

# IIROC NOTICE

## Rules Notice

### Request for Comments

UMIR

**Comments Due By: July 13, 2022**

*Please distribute internally to:*

Institutional  
Legal and Compliance  
Senior Management  
Trading Desk  
Retail

#### Contact:

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**22-0054**  
**April 14, 2022**

## Proposed Amendments Respecting the Codification of Certain UMIR Exemptions

### Executive Summary

IIROC is publishing for comment proposed amendments (**Proposed Amendments**) to the Universal Market Integrity Rules (**UMIR**) that would codify new exemptions to allow Participants to trade a listed security:

- off-marketplace during a statutory resale restriction where the trading is permitted pursuant to a prospectus exemption
- on a foreign organized regulated market (**FORM**) during a regulatory halt where a cease trade order (**CTO**) is in effect and the trading is permitted pursuant to meeting specified conditions set out in the CTO.



## Impacts

If implemented, IIROC expects the most significant impacts of the Proposed Amendments on Participants would be:

- a material savings in the time and effort currently spent in preparing and submitting these exemption requests
- the need to review and update their supervision and compliance policies to:
  - remove any procedures to seek individual exemptions from IIROC on a per transaction basis where the trading complies with the new codified exemptions
  - add reasonable procedures to manage and monitor compliance with applicable securities legislation and regulatory requirements when trading during a statutory resale restriction or regulatory halt.

If approved, the Proposed Amendments would be effective at least 90 days after the publication of the Notice of Approval.

Clean and blacklined copies of the Proposed Amendments are provided in Appendices A and B.

## How to Submit Comments

Comments are requested on all aspects of the Proposed Amendments, including any matter which they do not specifically address. Comments on the Proposed Amendments should be in writing and delivered by **July 13, 2022** to:

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Investment Industry Regulatory Organization of Canada  
Suite 2000, 121 King Street West  
Toronto, Ontario M5H 3T9  
e-mail: [tlam@iiroc.ca](mailto:tlam@iiroc.ca)



A copy should also be provided to the Recognizing Regulators by forwarding a copy to:

Market Regulation  
Ontario Securities Commission  
Suite 1903, Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
e-mail: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

**Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website at [www.iroc.ca](http://www.iroc.ca).**



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## 1. Discussion of Proposed Amendments

Over the years, we have granted individual exemptions to allow Participants to trade:

- off-marketplace when a security was subject to a statutory resale restriction where the trade complies with applicable securities legislation and requirements, or
- on a FORM during a regulatory halt where the sale of a security met the conditions set out in a CTO

on a per transaction basis as requested under UMIR 6.4(2)(b) or UMIR 9.1<sup>1</sup>.

These exemptions are limited to the specific transactions identified by the Participant. Due to the frequent need to grant individual exemptions related to trading during a statutory resale restriction or a regulatory halt (please see Section 3 of this Notice), we are proposing to amend UMIR 6.4 and 9.1 as set out below. The number and consistency of these exemption requests suggest that it may be more appropriate and efficient to permit these trades through a rule change rather than continue to provide individual exemptions as requested.

If the Proposed Amendments are approved, IIROC will also update the information in [IIROC Notice 15-0191](#) *Obtaining a Trading Exemption or Rule Interpretation* accordingly.

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<sup>1</sup> On an annual basis, IIROC publishes a summary of the exemptions granted during the calendar year. For example, see IIROC Notice [21-0086](#) for the exemptions granted in 2020 and IIROC Notice [20-0142](#) for the exemptions granted in 2019.



## 2. Analysis

### 2.1 Statutory Resale Restriction

UMIR 6.4(1) requires trades in a listed security to occur on a marketplace<sup>2</sup>.

#### Current practice

Where securities are not freely tradeable such that resales must comply with conditions set forth in National Instrument 45-102 *Resale of Securities (NI 45-102)*<sup>3</sup>, Participants currently request an exemption from UMIR 6.4(2)(b) in order to execute the trade off-marketplace.<sup>4</sup> In many instances we grant these exemptions given that trades in restricted securities can only be executed in a manner where interference by investors who cannot hold such securities is avoided.

