or a Settlement Agreement are without prejudice to the Market Regulator and all other persons involved in the negotiations and the negotiations may not be used as evidence or referred to in any proceedings.*

### **3.6 Approval of Settlement Agreement**

*If the Settlement Agreement is approved by the Hearing Panel:*

- (a) the Hearing Panel shall issue an order in accordance with the terms of the Settlement Agreement;*
- (b) the matter becomes final and no party to the Settlement Agreement may appeal or seek a review of the matter;*
- (c) the disposition of the matter shall be included in the permanent record of the Market Regulator in respect of the person that accepted the Offer of Settlement;*
- (d) the Market Regulator shall publish a summary of:*
  - (i) the Requirement contravened,*
  - (ii) the facts, and*
  - (iii) the disposition of the matter, including any penalty or remedy imposed and any expenses assessed,*

*and such summary shall specify that any person may obtain or inspect a copy of the Settlement Agreement in the form approved by the Hearing Panel; and*

- (e) *the Market Regulator shall publish the Settlement Agreement in the form approved by the Hearing Panel and this obligation may be satisfied by the posting of the Settlement Agreement to any website maintained by the Market Regulator.*

### **3.7 Rejection of Settlement Agreement**

*If the Settlement Agreement is rejected by the Hearing Panel, the Market Regulator may proceed with a hearing of the matter and any member of the Hearing Panel that reviewed the Settlement Agreement must not participate further in any way in the matter.*

## **Part 4 – Notice of Hearing**

### **4.1 Provision of Notice of Hearing**

*If the Market Regulator has served a Statement of Allegations on any person, the Market Regulator may serve a Notice of Hearing on such person concurrent with or at any time after the serving of the Statement of Allegations provided that a Notice of Hearing may not be issued:*

- (a) *if the Market Regulator has served an Offer of Settlement, until after the date specified in the Offer of Settlement by which the Offer of Settlement may be accepted; and*
- (b) *if an Offer of Settlement has been accepted, until the Settlement Agreement has been rejected by a Hearing Panel.*

### **4.2 Contents of Notice of Hearing**

*A Notice of Hearing must contain:*

- (a) *details about the manner in which the hearing will be held including, if applicable to the form of hearing, the date, time and place of the hearing;*
- (b) *a reference to the statutory or other authority under which the hearing will be held;*
- (c) *a statement as to the purpose of the hearing;*
- (d) *a reference to the Statement of Allegations intended to be relied upon by the Market Regulator;*
- (e) *if the Notice of Hearing specifies that the hearing is to be an electronic or a written hearing, a statement that the party notified may object to holding the hearing as an electronic or a written hearing and the procedure to be followed for that purpose;*
- (f) *a statement respecting the effect of section 9.4 of this Policy; and*

- (g) *any other information the Market Regulator or the Hearing Panel considers advisable.*

#### **4.3 Date of Hearing**

- (1) *Unless the party on whom the Notice of Hearing is served has consented in writing, the date of the initial hearing specified in the Notice of Hearing shall not be earlier than 45 days after the date the Notice of Hearing has been served.*
- (2) *For greater certainty, any hearing of a matter after the date of the initial hearing specified in the Notice of Hearing shall be as directed or ordered by the Hearing Panel.*

### **Part 5 – Form of Hearing**

#### **5.1 Factors in Determining to Hold Oral, Electronic or Written Hearing**

*In deciding whether to hold an oral hearing, written hearing or electronic hearing, the Hearing Panel shall take into account any relevant factors, which may include:*

- (a) *the suitability of the hearing format considering the subject matter of the hearing, including the extent to which matters are in dispute;*
- (b) *whether the nature of the evidence is appropriate for the hearing format, including whether credibility is an issue and the extent to which the facts are in dispute;*
- (c) *the extent to which the matters in dispute are questions of law;*
- (d) *the convenience of the parties;*
- (e) *the cost, efficiency and timeliness of the proceedings;*
- (f) *avoidance of unnecessary length or delay;*
- (g) *ensuring a fair and understandable process;*
- (h) *the desirability or necessity of public participation or public access to the Hearing Panel's process; and*
- (i) *any other consideration which may be taken into account in accordance with applicable legislation.*

#### **5.2 Notice of Objection**

- (1) *A party who objects to a hearing being held as an electronic or as a written hearing shall file and serve on all other parties a Notice of Objection within 5 days after receiving the Notice of Hearing.*

- (2) *Despite subsection (1), a party may not object to the Hearing Panel conducting an electronic hearing to deal with procedural matters.*

### **5.3 Contents of Notice of Objection**

*A Notice of Objection shall be in writing and shall:*

- (a) *state whether the holding of an electronic or written hearing is likely to cause the party significant prejudice;*
- (b) *set out reasons for the objection; and*
- (c) *state all facts upon which the party relies and provide the evidence on which the party relies in relation to the objection.*

