

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

AND

THE UNIVERSAL MARKET INTEGRITY RULES

AND

POPE & COMPANY LIMITED

OFFER OF SETTLEMENT

A. INTRODUCTION

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Pope & Company Limited (the Respondent).
2. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).
3. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).
4. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.
5. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

7. The Respondent agrees that between December 2008 and January 2011, it contravened the following Requirements of UMIR:
- (i) failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and
 - (ii) failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and UMIR Policy 7.1.

C. ADMITTED FACTS

8. For the purposes of this Settlement Agreement only, Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Appendix A to this Settlement Agreement.

D. DISPOSITION

9. For the contraventions in paragraph 7 above, Staff and the Respondent have agreed upon disposition as follows:
- (i) a fine of \$30,000.00 payable by the Respondent to IIROC; and
 - (ii) costs of \$5,000.00 payable by the Respondent to IIROC.
10. If this Settlement Agreement is accepted by a Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 9 within 30 days of such acceptance.

E. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT

11. The Respondent shall have until the close of business on February 21, 2012 to accept the Offer of Settlement and serve an executed copy thereof on Staff.

12. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.
13. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.
14. In the event the Settlement Agreement is accepted by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.
15. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.
16. The Respondent agrees that, in the event it fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.
17. The Respondent agrees that neither it, nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement as of the dates noted below.

DATED at Toronto, Ontario on the 14th day of February, 2012.

“Witness”

Witness Signature

“Francis Pope”

Francis Pope
Pope & Company Limited

Name of Witness

Address of Witness

DATED at Toronto, Ontario on the 13th day of February, 2012.

Per: “Jeff Kehoe”

JEFFREY KEHOE
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
Suite 2000, 121 King Street West
Toronto, Ontario M5H 3T9

This foregoing Settlement Agreement is hereby approved this 28th day of February 2012, by the following hearing panel constituted to review the terms thereof:

Per: “John Webber”
Panel Chair

Per: “G.W.K. Kileberg”
Panel Member

Per: “D. Grant”
Panel Member

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

THE UNIVERSAL MARKET INTEGRITY RULES

AND

POPE & COMPANY LIMITED

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. Between December 2008 and January 2011, Pope & Company Limited (“Pope & Company”) contravened the following Requirements of UMIR:
 - (i) failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and
 - (ii) failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and UMIR Policy 7.1.
2. Schedule “A” sets out the text of the relevant UMIR Requirements.

II. RELEVANT FACTS AND CONCLUSIONS

Overview

3. The best price obligation set out in UMIR 5.2 is a general duty owed to the market as a whole to ensure fairness to all market participants and promote competition, efficiency and transparency while maintaining investor confidence in the market. UMIR Policy 5.2

requires a Participant to adopt policies and procedures that will ensure compliance with its ongoing best price obligation and to review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

4. UMIR 7.1 and UMIR Policy 7.1 set out the regulatory obligations for trading supervision. UMIR Policy 7.1, Part 6 requires that each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace.
5. During the relevant period, Pope & Company failed to make reasonable efforts to ensure compliance with UMIR 5.2 and did not adopt adequate policies and procedures to ensure compliance with the best price obligation.

Background

6. Pope & Company is registered as an investment dealer, is a Participating Organization of the Toronto Stock Exchange (“TSX”), a Member of the TSX Venture Exchange (“TSXV”) and therefore a Participant under UMIR.
7. Pope & Company is an institutional investment firm located in Toronto, Ontario.

Overview of UMIR 5.2

8. On May 16, 2008, Market Regulation Services Inc. instituted amendments to UMIR 5.2, which required that a Participant make reasonable efforts at the time of execution of an order to ensure that:
 - (a) in the case of an offer, the order is executed at the best bid price; and
 - (b) in the case of a bid, the order is executed at the best ask price.
9. Policy 5.2, which accompanied the Rule, further provided that “reasonable efforts” did not require that a Participant become a member, user or subscriber of

each protected marketplace. A Participant will have been found to have made “reasonable efforts” to comply with the best price obligation if the Participant has:

- (a) entered the order on a marketplace that will ensure compliance with the best price obligation;
 - (b) used an acceptable order router; or
 - (c) provided the order to another Participant for entry on a marketplace.
10. Each Participant must adopt policies and procedures to ensure compliance with its best price obligation. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.
 11. Participants were provided with ample notice of the best price obligation under UMIR and given ample time to comply with the amendments.
 12. Pope & Company did not make reasonable efforts to comply with the best price obligation until January 2011 and did not update its written policies and procedures in this regard.

Protected marketplaces

13. During the relevant period, there were six protected marketplaces: TSX, TSXV, CNSX (includes Pure Trading), Omega ATS, Chi-X Canada and Alpha ATS (Alpha did not begin trading a full list of TSX securities until Feb 20, 2009 and a full list of TSXV securities until March 30, 2009).
14. A Participant has an obligation to execute against better priced orders on these protected marketplaces before executing at an inferior price on any marketplace or foreign organized regulatory market.
15. On April 17, 2009, IIROC issued a Rule Notice, Notice of Approval of UMIR 09-0107. This Rule Notice advised that the Rule effected on May 16, 2008 had been retroactively approved by the recognizing securities regulators.

Pope & Company not connected to all of the protected marketplaces

16. Between December 2008 and January 2011, Pope & Company was not connected to all of the six protected marketplaces. Pope & Company was only connected to the TSX and TSXV and was not connected to any other protected marketplace.