#### Changes under the Proposed Amendments

Under the Proposed Amendments to UMIR 6.4(2)(k), Participants would be able to trade off-marketplace without seeking an exemption from IIROC as long as:

- the securities are subject to a statutory resale restriction, and
- the trade:
  - complies with requirements set forth in NI 45-102, and

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<sup>2</sup> [IIROC By-law No. 1](#) defines a “marketplace” to mean:

1. a recognized exchange or a commodity futures exchange registered in a jurisdiction of Canada;
2. a recognized quotation and trade reporting system; or
3. a person or company not included in clause (a) or (b) above that facilitates the trading of securities or derivatives in a jurisdiction of Canada; and
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives;
  - (ii) brings together the orders for securities or derivatives of multiple buyers and sellers; and brings together the orders for securities or derivatives of multiple buyers and sellers; and
  - (iii) uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.

<sup>3</sup> One of the conditions under NI 45-102 is the requirement for trading during the statutory hold period to occur between investors eligible to purchase under a prospectus exemption.

<sup>4</sup> IIROC Notice [15-0191](#) – UMIR – Rules Notice - *Obtaining a Trading Exemption or Rule Interpretation* (August 28, 2015). If the Proposed Amendments to UMIR 6.4(2)(k) becomes approved, we would amend IIROC Notice [15-0191](#) to remove trades during a resale restriction as a type of exemption that would be granted by IIROC under UMIR 6.4(2)(b).



- is executed pursuant to an applicable exemption from prospectus requirements under securities legislation, such as the accredited investor exemption, where available.

The Participant must also continue to ensure that its trades comply with all applicable securities legislation and regulatory requirements, including but not limited to:

- reporting obligations pursuant to insider reporting requirements where applicable
- any additional requirements imposed by the listing exchange.

The Proposed Amendments to UMIR 6.4(2)(k) would not apply to securities subject to contractual hold periods that can be imposed or removed through private agreement, as the resale of these securities are not statutorily restricted.

Similar to all other exemptions under UMIR 6.4(2)<sup>5</sup>, while Participants would not need to separately report details of trades executed under the Proposed Amendments to UMIR 6.4(2)(k) to IIROC, Participants must continue to maintain records as required under IIROC requirements<sup>6</sup>, including but not limited to UMIR [10.11](#) *Audit Trail Records*, UMIR [10.12](#) *Retention of Records and Instructions*, and IIROC Rule [3804](#) *General requirement to maintain records*.

## **2.2 Regulatory Halt where Cease Trade Order is in effect**

UMIR 9.1(1)(a) prohibits Participants from entering an order to buy or sell a security on a marketplace or over-the-counter at any time while a CTO is in effect.

### Current practice

Participants currently request an exemption from UMIR 9.1 in order to sell a security for their client on a FORM where a CTO permits the selling of that security by investors that:

- acquired the position before the date of the CTO

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<sup>5</sup> Not including UMIR 6.4(2)(b), as Participants are required to report details of trades executed pursuant to certain exemptions granted by IIROC staff under UMIR 6.4(2)(b).

<sup>6</sup> “IIROC requirements” are defined in [IIROC Rule 1201\(2\)](#) as requirements set out within IIROC’s articles, by-laws and rules, along with all other instruments prescribed or adopted within IIROC’s by-laws and rules, and rulings of IIROC and the District Councils.



- are not insiders of the issuer.

If a security is subject to a CTO that does not allow securityholders to sell within the order, then the Participant currently needs to seek non-objection confirmations or a variation of the order from the relevant CSA jurisdiction(s) before IIROC is able to grant the requested exemption.

### Changes under the Proposed Amendments

Where the conditions for selling a security are prescribed within the CTO itself, IIROC is proposing to amend UMIR 9.1(4)(b) to allow Participants to sell in a manner that complies with:

- the conditions set forth in the CTO (UMIR 9.1(4)(b)(i)), and
- all applicable securities legislation (UMIR 9.1(4)(b)(ii)).