### **5.4 Procedure When Objection Made**

*If the Hearing Panel receives a Notice of Objection, the Hearing Panel shall:*

- (a) *accept the objection, cancel the form of hearing and either schedule an oral hearing or, with consent of the parties, schedule a written hearing or an electronic hearing as the case may be;*
- (b) *if permitted by applicable law, reject the objection provided the Hearing Panel is satisfied that there will not be significant prejudice to the objecting party, inform every other party that they are not required to respond to the Notice of Objection and proceed with the form of hearing specified in the Notice of Hearing; or*
- (c) *notify all other parties that they may respond to the Notice of Objection by serving on every other party and filing a written response in such form and within such time as is directed by the Hearing Panel and, after considering the objection and all responses, proceed with the form of hearing specified in the Notice of Hearing, schedule an oral hearing, or, with consent of the parties, schedule a written hearing or an electronic hearing as the case may be.*

### **5.5 Converting Type of Hearing**

- (1) *Subject to any applicable statutory requirements, the Hearing Panel may continue:*
  - (a) *a written or electronic hearing as an oral hearing;*
  - (b) *an oral or written hearing as an electronic hearing; or*
  - (c) *an oral or electronic hearing as a written hearing, unless a party objects.*
- (2) *If the Hearing Panel decides to convert the type of hearing that was specified in the Notice of Hearing, the Hearing Panel shall notify the parties of its decision*

*and may supply directions as to the holding of that hearing and any procedures for such hearing.*

## **Part 6 - Motions**

### **6.1 Notice of Motion**

*Where a party intends to bring a motion before the Hearing Panel at a hearing, written notice shall be served on all other parties and filed with the Hearing Panel at least 5 days before the day the motion is to be heard.*

### **6.2 Contents of Notice of Motion**

*The Notice of Motion must contain the relief sought, the grounds for the motion and the evidence to be relied upon.*

### **6.3 Hearing Date for Notice of Motion**

*Except when a motion is to be heard on a scheduled hearing date or is to be argued in writing, the party bringing the motion shall, before serving the Notice of Motion, file a copy of the Notice of Motion with the Secretary and obtain a date for the Hearing Panel to hear the motion.*

## **Part 7 - Pre-Hearing Conferences**

### **7.1 Order for a Pre-Hearing Conference**

*At any time prior to a hearing, the Hearing Panel on its own initiative, or at the request of one or more of the parties, may order the parties to attend a pre-hearing conference.*

### **7.2 Composition of the Hearing Panel at the Pre-Hearing Conference**

- (1) A pre-hearing conference shall be held before the chairman of the Hearing Panel and any other member of the Hearing Panel who may be required to assist the chairman.*
- (2) The members of the Hearing Panel presiding at the pre-hearing conference shall not preside at the hearing of the proceeding unless all parties consent in writing or on the record.*

### **7.3 Issues to be Considered**

*At a pre-hearing conference the Hearing Panel may consider any appropriate issue, including:*

- (a) the settlement of any or all of the issues;*
- (b) the identification and simplification of the issues;*



- (c) *the disclosure of documents;*
- (d) *facts or evidence that may be agreed upon;*
- (e) *evidence to be admitted on consent;*
- (f) *the identification of any preliminary objections;*
- (g) *procedural issues including the dates by which any steps in the hearing are to be taken or begun, the estimated duration of the hearing, and the date that the hearing will begin; and*
- (h) *any other issue that may assist in the just and most expeditious disposition of the hearing.*

#### **7.4 Notice of Pre-Hearing Conference**

- (1) **Notice to Parties and Others** - *The Secretary shall give notice of any pre-hearing conference to the parties and to such other persons as the Hearing Panel directs.*
- (2) **Contents of Notice** - *The notice of any pre-hearing conference must include:*
  - (a) *the date, time, place and purpose of the pre-hearing conference;*
  - (b) *whether parties are required to exchange or file documents or pre-hearing submissions in accordance with section 7.5 of this Policy and, if so, the issues to be addressed and the date by which the documents or pre-hearing submissions must be exchanged and filed;*
  - (c) *whether parties are required to attend in person, and*
    - (i) *if so, that they may be represented by counsel or agent, or*
    - (ii) *if not, that their counsel or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference;*
  - (d) *a statement that if a party does not attend in person or by counsel or an agent at the pre-hearing conference, the Hearing Panel may proceed in the absence of that party; and*
  - (e) *a statement that the Hearing Panel presiding at the pre-hearing conference may make orders with respect to the conduct of the proceeding which will be binding on all parties.*

## **7.5 Exchange of Documents**

*The Hearing Panel designated to preside at the pre-hearing conference may:*

- (a) order the parties to exchange or file by a specified date documents or pre-hearing submissions; and*
- (b) set the issues to be addressed in the pre-hearing submissions and at the pre-hearing conference.*

## **7.6 Oral, Written or Electronic**

*A pre-hearing conference may be held in person, in writing or electronically as the Hearing Panel may direct.*

## **7.7 Inaccessible to the Public**

- (1) **Pre-Hearing Conference** - A pre-hearing conference shall be held in the absence of the public unless the Hearing Panel directs that it be open to the public.*
- (2) **Documents and Submissions** - Any pre-hearing documents or pre-hearing submissions ordered under section 7.5 of this Policy shall not be disclosed to the public.*