Lack of reasonable efforts

17. Pope & Company did not make reasonable efforts during the relevant period to obtain the “best price.” It did not use an acceptable order router. It did not provide the order to another Participant for entry on a marketplace. In short, Pope & Company did not make reasonable efforts to consider orders on any of the protected marketplaces other than the TSX or TSXV.
18. In September 2008, IIROC Trade Conduct Compliance (TCC) conducted a trade desk review of Pope & Company. The TCC review confirmed that Pope & Company did not have access to protected marketplaces other than the TSX and TSXV. Pope & Company was advised that it must make reasonable efforts to access protected marketplaces.
19. In February 2010, TCC issued its 2009 trade desk review report to Pope & Company. The firm’s compliance with the best price obligation was cited as a significant deficiency as it was a repeat deficiency. TCC reiterated that Pope & Company must make reasonable efforts to access all of the protected marketplaces.
20. In March 2010, Pope & Company advised TCC that it was trying to determine the most cost effective way of complying with the best price obligation.
21. In September 2008 and in April 2010, Pope & Company requested pricing information from Pure Trading, Omega ATS, Chi-X Canada and Alpha ATS. The

total costs of subscribing to the protected marketplaces were high for Pope & Company taking into account the size of its overall business and the volume of its trade execution business.

22. During the relevant period, Pope & Company considered providing its orders to another Participant for entry on a marketplace in order to comply with its best price obligation. However, this solution was deemed unfeasible given that it would result in a transaction cost to its clients that Pope & Company determined clients would consider unacceptable.
23. In response to an inquiry from IIROC Market Surveillance on June 28, 2010, Pope & Company advised IIROC that the firm was deciding whether a smart order router (SOR) would be set up.
24. On October 27, 2010, Pope & Company completed and signed a TSX Smart Order Router (TSX SOR) Subscriber Agreement. The TSX SOR would ensure that orders would be routed to the marketplace with the best price.
25. Pope & Company chose to subscribe to the TSX SOR Automated Jitney service, which provided that orders would be routed to the firm's jitney provider if the best price was available on a marketplace where the firm was not subscribed.
26. On December 6, 2010, Pope & Company signed a jitney agreement with National Bank Financial Inc. (NBF).
27. Pope & Company was approved by NBF for jitney service on February 10, 2011.
28. During the time period December 2008 to January 2011, Pope & Company generated trade through alerts. A trade through alert occurs when a possible trade through violation has been identified by IIROC Market Surveillance Staff.
29. Pope & Company was contacted on several occasions by IIROC Market Surveillance advising them of trade through alerts.

30. During the relevant period, the percentage of trade through alerts generated by Pope & Company as a result of its failure to comply with the best price obligation was small relative to its overall trading volume.

Failure to have adequate policies and procedures in place

31. During the relevant period, Pope & Company failed to adopt policies and procedures to ensure compliance with its “best price” obligation.
32. Pope & Company did not set out the steps or process to be followed by it that would constitute the “reasonable efforts” to ensure that orders received the best price when executed on a marketplace.
33. During the relevant period, Pope & Company did not monitor or review its order flow for compliance with the best price obligation.

III. CONCLUSION

34. Effective February 1, 2011, UMIR 5.2 and Policy 5.2 were repealed, when changes to National Instrument 23-101 – *Trading Rules* regarding trade-through protection were implemented by the Canadian Securities Administrators.
35. Pope & Company has no history of regulatory violations and cooperated with IIROC Staff throughout the investigation.
36. During the relevant period, Pope & Company had an obligation to comply with UMIR 5.2 and UMIR 7.1 and did not make reasonable efforts to do so.

February 13, 2012
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
121 King St. West, Suite 2000
Toronto, Ontario M5H 3T9

SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES MADE AND ADOPTED AS RULES OF IROC PURSUANT TO TRANSITION RULE 1.1 SCHEDULE A.1

5.2 Best Price Obligation

- (1) A Participant shall make reasonable efforts at the time of the execution of an order to ensure that:
 - (a) in the case of an offer, the order is executed at the best bid price; and
 - (b) in the case of a bid, the order is executed at the best ask price.

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 an order receives the best price. "Reasonable efforts" does not require that a Participant become a member, user or subscriber of each protected marketplace.

The Market Regulator will accept that a Participant has made "reasonable efforts" to obtain the "best price" if the Participant:

- *enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if:*
 - *the order router has demonstrated an ability to access orders on a protected marketplace, and*
 - *the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace,*
- *enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order:*
 - *route all or any part of the order required to comply with Rule 5.2 to a protected marketplace,*
 - *execute the order at a price that will comply with Rule 5.2, or*

- *automatically vary the price of the order to a price that will comply with Rule 5.2;*
or
- *provides the order to another Participant for entry on a marketplace.*

In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:

Factors Related to Initial Consideration of a Particular Marketplace

- *whether the marketplace qualifies as a “protected marketplace”;*
- *whether the protected marketplace has recently:*
 - *commenced operations, or*
 - *had any material malfunction or interruption of service;*
- *whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and*
- *whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered.*

Factors Related to On-going Compliance

- *whether a “better-priced” order is on a protected marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered;*
- *whether the Participant has experienced:*
 - *disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or*
 - *an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being executed only in part for a volume less than that displayed at the time the order was entered by the Participant; and*
- *whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be considered on an on-going basis*

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

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Part 6 – Specific Provisions Respecting the Best Price Obligation

Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:

- *initially in determining whether order on a protected marketplace need to be considered; and*
- *on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.*

The policies and procedures adopted by the Participant:

- *must take into account the factors and other requirements enumerated in Policy 5.2; and*
- *may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument.*