

## Chapter 13

# SRO Notices and Disciplinary Proceedings

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### 13.1.1 RS Market Integrity Notice - Request for Comments - Provisions Respecting “Off-Marketplace” Trades

April 29, 2005

#### REQUEST FOR COMMENTS

#### PROVISIONS RESPECTING “OFF-MARKETPLACE” TRADES

##### Summary

On April 1, 2005, the Board of Directors of Market Regulation Services Inc. (“RS”) approved a series of revised amendments (the “Revised Proposal”) to the Universal Market Integrity Rules (“UMIR”) and the Policies respecting:

- the ability of Participants and Access Persons to conduct trades of listed or quoted securities other than by the entry of orders on a marketplace;
- the procedure for the execution of certain pre-arranged trades and intentional crosses and certain trades made to satisfy “best price” obligations; and
- various related and consequential amendments.

In particular, the Revised Proposal would:

- would change the relevant time to determine compliance with “best price” obligations from the time of order entry to the time of order execution;
- provide guidance on the “reasonable efforts” expected of a Participant under its best price obligation when a trade executes on one marketplace and better-priced orders are indicated on a consolidated market display for another marketplace;
- provide a mechanism to cap the obligation to fill better-priced orders to the disclosed volume of better-priced orders indicated on a consolidated market display in the case of certain pre-arranged trades or intentional crosses (defined in the amendments as a “designated trade”);
- clarify and modify the obligations to “move the market” when the trade would not qualify for a cap on the displacement obligation; and
- make a number of additional consequential changes to UMIR including the provision of definitions for the terms: “Canadian account”; “disclosed volume”; “non-Canadian account”; “organized regulated market”; “pre-arranged trade” and “trading increment”.

RS published the initial version of the proposed amendments in Market Integrity Notice 2004-018 issued on August 20, 2004 (the “Original Proposal”). A provision in the Original Proposal that would require an Access Person to make reasonable efforts to fill better-priced orders on marketplaces prior to executing a trade at an inferior price has been deleted from the Revised Proposal. The concept of trade-through obligations of a Participant or an Access Person will be published as part of a separate proposal.

##### Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and in Quebec by the Autorité des marchés financiers (the “Recognizing Regulators”) and, as such, is authorized to be a regulation services provider for the purposes of the National Instrument 21-101 (“Marketplace Operation Instrument”) and National Instrument 23-101 (“Trading Rules”).

As a regulation services provider, RS will administer and enforce trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any

marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSX V") and Canadian Trading and Quotation System ("CNQ"), each as a recognized exchange ("Exchange"); and for Bloomberg Tradebook Canada Company ("Bloomberg") and Liquidnet Canada Inc., each as an alternative trading system ("ATS").

The Rules Advisory Committee of RS ("RAC") reviewed the proposed amendments respecting "off-marketplace" trades and recommended their adoption by the Board of Directors. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The amendments to the Rules and Policies will be effective upon the approval of the changes by the Recognizing Regulators following public notice and comment. Comments on the proposed changes to UMIR should be in writing and delivered by **May 30, 2005** to:

James E. Twiss,  
Chief Policy Counsel,  
Market Policy and General Counsel's Office,  
Market Regulation Services Inc.,  
Suite 900,  
P.O. Box 939,  
145 King Street West,  
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265  
e-mail: james.twiss@rs.ca

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

Cindy Petlock  
Manager, Market Regulation  
Capital Markets Branch  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario. M5H 3S8

Fax: 416.595.8940  
e-mail: cpetlock@osc.gov.on.ca

## **Nature, Purpose and Effect of the Revised Proposal**

### ***Current Requirements***

UMIR requires dealers who have access to a Canadian marketplace to trade in securities only by means of the entry of an order on a Canadian marketplace unless the trade specifically is exempted from that requirement. When trading on behalf of a client, a dealer is not able to bypass "better-priced" orders on a marketplace to which the Participant has trading access in order to trade at an inferior price over-the-counter, on a foreign market or on another marketplace. A dealer is able to complete principal trades with a Canadian client account on an "organized regulated market" outside of Canada provided the dealer has first met its obligation to the Canadian market by filling the "better-priced" orders on Canadian marketplaces as disclosed in a consolidated market display.