## **7.8 Settlement of Issues**

*If the settlement of any issues is discussed at a pre-hearing conference:*

- (a) statements made without prejudice at a pre-hearing conference may not be communicated to the Hearing Panel;*
- (b) an agreement to settle any or all of the issues binds the parties to the agreement but is subject to approval by such other panel of the Hearing Panel as is assigned to consider the settlement; and*
- (c) all agreements, orders and decisions which dispose of a proceeding as it affects any party shall be made available to the public unless the Hearing Panel directs otherwise.*

## **7.9 Orders, Agreements, Undertakings**

- (1) **Preparation of Memorandum** - Any orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum prepared by or under the direction of the members of the Hearing Panel presiding at the pre-hearing conference.*
- (2) **Provision of Copies** - Copies of this memorandum shall be provided to the parties and to the members of the Hearing Panel presiding at the hearing of the matter*

*and to such other persons as the members of the Hearing Panel presiding at the pre-hearing conference direct.*

- (3) ***Binding Effect*** - Any orders, agreements and undertakings in the memorandum shall govern the conduct of the hearing and are binding upon the parties at the hearing unless otherwise ordered by the Hearing Panel.

#### **7.10 No Communication to Hearing Panel**

*Other than any orders, agreements and undertakings recorded in a memorandum prepared in accordance with section 7.9 of this Policy, no information about the pre-hearing conference shall be disclosed to the members of the Hearing Panel who preside at the hearing unless all parties consent in writing or on the record.*

### **Part 8 - Disclosure**

#### **8.1 Procedure for Compliance with Disclosure Obligations**

- (1) ***Documents and Other Things*** - Each party to a hearing shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence:
  - (a) *deliver to every other party copies of all documents that the party intends to refer to or tender as evidence at the hearing; and*
  - (b) *make available for inspection by every other party any other things that the party intends to refer to or tender as evidence at the hearing but not including any document a copy of which was delivered to every other party in accordance with clause (a).*
- (2) ***By Order of Hearing Panel*** - At any stage in a hearing, the Hearing Panel may order a party to provide to another party any other disclosure that the Hearing Panel considers appropriate within a time period and on terms and conditions as specified by the Hearing Panel.
- (3) ***Disclosure Obligation*** – Nothing in this section shall affect the obligation of the Market Regulator or any other party to disclose any document or other thing that may be required under common law or other applicable law.

#### **8.2 Failure to Make Disclosure**

*If a party fails to make a disclosure of a document or thing in compliance with section 8.1 of this Policy, the party may not refer to the document or thing or tender it as evidence at the hearing without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

### **8.3 Witness Lists and Statements**

- (1) **Provision of Witness Lists and Statements** – Subject to section 8.4 of this Policy, a party to a hearing shall, as soon as practicable after service of the Notice of Hearing, and in any case no later than 10 days before the day upon which the hearing is scheduled to commence, provide to every other party:
  - (a) a list of the witnesses the party intends to call to give evidence at the hearing; and
  - (b) in respect of each witness named on the list, either:
    - (i) a witness statement signed by the witness, or
    - (ii) a summary of the anticipated evidence that the witness is expected to give at the hearing.
- (2) **Contents of Witness Statements** - A witness statement or summary of the anticipated evidence that the witness is expected to give at the hearing must contain:
  - (a) the substance of the evidence of the witness;
  - (b) a reference to all documents, if any, that the witness will refer to; and
  - (c) the name and address of the witness, or in the alternative, the name of a person through whom the witness can be contacted.
- (3) **Failure to Provide Witness List or Statement**

*If a party fails to include a witness in the witness list or provide a witness list or a witness statement or a summary of the anticipated evidence as required by subsection (1), the party may not call the witness at the hearing without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

- (4) **Incomplete Witness Statement**

*A party may not call a witness to testify to matters not disclosed in the witness statement or summary of the anticipated evidence as required by subsection (2), without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

### **8.4 Expert Witness**

- (1) **Notice of Intent to Call Expert** - A party that intends to call an expert witness at the hearing shall, at least 30 days before the day upon which the hearing is

*scheduled to commence, inform the other parties of the intent to call the expert witness and the issue on which the expert will be giving evidence.*

- (2) ***Provision of Expert's Report*** - *A party that intends to refer to or to tender as evidence a report prepared by an expert witness at a hearing shall, at least 15 days before the day upon which the hearing is scheduled to commence, provide to every other party a copy of the report signed by the expert containing:*
  - (a) *the name, address and qualifications of the expert;*
  - (b) *the substance of the anticipated evidence of the expert; and*
  - (c) *a list of all the documents, if any, to which the expert will refer.*
- (3) ***Failure to Advise of Intent to Call Expert*** - *A party that fails to comply with subsection (1) may not call the expert as a witness without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*
- (4) ***Failure to Provide Expert's Report*** - *A party that fails to comply with subsection (2) may not refer to or tender as evidence the expert's report without the consent of the Hearing Panel on such terms and conditions as the Hearing Panel considers just.*