In order to ensure the sale complies with all applicable securities legislation, Participants must continue to verify against the [CSA CTO database](#) to determine whether the security at issue is subject to a CTO issued by more than one CSA jurisdiction. If the security is subject to a CTO issued by more than one CSA jurisdiction, the Participant must continue to:

- conduct the necessary due diligence before trading to determine whether or not a specific trade can be executed (for example, this may include seeking variation orders from the CSA jurisdiction(s) at issue depending on the CTO in effect)
- document and maintain records to demonstrate compliance with securities legislation and IIROC requirements<sup>7</sup>, including but not limited to UMIR [10.11 Audit Trail Records](#), UMIR [10.12 Retention of Records and Instructions](#), and IIROC Rule [3804 General requirement to maintain records](#).

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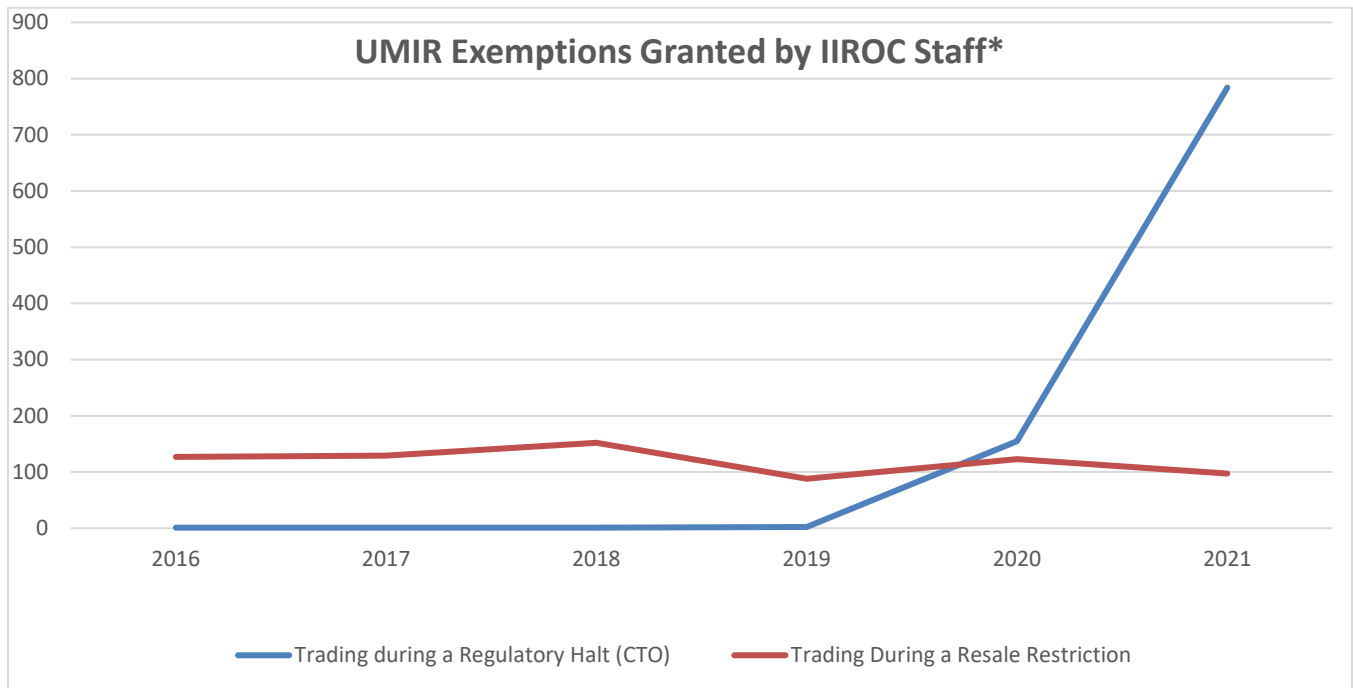
<sup>7</sup> “IIROC requirements” are defined in [IIROC Rule 1201\(2\)](#) as requirements set out within IIROC’s articles, by-laws and rules, along with all other instruments prescribed or adopted within IIROC’s by-laws and rules, and rulings of IIROC and the District Councils.