Currently, a dealer when completing a pre-arranged trade or a wide distribution of significant blocks of stock must deal with the uncertainties created over the amount of "interference" which the execution of the trade may encounter from "iceberg orders" (orders with an undisclosed volume) if the dealer must "move" the market for the security to facilitate the transaction on a marketplace. The "unknowns" surrounding the possible presence of iceberg orders distort pricing and fee arrangements.

For the purposes of UMIR, a "marketplace" is defined as an Exchange, a recognized quotation and trade reporting system ("QTRS") or an ATS and a "Participant" is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. UMIR permits the entry of an order other than on a marketplace, including the entry of an order outside of Canada, under the conditions specifically enumerated in Rule 6.4. However, even though the order may be exempt from having to be entered on a marketplace, certain provisions of UMIR will continue to apply to a Participant entering the order. For example, Rule 2.1 of UMIR requires a

Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

In certain circumstances, a Participant may agree to take on a block of stock of a listed or quoted security from a shareholder at a discount to the prevailing market. Ordinarily, this trade would be completed by the execution of an order on a marketplace (being an Exchange, a QTRS or an ATS in Canada). However, if the person from whom the block of stock is acquired is:

- a “non-Canadian account” the Participant can complete the trade outside of Canada (including in an over-the-counter transaction) provided “such trade is reported to a marketplace or to a stock exchange or organized regulated market that publicly disseminates details of trades in that market” as permitted by Rule 6.4(e) of UMIR; and
- a “Canadian account” the Participant can execute the trade “on another exchange or organized regulated market that publicly disseminates details of trades in that market” as permitted by Rule 6.4(d) of UMIR.

If these trades are executed other than on a marketplace, the price at which such a trade may be executed will be governed by the requirements applicable in the jurisdiction of the exchange or market.

If the Participant has acquired the block of securities in anticipation of undertaking a “wide distribution” in accordance with the rules of the TSX, either a specific exemption is granted from the requirement that the purchase be conducted on a marketplace or the acquisition is covered by one of the enumerated exemptions from that requirement contained in Rule 6.4. A specific exemption will normally be granted by RS pursuant to Rule 6.4 in recognition of the fact that the Participant will be undertaking a sale of the block to not less than 25 separate and unrelated accounts with no one account participating to the extent of more than 50% of the value of the sale. Wide distributions are seen as a mechanism to enhance the public float of a security by increasing the spectrum of investors holding the security. Increasing the number of sizable (but not significant shareholders) of a security leads to greater visibility and interest in a security that ultimately contributes to liquidity and depth in the market for a security. In turn, liquidity and depth contribute to the maintenance of a “fair and orderly” market.

Under a wide distribution on the TSX, the Participant must allocate up to 20% of the volume to fill “better-priced orders” entered on the TSX at the same price at which the remainder of the block will be distributed. Given the mechanics of the TSX trading system, such wide distributions are normally undertaken immediately following the close of the regular trading session. In this way, the wide distribution is normally completed at a price which is at a discount to the closing price but better-priced orders in the regular trading book at the close have the opportunity to participate in the distribution (subject to the 20% cap on the amount of the block which the Participant must allocate for this purpose). Once all better-priced orders have been satisfied or the 20% allocation has been exhausted, all other trades in the wide distribution can occur outside of the market “spread”.

If the Participant is not undertaking the trades as a wide distribution, the Participant would be under an obligation to “move the market” to an appropriate price at which the Participant could cross the block (if the Participant was acting as agent for both the purchase and the sale) or cross the purchase and also the subsequent sale (if the Participant was acting as principal on both the purchase and the subsequent sale).