## **PART 9 – CONDUCT OF HEARING**

### **9.1 Particular Practice and Procedure for Oral Hearing**

- (1) *A person served with a Notice of Hearing shall, within 20 days from the date of service, serve on the Market Regulator a Reply signed by the person or by an individual authorized to sign on behalf of the person that specifically denies, with the particulars of the supporting facts and arguments, any or all of the facts alleged or the conclusions drawn by the Market Regulator as set out in the Statement of Allegations.*
- (2) *The Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the Market Regulator in the Statement of Allegations that are not specifically denied, with the particulars of the supporting facts and arguments, in the Reply.*
- (3) *A person served with a Notice of Hearing is entitled at an oral hearing of the matter:*
  - (a) *to attend and be heard in person;*
  - (b) *to be represented by counsel or an agent;*
  - (c) *to call and examine witnesses and to present arguments and submissions;*  
*and*

- (d) *to conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.*

## **9.2 Particular Practice and Procedure for Written Hearing**

- (1) **Submissions and Supporting Documents** - *The applicant shall, within 7 days after receiving notice of the written hearing, file and serve on all other parties its written submissions setting out,*
  - (a) *the grounds upon which the request for the remedy or order is made;*
  - (b) *a statement of the facts relied on in support of the remedy or order requested;*
  - (c) *the evidence relied on in support of the remedy or order requested; and*
  - (d) *any law relied on in support of the remedy or order requested.*
- (2) **Additional Information** - *The Hearing Panel may require the applicant to provide further information, and this information must be supplied to every other party.*
- (3) **Response** - *A party may respond to the submissions of the applicant by filing and serving on every other party a written response within 5 days after the submissions and supporting documents of the applicant are served on the party which response shall set out the submissions of the responding party relating to the matter before the Hearing Panel and be accompanied by a statement of the facts and any evidence and any law relied on in support of the response.*
- (4) **Reply to Response** - *The applicant may reply to a response by filing and serving on every other party a written reply within 5 days after a response from a party is served on the applicant which reply to the response must set out the position of the applicant to the response and be accompanied by any additional facts, evidence and law that the applicant relies on in support of the reply.*
- (5) **Questions and Answers** - *If a written hearing involves evidentiary issues, the Hearing Panel may direct that,*
  - (a) *the applicant and any responding party may ask such questions of the other as are reasonably necessary for the purpose of clarification of the other's evidence by filing and serving on every other party written questions within such time as is directed by the Hearing Panel; and*
  - (b) *the party to whom the questions are directed shall file and serve on every other party written answers to such questions within such time as is directed by the Hearing Panel.*

- (6) **Evidence** - *The evidence must:*
- (a) *be in writing, or when electronic transmission is permitted, it must be in the form directed by the Hearing Panel;*
  - (b) *identify the person giving the evidence and be in certified form or in affidavit form; and*
  - (c) *include all documents and things a party is relying on to support the remedy or order requested or the response or to otherwise support the position a party is taking in the hearing.*
- (7) **No Oral Examination** - *Unless ordered by the Hearing Panel, there will be no oral examination.*
- (8) **Presentation of Witness** - *If a party requests, the Hearing Panel may order that a party present a witness to be examined or cross-examined upon such conditions as the Hearing Panel directs.*

### **9.3 Particular Practice and Procedures for Electronic Hearing**

*The Hearing Panel may, in deciding that a hearing will be held electronically, impose conditions including specifying the party responsible for making the necessary arrangements for the electronic hearing and requiring that a party requesting an electronic hearing pay all or part of the cost of providing the facilities necessary for the conduct of the hearing electronically.*

### **9.4 Failure to Reply, Attend or Participate**

*If a person served with a Notice of Hearing fails to:*

- (a) *in the case of an oral hearing, serve a Reply in accordance with section 9.1 of this Policy;*
- (b) *in the case of a written hearing, serve a Response in accordance with section 9.2 of this Policy; or*
- (c) *attend or participate at the hearing specified in the Notice of Hearing,*

*the Market Regulator may proceed with the hearing on the matter on the date and at the time and place set out in the Notice of Hearing without further notice to and in the absence of the person, and the Hearing Panel may, unless precluded by law, proceed on the facts alleged or the conclusions drawn by the Market Regulator in the Statement of Allegations and the Hearing Panel may impose any one or more of the penalties or remedies authorized by UMIR and assess expenses as authorized by UMIR.*

### **9.5 Order for Particulars or Amendment**

*At any time in a hearing, the Hearing Panel may order:*

- (a) any party to provide to any other party such particulars as the Hearing Panel considers necessary for a full and satisfactory understanding of the subject of the hearing; and*
- (b) after providing the parties an opportunity to make submissions, that the Statement of Allegations be amended in accordance with the evidence introduced at the hearing.*

### **9.6 Disposition**

- (1) The Hearing Panel shall give its final decision and order, if any, in a hearing in writing and shall give reasons in writing.*
- (2) The Hearing Panel shall send to each party to the hearing a copy of its final decision and order, if any, including the reasons therefor if any have been given by any method of service permitted under section 1.4 of this Policy.*
- (3) The disposition of the matter shall be included in the permanent record of the Market Regulator in respect of the person that is the subject of the hearing.*
- (4) The Market Regulator shall publish a summary of the decision and order, including:*
  - (a) the Requirement contravened or alleged to be contravened;*
  - (b) the facts;*
  - (c) the disposition of the matter, including any penalty or remedy imposed and any expenses assessed; and*
  - (d) a statement that any person may obtain or inspect a copy of the decision and order of the Hearing Panel.*
- (5) The Market Regulator shall publish the decision and order of the Hearing Panel and this obligation may be satisfied by the posting of the decision and order to any website maintained by the Market Regulator.*

