Appendix 2 – Proposed Amendments to UMIR / IDPC Rules (clean)

Clean version of the Proposed Amendments to UMIR

UMIR 1.1 Definitions

...

"deemed to own" means the seller, directly or through an agent or trustee:

(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;

(b) owns another security that is convertible or exchangeable into that security and 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) has entered into a contract to purchase a security that trades on a when issued basis and such contract is binding on both parties and subject only to the condition of issuance or distribution of the security.

...

UMIR POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

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 a derivative 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:

...

(g) entering an order for the purchase of a security or a derivative 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 or a derivative without, at the time of entering the order, having the reasonable expectation of settling any trade on settlement date that would result from the execution of the order;

(h.1) the prohibition in paragraph (h) of Part 2 of Policy 2.2 does not apply to the sale of a security by:

(i) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:

(1) as soon as all restrictions on delivery have been removed; and

(2) by no later than thirty-five consecutive calendar days following the trade date;

...

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 a derivative or an artificial ask price, bid price or sale price for a security or a derivative or a related security or a related derivative.

UMIR 3.3 Reasonable expectation to settle prior to the entry of an order for a short sale

(1) Before entering an order on a marketplace to sell a security that on execution would result in a short sale, a Participant or Access Person must have a reasonable expectation to settle any resulting trade on the date contemplated on the execution of the trade.

(2) Subsection (1) does not apply to the short sale of a security by:

(a) a person that is deemed to own the security, provided that the Participant has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:

(i) as soon as all restrictions on delivery have been removed; and
(ii) by no later than thirty-five consecutive calendar days following the trade date;

Clean version of the Proposed Amendments to IDPC Rules

Rule 4700 – Operations – Business Continuity and General Trading and Delivery Standards

4701 – Introduction

(1) Rule 4700 sets out the following requirements relating to Dealer Member operations:

Part A - Business continuity plan

[sections 4710 through 4716]

Part B - General trading and delivery standards applicable to all transactions

[sections 4750 through 4761]

Part C – Reasonable Expectation to Settle and Mandatory Close-out Requirements

[sections 4780 through 4784]

PART C – REASONABLE EXPECTATION TO SETTLE AND MANDATORY CLOSE-OUT REQUIREMENTS

4780. Introduction

(1) Part C of Rule 4700 sets out the requirements relating to a reasonable expectation to settle and mandatory close-outs applicable to all trades in a *listed security* that are executed on a *Marketplace*.

4781. Definitions

(1) The following terms have the meaning set out below when used in sections 4782 through 4784:

"Allocated Member"	A *Dealer Member* that has been allocated all or a portion of a fail to deliver position from a *Clearing Member* through which it clears or settles trades.
"Clearing Member"	A *Dealer Member* that is a member of a *recognized clearing agency*.
"deemed to own"	A seller shall be deemed to own a *security* if the seller, directly or through an agent or trustee: (a) has purchased or has entered into an unconditional contract to purchase the *security*, but has not yet received delivery of the *security*; (b) owns another *security* that is convertible or exchangeable into that *security* and 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) has entered into a contract to purchase a *security* that trades on a when issued basis and such contract is binding on both parties and subject only to the condition of issuance or distribution of the *security*.
"intended settlement date"	The *business day* on which the delivery of *securities* and payment of money is required to be made to permit the settlement of the trade through the facilities of a *recognized clearing agency* on the date expected when the trade was executed on a *Marketplace*.

"listed security"	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
"long sale"	A sale in a *listed security* that is not a *short sale*.
"Marketplace Trading Obligations"	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
"Participant"	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
"recognized clearing agency"	An *acceptable clearing corporation* that is recognized by the applicable securities regulatory authorities in Canada for the clearing and settling of trades in *listed securities*.
"short sale"	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.
"trading day"	The same meaning as set out in the Universal Market Integrity Rules, section 1.1.

4782. Reasonable expectation to settle prior to the entry of an order for a short sale

(1) Before submitting an order to a *Dealer Member* to sell a *listed security* on a *Marketplace* that on execution would result in a *short sale*, a *Dealer Member* that is not a *Participant* must have a reasonable expectation to settle any resulting trade on the *intended settlement date*.

(2) Subsection 4782(1) does not apply to the sale of a *listed security* by:

  (i) a person that is *deemed to own* the *security*, provided that the *Participant* has been reasonably informed that the person has a reasonable expectation to deliver such security in such number and form as to permit the settlement of the trade:

    (a) as soon as all restrictions on delivery have been removed; and

    (b) by no later than thirty-five consecutive calendar days following the trade date.

4783. Close-out requirement

(1) A *Clearing Member* must deliver *securities* to a *recognized clearing agency* for the clearing and settling of a sale in a *listed security* by the *intended settlement date*.

(2) If a *Clearing Member* has a fail to deliver position at a *recognized clearing agency* in any *listed security* for a sale in that *listed security*, the *Clearing Member* shall, by no later than the *trading day* following the *intended settlement date*, immediately close out its fail to deliver position by borrowing or purchasing *securities* of like kind and quantity.