In March of 2002, the TSX introduced “iceberg orders” which permit only a portion of the volume of an order to be disclosed in the book or on the consolidated market display. Since commencing operations in July of 2003, CNQ has permitted iceberg orders. The TSX V amended its rules to permit iceberg orders effective upon receipt of required regulatory approvals on October 29, 2003. There is no provision for iceberg orders in the Bloomberg trading system.

Currently on the TSX, if the disclosed portion of the iceberg order executes, a portion of the balance of the order automatically emerges (with time priority established by the time at which the previously hidden volume is disclosed). The introduction of this feature has complicated the ability of Participants to accurately determine the volume which may be required to be satisfied as “better-priced orders” in a wide distribution or otherwise displaced as part of an orderly movement of the markets. When the Participant agrees to take on the block from the shareholder and place the block with institutional clients of the Participant, the Participant wants to be able to satisfy the requirements of the institutional clients at the price that has been agreed upon without any “leakage” to fill other orders in the market. In part, because of this uncertainty, Participants have attempted to use foreign markets to execute or report block trades. In doing so, Participants, acting as principal, have been able to bypass better-priced orders then existing on the TSX. Similarly, this ability to bypass better-priced orders would also apply if the better-priced orders were on any Exchange, QTRS or ATS.

#### ***Rationale for the Priority of Better-Priced Orders***

UMIR contemplates that Participants will have “reasonable access” to better-priced orders and that each Participant will take “reasonable efforts” to ensure that client orders are executed at the “best bid price” in the case of a sale for a client and at the “best ask price” in the case of a purchase for a client. UMIR does not provide for “blanket” trade-through protection, better-

priced orders can not be intentionally bypassed when trading on behalf of a client except when access, transaction costs or other factors warrant the trade through.

UMIR recognizes that marketplaces may have special trading facilities and, as such, contains a number of exceptions which may permit certain types of trades to occur at prices other than the prevailing market at the time of the trade. The exceptions and the policy rationale for the provision of each of the exceptions are set out in greater detail under the subheading "Trades Outside the Prevailing Market".

Rule 6.4 of UMIR is designed to provide pre-trade and post-trade transparency and "best price" executions by requiring that all trades by a Participant to be undertaken by means of the entry of an order on a marketplace unless otherwise specifically exempted. Rule 6.4 does not prefer any single marketplace to another. Indeed, Rule 6.4 of UMIR specifically recognizes that trades also may be undertaken in foreign markets which are regulated and which disseminate details of trades. "Best price" should not be seen as a concept which applies only to one side of a trade. Both the buyer and the seller must be obtaining "best price". Rule 5.2 of UMIR ensures that trades between client orders of a Participant meet this standard.

A number of other UMIR provisions are premised on the expectation that the best-priced order will be executed first regardless of the marketplace on which that order is entered.

#### *Order Exposure Obligations*

Under UMIR, if a Participant receives a client order for 50 standard trading units or less with a value of \$100,000 or less the Participant must, subject to certain exceptions listed in Rule 6.3 of UMIR, enter the client order on a marketplace. For the purposes of UMIR, 50 standard trading units would be: 5,000 units of a security trading at \$1.00 or more per unit; 25,000 units of a security trading at \$0.10 or more per unit and less than \$1.00 per unit; and 50,000 units of a security trading at less than \$0.10 per unit.

In accordance with the provisions of Rule 6.3, the Participant may execute the client order upon receipt at a better price than orders indicated in a consolidated market display. If the Participant executes the client order against a principal order or non-client order at a better price, Rule 8.1 of UMIR requires that the Participant must have taken reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market at the time.

The order exposure rule was designed to ensure that clients received the "best price" by:

- requiring the orders to be immediately exposed to the "marketplace" rather than being held by a Participant to be matched internally with future order flow; and
- supporting the price discovery mechanism.