### **9.7 Public Access to Hearing**

- (1) Subject to subsections (2) and (3), each hearing shall be conducted in a manner:*
  - (a) in the case of an oral hearing, to be open to the public;*



- (b) *in the case of a written hearing, to provide the public with reasonable access to the documents submitted at the office of the Market Regulator during ordinary business hours; and*
  - (c) *in the case of an electronic hearing, to provide the public with reasonable access to the proceedings.*
- (2) *A hearing shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing if:*
  - (a) *a specific provision of UMIR or any Policy provides that a hearing be conducted in the absence of the public or without access to the documents submitted;*
  - (b) *in the opinion of the Hearing Panel, the absence of the public from an oral or electronic hearing is necessary for the maintenance of order at the hearing; and*
  - (c) *in the opinion of the Hearing Panel, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.*
- (3) *Despite subsection (2), a hearing by a Hearing Panel in Quebec shall be public provided the Hearing Panel, on its own initiative or at the request of a party, may order the hearing be held in camera or ban the publication or release of any information or documents it indicates in the interest of morality or public order.*
- (4) *If a Hearing Panel decides that a hearing to consider a Settlement Agreement shall be conducted in the absence of the public in the case of an oral or electronic hearing or without access to the documents submitted in the case of a written hearing:*
  - (a) *any record or transcript of the hearing or any document or other thing tendered at the hearing shall be made available to the public if the Hearing Panel approves the Settlement Agreement; and*
  - (b) *any record or transcript of the hearing and any document or other thing tendered at the hearing shall not be made available to the public if the Hearing Panel rejects the Settlement Agreement.*
- (5) *Despite subsection (4), if a Hearing Panel in Quebec approves a Settlement Agreement, any record or transcript of the hearing or any document or other thing tendered at the hearing shall not be made available to the public if the hearing is subject to an order that the hearing be held in camera or a ban on the*

*publication or release of any information or documents except to the extent that such order is varied or vacated.*

## **Part 10 – Selection of Hearing Panels**

### **10.1 Selection of Hearing Panel**

*Upon the issuance of a Notice of Hearing or upon acceptance of an Offer of Settlement, the Secretary shall select a Hearing Panel in accordance with Schedule C.1 to the Investment Industry Regulatory Organization of Canada’s Transition Rule 1 – Hearing Committees and Hearing Panels Rule.*

### **10.9 Power of Market Integrity Officials**

- (1) A Market Integrity Official may, in governing trading in securities on the marketplace:
  - (a) delay, halt or suspend trading in a security at any time and for such period of time as such Market Integrity Official may consider appropriate in the interest of a fair and orderly market;
  - (b) refuse to allow any bid price or ask price to be recorded at any time if, in the opinion of such Market Integrity Official, such quotation is unreasonable or not in compliance with UMIR or any Policy;
  - (c) settle any dispute arising from trading in securities on the marketplace where such authority is not otherwise provided for in any requirement governing trading on the marketplace;
  - (d) vary or cancel any trade which, in the opinion of such Market Integrity Official, is unreasonable or not in compliance with UMIR or any Policy;
  - (e) vary or cancel any trade upon application of the buyer and seller provided such application has been made by the end of trading on the day following the day on which the trade was made or such earlier time as may be established in any Marketplace Rule of the marketplace on which the trade was executed;
  - (f) in respect of any trade which has not complied with the requirements of Part 5, correct the price of the trade to a price at which the trade would have complied with such requirement; or
  - (g) require the Participant to satisfy the better bid or offer up to the volume of the trade which failed to comply with the requirements of Part 5;
  - (g.1) in respect of any trade of a principal order or non-client order that has not complied with the requirements of Rule 5.3, require the Participant to

satisfy the client order at the price and up to the volume of the trade which failed to comply with the requirements of Rule 5.3;

- (h) provide to any person an interpretation of any provision of UMIR and any Policy in accordance with the purpose and intent of the provision and shall ensure that any such interpretation is observed by such person;
  - (i) exercise such powers as are specifically granted to a Market Regulator or Market Integrity Official by UMIR and any Policy; and
  - (j) exercise such powers as are specifically granted to the Market Regulator by the marketplace where the marketplace is entitled to grant such powers.
- (2) In determining whether any quotation or trade in a security is unreasonable, the Market Regulator shall consider:
- (a) prevailing market conditions;
  - (b) the last sale price of the security as displayed in a consolidated market display;
  - (c) patterns of trading in the security on the marketplace including volatility, volume and number of transactions;
  - (d) whether material information concerning the security is in the process of being disseminated to the public; and
  - (e) the extent of the interest of the person for whose account the order is entered in changing the price or quotation for the security.
- (3) In connection with the exercise of a power under this Rule, upon the verbal, written or electronic request of the Market Integrity Official, the Regulated Person shall, within the time period specified by the Market Integrity Official:
- (a) provide any information, document or records in the possession or control of the person that the Market Regulator determines may be relevant to the exercise of a power by the Market Regulator and such information, document or records shall be provided in such manner and form, including electronically, as may be required by the Market Regulator; and
  - (b) allow the inspection of, and permit copies to be taken of, any information, document or records in the possession or control of the person that the Market Regulator determines may be relevant to the exercise of a power by the Market Regulator.
- (4) If a Market Integrity Official has provided notice to a Regulated Person pursuant to subsection (3), the Regulated Person shall, notwithstanding any policy or procedure of the Regulated Person with respect to the retention of information,

documents or records, retain any document or record in the possession or control of the Regulated Person that is relevant to the exercise of the power by the Market Integrity Official for a period of 30 days from the date of the notice or such other period as may be specified by the Market Regulator.