(3) If a *Clearing Member* has a fail to deliver position at a *recognized clearing agency* in any *listed security* and the *Clearing Member* can demonstrate on its books and records that such fail to deliver position resulted from:

  (i) a *long sale*, the *Clearing Member* shall by no later than the third consecutive *trading day* following the *intended settlement date*, immediately close out the fail to deliver position by purchasing or borrowing *securities* of like kind and quantity;

(ii) a sale of a *security* that a person is *deemed to own* and that such person intends to deliver as soon as all restrictions on delivery have been removed, the *Clearing Member* shall, by no later than the thirty-fifth consecutive calendar day following the trade date of the transaction, immediately close out the fail to deliver position by purchasing *securities* of like kind and quantity;

(iii) a sale that is executed by a person with *Marketplace Trading Obligations* in respect of a *security* for which that person has obligations, the *Clearing Member* shall by no later than the third consecutive *trading day* following the *intended settlement date*, immediately close out the fail to deliver position by purchasing or borrowing *securities* of like kind and quantity.

(4) If a *Clearing Member* has a fail to deliver position in any *listed security* at *a recognized clearing agency* and does not close out such fail to deliver position in accordance with the requirements of subsections 4783(2) or 4783(3):

(i) The *Clearing Member* and any *Dealer Member* from which it receives trades for clearing and settlement:

(a) may not accept a *short sale* order in that *listed security* from another person, or

(b) effect a *short sale* in that *listed security* for its own account,

to the extent that the *Dealer Member* submits *short sales* to that *Clearing Member* for clearing and settlement, until the *Clearing Member* closes out the fail to deliver position by purchasing or borrowing *securities* of like kind and quantity and:

(I). that purchase has cleared and settled at *a recognized clearing agency*, or

(II). the *Clearing Member* can demonstrate that it has a net flat or net long position in that *listed security* on its books and records.

(ii) Despite clause 4783(4)(i), the *Clearing Member* and any *Dealer Member* from which it receives trades for clearing and settlement may accept a *short sale* order in that *listed security* from another person, or effect a *short sale* for its own account if the *Clearing Member* or *Dealer Member* first:

(a) borrows that *listed security*, or

(b) enters into a bona fide arrangement to borrow that *listed security*.

(5) A *Clearing Member* must:

(i) notify any *Dealer Member* from which it receives trades for clearing and settlement:

(a) that the *Clearing Member* has a fail to deliver position in a *listed security* at *a recognized clearing agency* that has not been closed out in accordance with the requirements of subsections 4783(2) or 4783(3); and

(b) when the purchase or borrow that the *Clearing Member* has made to close out the fail to deliver position has been cleared and settled at a *recognized clearing agency*; and

(ii) provide a copy of the notification required under clause 4783(5)(i) to the *Corporation* at such time and in such form and manner as required by the *Corporation*; and

(iii) notify any *Dealer Member* that receives an order from the *Clearing Member* to sell that *listed security* on a *Marketplace* that on execution would result in a *short sale* that the *Clearing Member* has become subject to the requirements of subsection 4783(4)(ii).

4784. Allocating a fail to deliver position

(1) A *Clearing Member* can reasonably allocate all or a portion of a fail to deliver position to an *Allocated Member* by notifying the *Allocated Member* of the fail to deliver position on a timely basis.

(2) If a *Clearing Member* reasonably allocates all or a portion of a fail to deliver position to an *Allocated Member* pursuant to subsection 4784(1):

(i) Subsections 4783(2), 4783(3) and 4783(4) relating to such fail to deliver allocation shall apply to the *Allocated Member*, and not to the *Clearing Member;*

(ii) If the *Allocated Member* does not comply with subsections 4783(2) and 4783(3), the *Allocated Member* must provide immediate notification that the *Allocated Member* has become subject to the requirements of subsection 4783(4) to:

  (a) the *Clearing Member* from which the *Allocated Member* received a fail to deliver allocation; and

  (b) any other *Dealer Member* that receives an order from the *Allocated Member* to sell the *listed security* on a *Marketplace* that on execution would result in a *short sale*.

(iii) If the *Allocated Member* does not comply with subsections 4783(2) and 4783(3), the *Allocated Member* must provide immediate notification when the purchase or borrow that the *Allocated Member* has made to close out the fail to deliver position has been cleared and settled at a *recognized clearing agency* to:

  (a) the *Clearing Member* from which the *Allocated Member* received a fail to deliver allocation; and

  (b) any other *Dealer Member* that receives an order from the *Allocated Member* to sell that *listed security* on a *Marketplace* that on execution would result in a *short sale*.

(iv) The *Allocated Member* must provide a copy of the notifications required under clauses 4784(2)(ii) and 4784(2)(iii) to the *Corporation* at such time and in such form and manner and containing such information as may be required by the *Corporation*.

(v) The *Clearing Member* must provide notification regarding the allocation of the fail to deliver position to the *Corporation* at such time and in such form and manner and containing such information as may be required by the *Corporation*.

4785.-4799. Reserved.