### 3. Impacts of the Proposed Amendments

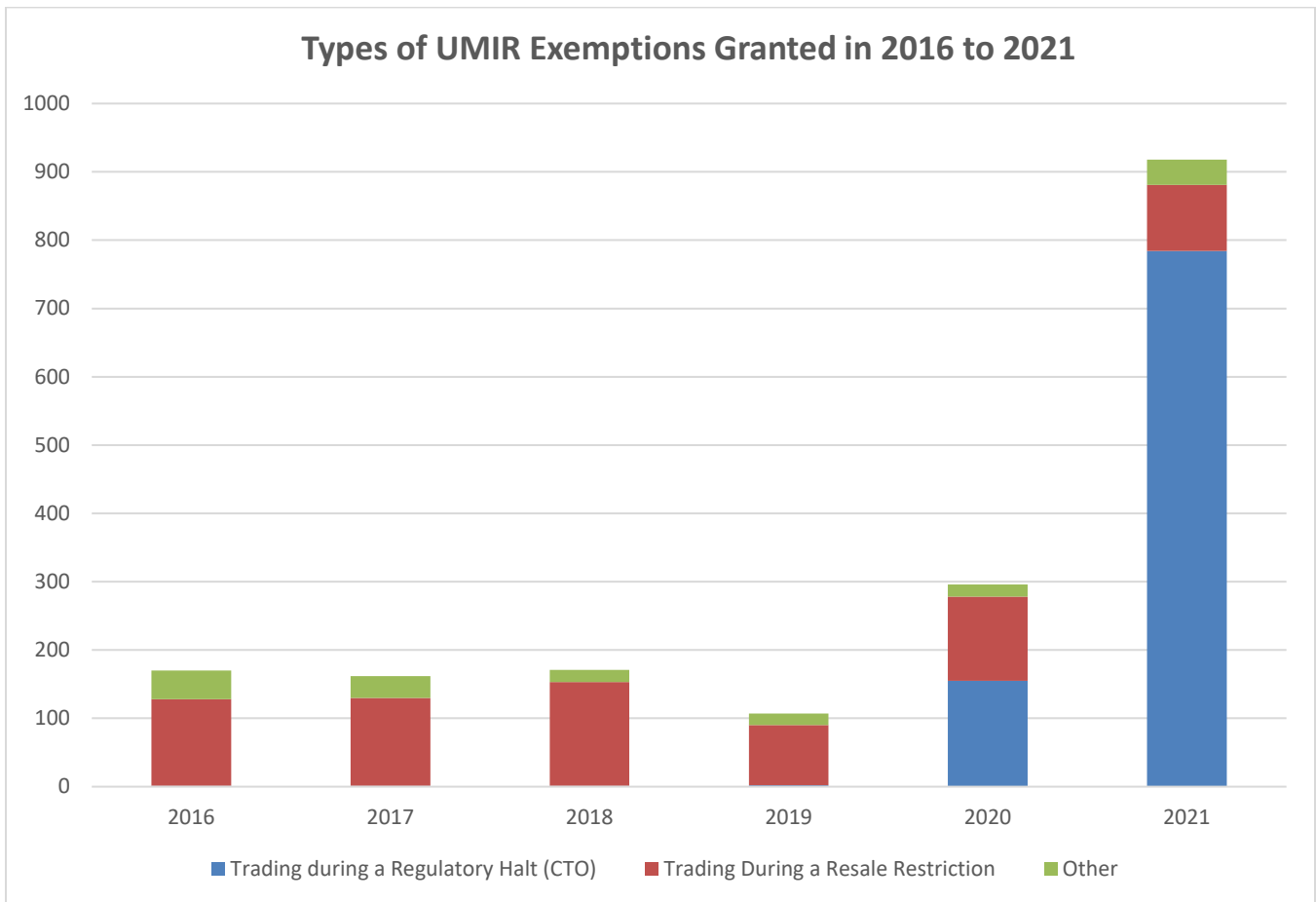
The expected main impacts of the Proposed Amendments would be to reduce regulatory burden on Participants and reduce an administrative burden on IIROC staff by codifying the two most commonly granted exemptions by IIROC related to: (1) regulatory halts (CTOs) and (2) statutory resale restrictions.



