

IIROC NOTICE

Rules Notice Notice of Implementation UMIR

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Changes to Implementation Date for Provisions Respecting Regulation of Short Sales and Failed Trades and for Provisions Respecting Dark Liquidity

Executive Summary

IIROC has changed the implementation date for amendments to UMIR respecting:

- ***Regulation of Short Sales and Failed Trades;¹ and***
- ***Dark Liquidity²***

to Monday, October 15, 2012.

¹ The implementation date for the provisions respecting Regulation of Short Sales and Failed Trades had previously been established as September 1, 2012. For a detailed discussion of the amendments to UMIR respecting Regulation of Short Sales and Failed Trades, see IIROC Notice 12-0078 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012).

² The implementation date for the provisions respecting Dark Liquidity had previously been established as October 10, 2012. For a detailed discussion of the amendments to UMIR respecting Dark Liquidity, see IIROC Notice 12-0130 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Dark Liquidity* (April 13, 2012).



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1. Background

1.1 *IIROC Practice in Establishing Implementation Dates*

The usual practice of IIROC is to indicate in the Request for Comments on proposed amendments to UMIR that the amendments will become effective 180 days following the publication of the notice of approval of the amendments by the applicable securities regulatory authorities. As a result, when notice of approval of the amendments respecting Short Sales and Failed Trades was published on March 2, 2012, the implementation date was set at September 1, 2012. Similarly, when the notice of approval of the amendments respecting Dark Liquidity was published on April 13, 2012, the implementation date was set at October 10, 2012.

1.2 *Technological Implications of the Amendments*

1.2.1 *Technological Implications of Amendments Respecting Short Sales and Failed Trades*

The technological implications to Participants, marketplaces or service providers of the amendments respecting Short Sales and Failed Trades have been identified as follows:

- their systems have to be able to differentiate between an order designated as “short sale” and “short-marking exempt” (since, under the amendments, the designations are mutually exclusive);
- their systems have to be able to accept the “short-marking exempt” designation on both purchase and sell orders; and



- their system enforcement of the tick test should be disabled for orders marked as a “short sale”.

1.2.2 Technological Implications of Amendments Respecting Dark Liquidity

The technological implications to Participants, Access Persons, marketplaces or service providers of the amendments respecting Dark Liquidity have been identified as follows:

- there would be no impact on the systems of transparent marketplaces that do not provide for Dark Orders nor iceberg orders with less than one standard trading unit being displayed;
- since the amendments do not require the marking of Dark Orders, there would be no impact on the systems of Participants, Access Persons or service providers; and
- Dark Pools and transparent marketplaces that permit Dark Orders or icebergs with less than one standard trading unit being displayed will be required to ensure that their trading system functionality provides:
 - execution priority for visible orders on their marketplace over Dark Orders on their marketplace at the same price, and
 - a “better price” to orders (other than “large” orders) that execute with Dark Orders.

1.2.3 Consolidation of Programming Changes and Testing Windows

In accordance with section 12.3 of National Instrument 21-101 *Marketplace Operation*, each marketplace shall make publicly available all technology requirements at least three months before implementing a material change and must make testing facilities available for at least two months before implementing a material change to its technology requirements. Given the relatively short period of time between the proposed implementation of the provisions respecting Short Sales and Failed Trades on September 1, 2012 and the implementation of the provisions respecting Dark Liquidity on October 10, 2012, there would have been overlapping releases of programming changes by marketplaces and testing windows. In addition, IIROC is aware that certain marketplaces were intending to make other programming changes for various reasons during this approximate period of time. To facilitate the programming changes and to allow each marketplace to have one testing window for the changes made by that marketplace, IIROC has proposed to change the implementation dates of both the Short Sales and Failed Trades and Dark Liquidity amendments to **October 15, 2012**.



1.3 Changes to the Implementation Dates

The implementation date for amendments to UMIR respecting:

- Regulation of Short Sales and Failed Trades has been changed from September 1, 2012 to October, 15, 2012; and
- Dark Liquidity has been changed from October 10, 2012 to October 15, 2012.

2. Summary of UMIR Amendments to be Implemented on October 15, 2012

2.1 Provisions Respecting Regulation of Short Sales and Failed Trades

On March 2, 2012, the applicable securities regulatory authorities approved amendments to UMIR respecting short sales and failed trades.³ These amendments, which will become **effective on October 15, 2012**, will:

- **repeal the tick test;**⁴
- impose pre-borrow requirements for short sales made in certain circumstances; and
- require a sell order from a short position to continue to be marked “short sale” but introduce a “short-marking exempt” designation to be used with an order for the **purchase or sale** of a security by certain accounts that adopt a “directionally neutral” strategy in the trading of securities.

IIROC expects to issue guidance on the use of the “short sale” and “short-marking exempt” designations prior to the amendments coming into effect.

2.2 Provisions Respecting Dark Liquidity

On April 13, 2012, the applicable securities regulatory authorities approved amendments to UMIR respecting dark liquidity on Canadian equity marketplaces.⁵ These amendments, which will become **effective October 15, 2012**, will:

³ Reference should be made to IIROC Notice 11-0075 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Short Sales and Failed Trades* (February 25, 2011) with which the proposed amendments were published for public comment (the “Proposed Amendments”). See Appendix B for the summary of comments received on the Proposed Amendments and the responses of IIROC. Column 1 of the table highlights the changes made to the amendments as approved from the initial proposed amendments.

⁴ The tick test is the requirement under Rule 3.1 of UMIR that a short sale not be made at a price which is less than the last sale price of the security.

⁵ Reference should be made to IIROC Notice 11-0225 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Dark Liquidity* (July 29, 2011) with which the proposed amendments were published for public comment (the “Proposed Amendments”). See Appendix B for the summary of comments received on the Proposed Amendments and the responses of IIROC. Column 1 of the table highlights the changes made to the amendments as approved from the initial proposed amendments.



- define “better price” to mean a minimum of one trading increment except, when the difference between the best ask price and the best bid price is one trading increment, the amount shall be a minimum of one-half of one trading increment;
- permit IIROC to designate a minimum size for orders that are not displayed in a consolidated market display;
- permit IIROC to designate a minimum size of an iceberg order that must be displayed in a consolidated market display;
- provide that an order entered on a marketplace must trade with visible orders on that marketplace at the same price before trading with dark orders at the same price on that marketplace;
- require, subject to certain exceptions, an order entered on a marketplace that trades with an order that has not been displayed in a consolidated market display to either:
 - receive a better price, or
 - be for more than 50 standard trading units or have a value of more than \$100,000; and
- provide that a Participant or Access Person may not enter an order on a particular marketplace if they know that the handling of the order by the marketplace may result in the order or resulting trade not being in compliance with UMIR.