### 10.10 Report of Short Positions

- (1) A Participant shall calculate, as of 15th day and as of the last day of each calendar month, the aggregate short position of each individual account in respect of each listed security and quoted security.
- (2) Unless a Participant maintains the account in which an Access Person has the short position in respect of a listed security or quoted security, the Access Person shall calculate, as of the 15th day and as of the last day of each calendar month, the aggregate short position of the Access Person in respect of each listed security and quoted security.
- (3) Unless otherwise provided, each Participant and Access Person required to file a report in accordance with subsection (1) or (2) shall file a report of the calculation with a Market Regulator in such form as may be required by the Market Regulator not later than two trading days following the date on which the calculation is to be made.

### 10.11 Audit Trail Requirements

- (1) **Order and Trade Record** - In addition to any information required to be recorded by a Participant in accordance with Part 11 of the Trading Rules, a Participant shall:
  - (a) immediately following the receipt or origination of an order, record:
    - (i) all order designations required by clause (b) of subsection (1) of Rule 6.2,
    - (ii) the identifier of any investment adviser or registered representative receiving the order, and
    - (iii) any information respecting the special terms attaching to the order required by subsection (2) of Rule 6.2, if applicable;
  - (b) immediately following the entry of an order to trade on a marketplace, add to the record:
    - (i) the identifier of the Participant through which any trade would be cleared and settled, and
    - (ii) the identifier assigned to the marketplace on which the order is entered; and

- (c) immediately following the variation or correction of an order, add to the record any information required by clause (a) which has been changed.
- (2) **Transmittal of Order Information to a Market Regulator** - The Participant shall transmit the record of the order required to be maintained by the Participant by this section to:
- (a) the Market Regulator for the marketplace on which the trade was executed; or
  - (b) if the order was not executed on a marketplace in accordance with Rule 6.4:
    - (i) a Market Regulator if the security is not listed on an Exchange or traded on a QTRS, and
    - (ii) the Market Regulator for the Exchange or the QTRS on which the security is listed or quoted,

at the time and in such manner and form as may be required by the Market Regulator.

- (3) **Provision of Additional Information** – In addition to any information provided by a Participant to a Market Regulator in accordance with subsection (2), the Participant shall provide to the Market Regulator forthwith upon request in such form and manner as may be reasonably required by the Market Regulator:
- (a) any additional information respecting the order or trade reasonably requested; and
  - (b) information respecting any prior or subsequent order or trade in the security or a related security undertaken by the Participant on any marketplace.
- (4) **Provision of Information by a Access Person** – Where an order has been entered on a marketplace by an Access Person, the Access Person shall provide to the Market Regulator of the marketplace on which the order was entered or the Market Regulator of the marketplace on which the order was executed forthwith upon request in such form and manner as may be reasonably required by the Market Regulator:
- (a) any information respecting the order or trade reasonably requested; and
  - (b) information respecting any prior or subsequent order or trade in the security or a related security undertaken by the Access Person on any marketplace.

## **10.12 Retention and Inspection of Records and Instructions**

- (1) A Participant shall retain:
  - (a) the record of each order as required by Rule 10.11; and
  - (b) sufficient information to identify the beneficial owner of each account for which a record of an order is retained,

for a period of not less than seven years from the creation of the record of the order, and for the first two years, such record and information shall be kept in a readily accessible location.
- (2) A Participant shall allow the Market Regulator of the marketplace:
  - (a) of which the Participant is a member, user or subscriber;
  - (b) on which the Participant entered the order; or
  - (c) on which the order of the Participant was executed,

to inspect and make copies of the record of an order, any record related to the order required to be maintained by the Participant in accordance with applicable securities legislation or the requirements of any self-regulatory organization of which the Participant is a member and information on the beneficial owner of the account at any time during ordinary business hours during the period that such record and information is required to be retained by the Participant.
- (3) An Access Person shall allow the Market Regulator of the marketplace:
  - (a) of which the Access Person is a subscriber; or
  - (b) on which the order of the Access Person was executed,

to inspect and make copies of any information respecting an order at any time during ordinary business hours during the period of not less than seven years from the date of the origination of the order, and for the first two years, such information shall be kept in a readily accessible location.

## **10.13 Exchange and Provision of Information by Market Regulators**

Each Market Regulator shall provide information and other forms of assistance for market surveillance, investigative, enforcement and other regulatory purposes including the administration and enforcement of UMIR to:

- (a) a self-regulatory entity;
- (b) a self-regulatory organization in a foreign jurisdiction;

- (c) a securities regulatory authority;
- (d) a securities regulatory authority in a foreign jurisdiction; and
- (e) another Market Regulator.