#### *Use of "Last Sale Price"*

A number of rules in UMIR (such as the rules on short sales, market stabilization and market balancing) employ the standard of the "last sale" price. In each of these cases, the premise underlying the particular rule is that the "best-priced" order executes first regardless of the marketplace on which that order is entered. This priority to the execution of orders ensures the working of the "price discovery" mechanism such that the last sale price disclosed on a consolidated market display represents the best approximation of market value of a security at that point in time. In approving recent amendments to the rules on market stabilization and market balancing (see Market Integrity Notice 2005-007 – Notice of Amendment Approval – Amendments Respecting Trading During Certain Securities Transactions – March 4, 2005), the Recognizing Regulators accepted that the "last sale price" represented a better measure of the current market for a security than the "best bid price". Similarly, the Ontario Securities Commission adopted the "last sale price" as the test in their OSC Rule 48-501 which contains similar trading restrictions to those adopted with the amendments to UMIR.

#### *Trades Outside the Prevailing Market*

Rule 5.2 of the UMIR requires that a Participant make reasonable efforts to ensure that a client order is executed at the "best bid price" in case of a sale by the client and the "best ask price" in the case of a purchase by the client. Each of the best bid price and the best ask price is determined by reference to a consolidated market display containing order information from each marketplace.

UMIR provides a number of exceptions from the requirement to trade at the best prevailing price as outlined in the following table. Generally speaking, these exceptions are for particular order types for which the exact price of the trade is not known at the time of the entry or the execution of the order and include: a Call Market Order, a Market-on-Close Order, an Opening Order and a Volume-Weighted Average Price Order. In addition, UMIR permits the execution of a Special Terms Order at a price

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other than the “best price” due to the presence of conditions attached to the execution of the order. UMIR also permits the execution of an order at other than the best price if exemption has been specifically granted by RS or another Market Regulator.

Order Type	Description of Order Type	Rationale for Exemption
Regulatory Exemption	An order that a Market Regulator requires or permits be executed other than on a marketplace in order to maintain a fair or orderly market.	Ordinarily a regulatory exemption is granted where the circumstances of the trade are such that the volume of the trade would cause a disruption to the market or which in accordance with securities legislation can not be completed in the open market. The most common example of this exemption is in the context of a control block distribution or an exempt take-over bid that is not made to the public at a price not exceeding 115% of the market price.
Special Terms Order	An order for the purchase or sale of a security: <ul style="list-style-type: none"> <li>• for less than a standard trading unit;</li> <li>• the execution of which is subject to a condition other than as to price or date of settlement; or</li> <li>• that on execution would be settled on a date other than in the ordinary settlement period or special period established by an Exchange or QTRS.</li> </ul>	This exemption permits Special Terms Orders to trade outside the prevailing market because of the conditions which have been attached to the order or because the order is for less than one standard trading unit. (This exemption permits an odd lot order on the TSX V to trade at the established discount or premium to market prices.) The exemption does not apply if the Special Terms Order could be executed in whole in accordance with its terms or if the rules of the Exchange or marketplace otherwise provide. (For example, the rules of the TSX require odd lots to trade at the market price in accordance with obligations imposed on market makers.)
Basis Order	An order for the purchase or sale of listed securities or quoted securities for which notice has been provided to a Market Regulator prior to entry and the price of the resulting trade is determined in a manner acceptable to a Market Regulator based on price achieved in one of more derivative transactions.	This exemption recognizes that the trade undertaken on the “equity” marketplace is based on prices achieved in one or more transactions in a derivative instrument listed on an Exchange or quoted on a QTRS. As such, the reported price represents a “true market price” determined by the trading of securities in another marketplace, which currently is the derivatives market of the Montreal Exchange. A Market Regulator must be satisfied as to the manner of the determination of the price.
Call Market Order	An order for the purchase or sale of one or more particular securities that is entered on a marketplace on a trading day to trade at a particular time or times established by the marketplace during that trading day at a price established by the trading system of the marketplace.	On the entry of a Call Market Order the price at which the trade will occur is not known. The price of the trade will be calculated by the trading system of the marketplace at the time designated by the marketplace. Since the price at which the trade will occur is not known at the time of the entry of a Call Market Order and the determination of the price is beyond the direct control of the parties to the trade, the execution of a Call Market Order at a price other than the prevailing price is not considered an attempt to bypass the market.
Market-on-Close Order	An order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of executing at the closing price of the security on that marketplace on that trading day.	Execution of this type of order guarantees the parties that the trade will occur at the closing price on a particular market. At the time of the execution, this price is not determinable. Nonetheless, the closing price on a particular marketplace may be outside the prevailing market prices as indicated in a consolidated market display. This exemption permits these trades to be made at the last sale price. Presently, this exemption extends to Special Trading Session Orders (STS Orders) on the TSX.
Opening Order	An order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of calculating and executing at the opening price of the	Each marketplace will be able to establish its own formula for the determination of opening prices. The so-called “calculated opening price” may vary right up to the time of the initial trade. In these circumstances, an order which has been specifically