[Text description of the chart entitled “UMIR Exemptions Granted by IIROC Staff”.](#)

\*This graph only shows the number of UMIR exemptions related to Trading during a Regulatory Halt (CTO) and Trading during a Resale Restriction. IIROC publishes a summary of all UMIR exemptions granted on an annual basis, for example, see IIROC Notice [21-0086](#) for the exemptions granted in 2020.

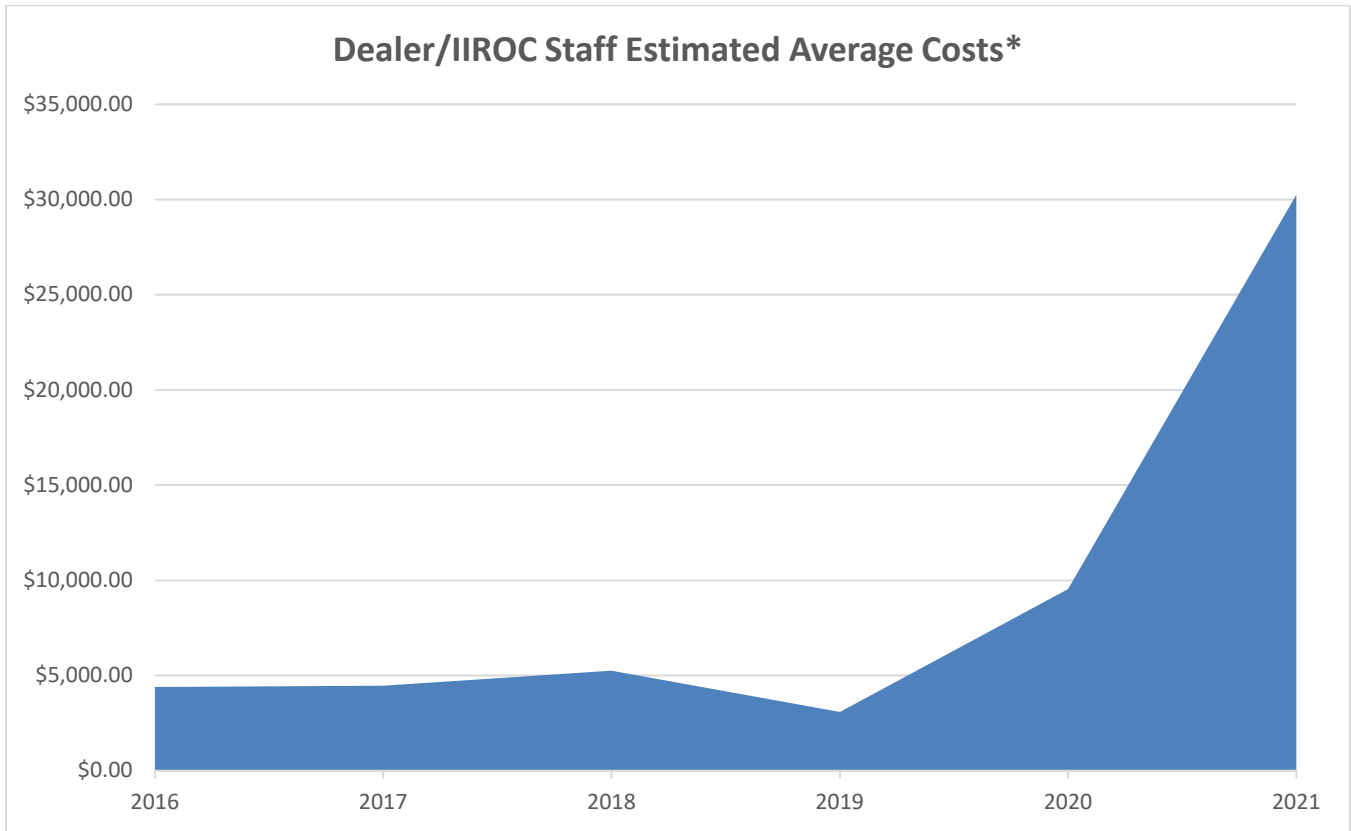
UMIR exemptions related to trading during a regulatory halt (CTO) and statutory resale restrictions account for an increasing proportion of overall UMIR exemptions granted by IIROC from 2016 to 2021 – constituting 75.29% of all exemptions in 2016 to 95.97% in 2021.