#### **10.14 Synchronization of Clocks**

Each marketplace and each Participant shall synchronize the clocks used for recording the time and date of any event that must be recorded pursuant to UMIR to the clock used by the Market Regulator for this purpose.

#### **10.15 Assignment of Identifiers and Symbols**

- (1) Each Participant and marketplace shall be assigned a unique identifier for trading purposes.
- (2) Unless otherwise provided pursuant to an agreement made in accordance with section 7.5 of the Trading Rules, the Toronto Stock Exchange shall assign each identifier for the purposes of subsection (1) after consultation with each Exchange and QTRS.
- (3) Each security that trades on a marketplace shall be assigned a unique symbol for trading purposes.
- (4) Unless otherwise provided pursuant to an agreement made in accordance with section 7.5 of the Trading Rules, the Toronto Stock Exchange shall assign each symbol for the purposes of subsection (3) after consultation with each Exchange and QTRS.

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

- (1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal, non-client or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of:
  - (a) Subsection (1) of Rule 2.1 respecting just and equitable principles of trade;
  - (b) Rule 2.2 respecting manipulative and deceptive activities;
  - (c) Rule 2.3 respecting improper orders and trades;
  - (d) Rule 4.1 respecting frontrunning;
  - (e) Rule 5.1 respecting best execution of client orders;

- (f) Rule 5.2 respecting best price obligation;
  - (g) Rule 5.3 respecting client priority;
  - (h) Rule 6.4 respecting trades to be on a marketplace; and
  - (i) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.
- (2) An officer, director, partner or employee of an Access Person shall forthwith report to their supervisor or the compliance department of the Access Person upon becoming aware of activity by the Access Person or a related entity that the officer, director, partner or employee believes may be a violation of:
- (a) Subsection (2) of Rule 2.1 respecting conduct of business openly and fairly;
  - (b) Rule 2.2 respecting manipulative and deceptive activities;
  - (c) Rules 2.3 respecting improper orders or trades; and
  - (d) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.
- (3) If a supervisor or compliance department of a Participant or Access Person receives a report pursuant to subsection (1) or (2), the supervisor or compliance department shall diligently conduct a review in accordance with the policies and procedures of the Participant adopted in accordance with Rule 7.1 or in accordance with the ordinary practices of the Access Person.
- (4) If the review conducted by the supervisor or compliance department concluded that there may be a violation, the supervisor or compliance department shall:
- (a) make a written record of the report by the officer, director, partner or employee and the review conducted in accordance with subsection (3);
  - (b) diligently investigate the activity that is the subject of the report and review;
  - (c) make a written record of the findings of the investigation; and
  - (d) report the findings of the investigation to the Market Regulator if the finding of the investigation is that a violation of an applicable provision of UMIR has occurred and such report shall be made not later than the 15th day of the month following the month in which the findings are made.



- (5) Each Participant and Access Person shall with respect to the records of the report, the review and the findings required by subsection (4):
  - (a) retain the records for a period of not less than seven years from the creation of the record; and
  - (b) allow the Market Regulator to inspect and make copies of the records at any time during ordinary business hours during the period that such record is required to be retained in accordance with clause (a).
- (6) The obligation of a Participant or an Access Person to report findings of an investigation under subsection (4) is in addition to any reporting obligation that may exist in accordance with applicable securities legislation, the requirements of any self-regulatory entity and any applicable Marketplace Rules.

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

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

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

## **PART 11 - ADMINISTRATION OF UMIR**

### **11.1 General Exemptive Relief**

- (1) A Market Regulator may exempt a specific transaction from the application of a provision of UMIR, if in the opinion of the Market Regulator, the provision of such exemption:
  - (a) would not be contrary to the provisions of any applicable securities legislation and the regulation and rules thereunder;
  - (b) would not be prejudicial to the public interest or to the maintenance of a fair and orderly market; and
  - (c) is warranted after due consideration of the circumstances of the particular person or transaction.
- (2) A Market Regulator may, upon approval by the applicable securities regulatory authority, exempt a marketplace or a class of transactions from the application of a provision of UMIR.
- (3) The Market Regulator shall amend UMIR to reflect any exemption provided under subsection (2).

### **11.2 General Prescriptive Power**

- (1) A Market Regulator may, from time to time, make or amend a provision of UMIR or Policy.
- (2) A provision of UMIR or Policy or an amendment to a provision of UMIR or Policy shall not become effective without the approval of the applicable securities regulatory authority.

### **11.3 Review or Appeal of Market Regulator Decisions**

Any person directly affected by any direction or decision of a Market Integrity Official or a Market Regulator made in connection with the administration of UMIR shall request a review of the direction or decision by an executive officer of the Market Regulator prior to applying to the applicable securities regulatory authority for a hearing and review or appeal.