Order Type	Description of Order Type	Rationale for Exemption
	security on that marketplace on that trading day.	entered to trade on a particular marketplace at the opening may trade at a price which is different from the opening price on another marketplace that opens at the same time or the prevailing price on a marketplace that it then already open for business. At the time of the entry of the order, the "opening" price is not known (though "indications" of the opening price may be publicly disclosed). An Opening Order will not have been entered in an attempt to bypass a "better" market price.
Volume-Weighted Average Price Order	An order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of executing trades at an average price of the security traded on that trading day on that marketplace or on any combination of marketplaces known at the time of the entry of the order.	When a Volume-Weighted Average Price Order executes the price will be determined by a formula that measures average price on one or more marketplaces for trades occurring after the execution of the Volume-Weighted Average Price Order. As such, the final price may be outside the context of the market at the end of the trading session but this fact would not have been determinable at the time of the execution of the order.

Where two or more marketplaces have the same price, trades may be executed on any of such marketplaces. Similarly, if a marketplace has more than one order at the same price, each marketplace will adopt its own allocation rules as to which orders will trade first. Allocations made by a marketplace are subject to the provisions of the client priority requirements set out in Rule 5.3 of UMIR.

#### ***Exemptions for "Wide Distributions"***

Presently, each Exchange and QTRS may establish its own rules for the qualification of a "wide distribution" through the facilities of that Exchange or QTRS. An ATS is not entitled to have rules governing such matters as wide distributions. However, if the objective is to maintain the integrity of the "consolidated market display", no marketplace should have a provision that could have the effect of bypassing "better-priced" orders on any marketplace.

The TSX has therefore indicated that if the proposal with respect to designated trades is adopted in UMIR that the TSX would repeal its existing rules and policies with respect to "wide distributions". If the proposed amendments to UMIR are implemented to permit "designated trades", it would be the intention of RS not to grant any requested exemptions from UMIR that may be required by a Participant seeking to employ the wide distribution rules of the TSX or comparable provisions of any other marketplace.

#### ***Use of Iceberg Orders***

Iceberg orders presently are permitted on the TSX and the TSX V has received regulatory approval to introduce iceberg orders. Based on trading information on the TSX for the period May 1, 2003 to January 8, 2004, iceberg orders accounted for 5.99% of orders by volume with the undisclosed portion of iceberg orders accounting for 4.75% of order volume. Iceberg orders were slightly more likely to participate in trades during this period accounting for 6.88% of trades by volume and 6.77% of trades by value. During the period, the disclosed portion of iceberg orders was approximately 20.66% of the total volume of iceberg orders and approximately 22.4% of the total value of iceberg orders.

Based on a one day sample orders on the TSX for the five securities that during the period July to December of 2003 were the most likely to trade in large blocks, the undisclosed volume represented 6.46% of overall order volume or 7.61% of the disclosed order volume. The sample of securities also indicated that iceberg orders are most prevalent within 5% of the last sale price (where they were 10.89% of the disclosed order volume within that price range). In the sample, there were no iceberg orders at prices which were more than 10% away from the last sale price. The sample of order data was taken at four times during a trading day (open; 11:30 a.m.; 2:30 p.m. and the close) and the undisclosed order volume as a percentage of disclosed order volume increased throughout the trading day (from a low of 6.87% at the open to 14.78% at the close). The sample also disclosed significant variations in the use of iceberg orders among the securities that had been identified as the ones most likely to trade in large blocks. In one case, no iceberg orders were entered at any of the four sample times. For another security, the undisclosed portion of iceberg orders represented approximately 49% of the disclosed volume of orders at the close within 5% of the last sale price.

