

LIST OF SECURITIES DESIGNATED TO BE EXCLUDED FROM THE DEFINITION OF AN “EXEMPT EXCHANGE-TRADED FUND”

Effective January 8, 2010, the Universal Market Integrity Rules (“UMIR”) were amended to replace the term “Exchange-traded Fund” with “Exempt Exchange-traded Fund”.¹ An “Exempt Exchange-traded Fund” is defined as:

a mutual fund for the purposes the purposes of applicable securities legislation, the units of which:

- (a) are a listed security or a quoted security; and
- (b) are in continuous distribution in accordance with applicable securities legislation but does not include a mutual fund that has been designated by the Market Regulator to be excluded from this definition.

To date, IIROC has not designated any mutual fund as being excluded from the definition of an “Exempt Exchange-traded Fund”. The factors which IIROC may consider in making such a designation are set out in Part 2 of Policy 1.1 of UMIR. In particular, a mutual fund may be designated if the IIROC determines that the trading price of units of the fund may be susceptible to manipulation due to a particular feature of the mutual fund. Factors which IIROC would take into account in making a designation to exclude a particular mutual fund would be:

- the lack of liquidity or public float of the security (or the underlying securities which comprise the portfolio of the mutual fund);
- the absence of the ability to redeem units at any time for a “basket” of the underlying securities in addition to cash;
- the absence of the ability to exchange a “basket” of the underlying securities at any time for units of the fund;
- the fact that the fund does not frequently make a net asset valuation calculation publicly available; and
- the fact that there are no derivatives based on units of the fund, the underlying index or the underlying securities listed on a marketplace.

None of these additional five factors would be determinative in and of itself and each security would be evaluated on its own merits.

¹ See IIROC Notice 10-0006 – Rule Notice – Notice of Approval – UMIR – *Provisions Respecting Trading During Certain Securities Transactions* (January 8, 2010).