### **11.4 Method of Giving Notice**

- (1) Unless otherwise specifically provided in any Requirement, notice to any person shall be sufficiently given if:
  - (a) delivered personally to the person to whom it is to be given;

- (b) delivered or mailed by pre-paid ordinary mail to the last address of such person as recorded by the Market Regulator or any securities regulatory authority or recognized self-regulatory organization; or
  - (c) provided by telephone transmission or any other form of transmitted or recorded communication or in any other manner, including electronic means, which may, in all the circumstances, could be reasonably expected to come to the attention of such person.
- (2) The Market Regulator may change the address of any person on the records of the Market Regulator in accordance with any information believed by the Market Regulator to be reliable.
  - (3) A notice delivered in accordance with this section shall be deemed to have been given when the notice is delivered personally or at the address aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice sent by any means of wire or wireless or any other form of transmitted or recorded communication shall be deemed to have been given when delivered to the appropriate communication company or agency or its representatives for dispatch.

### **11.5 Computation of Time**

- (1) In computing the time when a notice must be given or for the doing of anything or taking any proceeding under any provision of a Requirement requiring that a notice be given a specified number of days prior to any meeting, hearing, action or proceeding or that any action be done or proceeding taken within a specified number of days after some event, the date of giving of the notice or of such event shall be excluded and the date of the meeting, hearing, doing of the act or taking of the proceedings shall be included.
- (2) Where the time limited for a proceeding or the doing of anything under any provision of a Requirement expires or falls upon a day that is not a trading day, the time so limited extends to and the thing may be done on the next day following that is a trading day.

### **11.6 Waiver of Notice**

Any person may waive any notice that is required to be given to such person and such waiver, whether given before or after the meeting, hearing or other event of which notice is required to be given, shall cure any default in giving such notice.

### **11.7 Omissions or Errors in Giving Notice**

The accidental omission to give any notice to any person or the failure of a person to receive any notice or an error in any notice not affecting the substance of the notice does not invalidate any action founded or taken on the basis of such notice.

## **11.8 Transitional Provisions**

Where a marketplace has retained a Market Regulator to be the regulation services provider for that marketplace in accordance with the Trading Rules, any disciplinary proceedings commenced:

- (a) prior to the date the marketplace retained the Market Regulator shall, subject to the terms of any agreement between the Market Regulator and the marketplace entered into in accordance with Part 7 of the Trading Rules, be continued by the marketplace in accordance with the rules, policies, rulings, decisions or directions of the marketplace in effect and applicable to such disciplinary proceedings; and
- (b) on or after the date the marketplace retained the Market Regulator in respect of the breach or failure to comply with any rule, policy, ruling, decision or direction of the marketplace shall be undertaken in accordance with Part 10 and Schedule C.1 to the Investment Industry Regulatory Organization of Canada's Transition Rule 1 – Hearing Committees and Hearing Panels Rule – and be subject to the imposition of any penalty or remedy under Rule 10.5 as if the breach or failure to comply had been a breach or failure to comply with a Marketplace Rule after the date the marketplace retained the Market Regulator to be the regulation services provider.

## **11.9 Non-Application of UMIR**

UMIR does not apply to:

- (a) any order entered and executed on a marketplace provided the order has been entered and executed in compliance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules; and
- (b) any order entered and executed on a marketplace or otherwise provided the order has been entered and executed in compliance with:
  - (i) the rules of an applicable regulation services provider as adopted in accordance with Part 8, 9 or 10 of the Trading Rules, or
  - (ii) the terms of an exemption from the application of Part 8, 9 or 10 of the Trading Rules.

## **11.10 Indemnification and Limited Liability of the Market Regulator**

- (1) To the extent permitted by law, the Market Regulator shall be indemnified and saved harmless by a Regulated Person from and against all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment and including legal and professional fees and out of pocket expenses of attending trials, hearings and meetings), whatsoever that the Market Regulator sustains or

incurs in or about any action, suit or proceeding, whether civil, criminal or administrative, and including any investigation, inquiry or hearing, or any appeal or review, that is threatened, brought, commenced or prosecuted against a Protected Party or in respect of which a Protected Party is compelled or requested to participate, for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by the Regulated Person.

- (2) To the extent permitted by law, all costs, charges and expenses in respect of which the Market Regulator is indemnified pursuant to subsection (1) shall be paid to the Market Regulator by the Regulated Person within 90 days after receiving the written request of the Market Regulator.
- (3) The Market Regulator shall not be liable to any Regulated Person for any loss, damage, cost, expense or other liability or claim arising from any:
  - (a) failure of any system owned, operated or used by the Market Regulator; or
  - (b) act done in good faith in the exercise or intended exercise of any power or in the performance or intended performance of any duty or for any neglect, default or omission in the exercise or performance in good faith of any such power or duty by a Protected Party.
- (4) Subject to subsection (5), no Regulated Person shall be entitled to commence or carry on any action or proceeding in respect of any penalty or remedy imposed by an order or interim order or in respect of any act done or omitted under the provisions of and in compliance with, or intended compliance with, UMIR and any Policy as against a Protected Party.
- (5) Subsection (4) shall not restrict or limit the ability of any person to apply for a review in accordance with Rule 11.3 of a direction, order or decision of a Market Regulator or Market Integrity Official.

#### **11.11 Status of UMIR and Policies**

In the event of a conflict between a provision of UMIR or any Policy and the provision of a Marketplace Rule or the functionality of the trading system of any marketplace, UMIR shall govern unless otherwise provided by the securities regulatory authority.