[Text description of the chart entitled “Types of UMIR Exemptions Granted in 2016 to 2021”.](#)

Due to the increase in the number of exemption requests to trade during regulatory halts (CTOs) and statutory resale restrictions, IIROC staff has granted over five times more exemptions in 2021 (918 total exemptions granted in 2021) as compared to 2016 (170 total exemptions granted in 2016).

The increasing number of exemptions due to trading during regulatory halts (CTOs) and statutory resale restrictions translates to estimated average costs of approximately \$30,000 for Participants and IIROC staff in 2021 alone.



[Text description of the chart entitled “Dealer/IIROC Staff Estimated Average Costs”.](#)

\*Estimated average costs in preparing requests by Participant employees and processing exemptions by IIROC staff with respect to Trading during a Regulatory Halt (CTO) or Statutory Resale Restriction.<sup>8</sup>

Based on the above calculations, we expect both Participants and IIROC would experience material savings in time and resources by removing the need to prepare and process individual exemptions related to trading during a regulatory halt (CTO) and statutory resale restriction. These resource savings could be reallocated by both Participants and IIROC to other significant priorities.

If implemented, IIROC expects the most significant impacts of the Proposed Amendments on Participants would be:

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<sup>8</sup> Estimated average costs based on the following assumptions:

1. Participant employees and IIROC staff typically require 30 minutes to prepare requests or process exemptions.
2. Costs based on average annual salary range approximating \$100,000-\$150,000 for Participant employees and IIROC staff.



- a material savings in the time and effort currently spent in preparing and submitting these exemption requests
- the need to review and update their supervision and compliance policies to:
  - remove any procedures to seek individual exemptions from IIROC on a per transaction basis where the trading complies with the new codified exemptions
  - add reasonable procedures to manage and monitor compliance with applicable securities legislation and regulatory requirements when trading during a statutory resale restriction or regulatory halt.

The Proposed Amendments will have no material impact on investors, issuers, or marketplaces. The Proposed Amendments will not have any impact on IIROC Dealers that are not Participants.

#### **4. Implementation**

No technological implications are expected as a result of the Proposed Amendments.

If approved, the Proposed Amendments would be effective at least 90 days after the publication of the Notice of Approval.

#### **5. Questions**

While comment is requested on all aspects of the Proposed Amendments, comment is also specifically requested on the following question:

1. Do you agree with IIROC's assessment that the benefits of the Proposed Amendments are proportionate to the costs (if any) that may be imposed?
2. Should the Proposed Amendments be approved, would 90 days after publication of the notice of approval be sufficient time for Dealers to review and update their policies and procedures as necessary?

#### **6. Policy Development Process**

##### **6.1 Regulatory Purpose**

The Proposed Amendments would:



- establish and maintain rules that are necessary or appropriate to govern and regulate all aspects of IIROC’s functions and responsibilities as a self-regulatory entity, and
- ensure compliance with securities laws.

## **6.2 Regulatory Process**

The Board of Directors of IIROC (**Board**) has determined the Proposed Amendments to be in the public interest and on March 23, 2022 approved them for public comment.

The Market Rules Advisory Committee (**MRAC**) of IIROC considered this matter as proposed in concept by IIROC staff. MRAC is an advisory committee comprised of representatives of each of: the marketplaces for which IIROC acts as a regulation services provider, Participants, institutional investors and subscribers, and the legal and compliance community.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, IIROC may recommend that revisions be made to the applicable proposed amendments. If the revisions and comments received are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the proposed amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions or comments are material, the proposed amendments including any revisions will be submitted to the Board for approval for republication or implementation as applicable.



# Appendices

[Appendix A](#) – Proposed UMIR Amendments

[Appendix B](#) – Text of UMIR to Reflect the Proposed Amendments