#### **Summary of Revisions to the Original Proposal**

Based on comments received in response to the Request for Comments contained in Market Integrity Notice 2004-018 and based on comments received from the Recognizing Regulators, RS has revised the proposed amendments. The changes to

the Revised Proposal from the Original Proposal are set out in Appendix “B”. In summary, the Original Proposal has been revised by:

- deleting from the proposal the provisions to extend to an Access Person the requirement to take reasonable steps to honour better-priced orders on a marketplace;
- deleting from the proposal suggested additions to the Policy under Rule 2.1 as these proposals will be encompassed as part of a separate initiative on trade-through obligations;
- clarifying in the policy that the reasonable effort which would be required of a Participant to ensure “best price” would be the entry of orders on marketplaces to which the Participant has access to the extent of the disclosed volume of the “better-priced orders” at the time of the entry of the order;
- amending the concept of the “designated block trade” by deleting the requirement that the order be of a significant size (e.g. have a value of not less than \$25,000,000 or constitute 10% or more of the issued and outstanding shares);
- eliminating the proposed reporting requirements for trades that would have qualified as a “designated block trade” that were executed other than on a marketplace;
- providing a definition of a “pre-arranged trade”;
- providing for a new order marker that would indicate that the order is able to “bypass” undisclosed volume of better-priced orders; and
- making a number of drafting changes to provide greater clarity and consistency of language.

#### **Summary of the Impact of the Revised Proposal**

The principal impacts of the proposed amendments would be to:

- address the “uncertainties” surrounding the ability of a Participant to “move the market” as a result of the presence of iceberg orders by providing a “cap” on the displacement obligation when undertaking certain pre-arranged trades or intentional crosses (defined in the proposal as a “designated trade”) such that there would be no obligation to fill the undisclosed volume of an iceberg order;
- eliminate the need for “wide distributions” as provided for in the rules of the TSX or similar provisions of other marketplaces;
- specifically incorporate in the text of UMIR definitions of various phrases including:
  - “Canadian account”,
  - “designated trade”,
  - “disclosed volume”,
  - “non-Canadian account”,
  - “organized regulated market”,
  - “pre-arranged trade”, and
  - “trading increment”;
- amend the formula to be used to determine when a “better price” exists on a foreign market and for reporting trades agreed to in a foreign currency; and
- provide that the undisclosed portion of the volume of an iceberg order will be ignored in trade allocations when an order is entered:
  - as a “designated trade”,

- to satisfy an obligation to fill an order with a better price in accordance with the requirements respecting “trade-through” (Rule 2.4), or
- to obtain the “best price” for a client order (Rule 5.2).

### Summary Description of the Revised Proposal

#### ***Definition of “Canadian account” and a “non-Canadian account”***

The amendments under the Revised Proposal would define a “non-Canadian account” as an account of a client of a Participant and the client is considered to be a non-resident of Canada for the purposes of the *Income Tax Act* (Canada). This definition is easily verifiable as a Participant must determine the tax status of each account for the purposes of establishing the obligation of the Participant to withhold taxes from distributions of dividends and interest allocated by the Participant to each account. This definition also effectively adopts the interpretation which RS have provided for the term.

The amendments also propose a definition of a “Canadian account” in order to clarify that there are not more than two possible categories. If an account is not a “non-Canadian account” it would be considered a “Canadian account”. As such, if there is any doubt as to the status of an account, it would be treated as a Canadian account (and the exemption for an off-marketplace trade involving a non-Canadian account provided in clause (e) of Rule 6.4 would not be available when trading with or on behalf of the account.)

#### ***Definition of “Designated Trade”***

The Revised Proposal would replace the definition of “designated block trade” with the concept of “designated trade”. Both definitions would include an intentional cross or a pre-arranged trade of a listed security of a quoted security made at a price that:

- would not be less than the lesser of:
  - 95% of the best bid price; and
  - 10 trading increments less than the best bid price; and
- would not be more than the greater of:
  - 105% of the best ask price, and
  - 10 trading increments more than the best ask price.

The differences between the two definitions is the elimination of the requirement in the definition of “designated trade” that the trade have a value of \$25,000,000 or constitute 10% or more of the issued and outstanding securities of a listed security or quoted security.

Based on trading information from early 2004, there are approximately 3 to 4 trades a day on the TSX with a value in excess of \$25,000,000 and no trades on TSX V or CNQ of this size. No estimate is available of the number of trades which may involve more than 10% of the issued and outstanding securities of an issuer.

One of the amendments made to the Marketplace Operation Instrument in 2004 eliminated the requirement that each marketplace maintain an electronic connection to every other marketplace trading the same security. One of the by-products of this change is the practical difficulty of orders “migrating” between markets to trade at a better price. In recognition of these difficulties, RS has proposed that the “reasonable effort” which would be required of a Participant to ensure “best price” would be the entry of orders on marketplaces to which the Participant has access to the extent of the disclosed volume of the “better-priced orders” and that such order entry should be concurrent with or immediately following the execution of the initial trade at the “inferior price”. The obligation of the Participant would not exceed the volume of the trade at the “inferior price”.

If the obligation to “better-priced” orders on other marketplaces under Rule 5.2 is limited to the disclosed volume, the next logical question is whether a pre-arranged trade or intentional cross should be able to by-pass undisclosed volume on the market on which the pre-arranged trade or intentional cross is entered. If this is not permitted, there would be an incentive to enter such trades on “another” marketplace in order to limit the obligation in accordance with the test for “reasonable efforts” that is recommended under Rule 5.2. If a pre-arranged trade or intentional cross is able to by-pass undisclosed volume on the “same marketplace”, the “block” component of the concept of the “designated block trade” becomes redundant and can be deleted from the proposal as all pre-arranged trades or intentional crosses would be able to by-pass undisclosed volume at better-prices on the same or other marketplaces.



The “designated block trade” was designed such that special rules would apply to a very few large trades and that the processing of these trades could, if necessary, be handled manually by the marketplace. The adoption of the broader approach described above would necessitate programming changes by each of the marketplaces and the introduction of a marker to indicate that an order should only trade against “disclosed volume”. The “bypass” marker would apply to:

- orders entered on “another” marketplace to fulfil the “best price” obligation; and
- “designated trades” (pre-arranged trades and intentional crosses on a marketplace at a price within 5% of the current market spread).

***Definition of “Disclosed Volume”***

Disclosed volume at better than the price of the intended trade would exclude:

- the undisclosed portion of any iceberg order;
- a Special Terms Order unless the order could be executed in whole, according to the terms of the order;
- a Basis Order;
- a Call Market Order;
- a Volume-Weighted Average Price Order;
- a Market-on-Close Order; or
- an Opening Order.

The definition of disclosed volume is applicable for determining the obligation to better-priced orders when entering:

- a designed trade under Policy 2.1; and
- an order to satisfy the “best price” obligation under Rule 5.2.

Where the designated trade has been negotiated outside of the trading hours of a marketplace, the disclosed volume would be determined at or after the opening of the marketplace on which the designated trade is to be executed (as this would ensure that the disclosed volume reflected all “after hours” news regarding the market generally or the particular issuer whose securities were included in the designated trade).

***Definition of “Organized Regulated Market”***

The amendments under the Revised Proposal would specifically provide a definition of an “organized regulated market” as a market outside of Canada:

- that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with an ordinary member of the International Organization of Securities Commissions;
- on which the entry of orders and the execution of trades is monitored for securities regulatory requirements at the time of entry and execution by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor its own market;
- that displays and provides timely information to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market’s details of at least the price, volume and security identifier in respect of each order at the time of entry of the order and in respect of each trade at the time of execution or reporting of the trade on that market; and
- that excludes a facility of a market to which trades executed over-the-counter are reported unless:
  - the trade is required to be reported and is reported to the market forthwith following execution,

- at the time of the report, the trade is monitored for compliance with securities regulatory requirements, and
- at the time of the report, timely information respecting the trade is provided to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.

When a Participant is trading a listed security or quoted security outside of Canada, the trade should be conducted on a market that has substantially the same regulatory monitoring and dissemination of data to the public as would be present if the trade had been conducted on a marketplace in Canada. The definition of “organized regulated market” under the Revised Proposal will exclude certain bulletin boards (in particular, the “Pink Sheets”) and reporting facilities (such as the Automated Confirmation Transaction Services (“ACT”) operated by Nasdaq and the Trade Reporting and Comparison Services (“TRACS”) operated by the National Association of Securities Dealers for those members that participate in the Alternative Display Facility).

The OTC Bulletin Board is an automated trading system that permits dealers to voluntarily post quotes subject to NASD rules. The prices and quotes are available to the public, with a data feed available to data vendors. All trades must be reported to NASD within ninety seconds and information of each trade is printed, or if made after hours, the next trading day. If the trade is made after NASD hours, the trade is not printed nor is there “real time” surveillance of the trading activity. In this context, the OTC Bulletin Board would constitute an “organized regulated market” under the Revised Proposal during the period of operation when trades must be reported within ninety seconds. At all other times, the OTC Bulletin Board would not meet the requirements of the definition.

#### ***Definition of “pre-arranged trade”***

The Revised Proposal introduces a definition of a “pre-arranged trade” as a trade for which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered. Orders which have been matched in the “upstairs market” would be considered to be a pre-arranged trade. Similarly, a Participant that receives client instructions to “cross” with a particular order where the clients have agreed to pursue the transaction would be entering a “pre-arranged trade”.

#### ***Definition of “trading increment”***

If adopted, the amendments under the Revised Proposal will permit the immediate execution of orders that are not more than 10 trading increments below the best bid price or not more than 10 trading increments above the best ask price. Under the amendments, the ability to undertake an immediate trade would also depend on the percentage difference of the intended trade price from the best ask price and best bid price. The definition of a “trading increment” under the Revised Proposal will be the minimum difference in price at which orders may be entered on a marketplace in accordance with Rule 6.1. Under the Revised Proposal, Rule 6.1 will set out the minimum trading increment as one cent for orders with a price of \$0.50 or more and one-half cent for orders less than \$0.50. The standardization of minimum trading increments will permit the direct comparison of whether an order on a particular marketplace is a “better-priced” order and allow a Participant to determine whether a period of time to move the market is required in order to execute an intentional cross or prearranged trade. The Revised Proposal provides for the reporting of trades resulting from Call Market Orders or Volume-Weighted Average Price Orders at an increment of one-half of one cent.

#### ***Best Price Obligation***

Part 2 of Policy 5.2 as set out in the Revised Proposal would provide that a Participant will be considered to have taken reasonable efforts to obtain the best price for a client if, at the time of the entry of the client order on a particular marketplace or organized regulated market, the Participant enters orders on behalf of the client on each other marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume on that marketplace. If following the entry of the client order on the particular marketplace or organized regulated market, the client order does not immediately execute in full, the Participant shall monitor the “best bid price” and “best ask price” displayed in a consolidated market display to determine if the unfilled portion of the client order should be entered on another marketplace.

The Revised Proposal moves the exemption provided when a Participant is handling an order for a non-Canadian account from the Policy to be a specifically enumerated exemption in Rule 5.2.

If on the entry of a client order by a Participant on a marketplace, all or part of that client order could be executed immediately against better-priced orders indicated in a consolidated market display, the “best price” obligation would require that the Participant make reasonable efforts to obtain the “best price” for the client. If the client order is being executed as a pre-arranged trade or intentional cross that would qualify as a designated trade, the disclosed volume of any better-priced orders would have to be filled by the Participant as part of its obligations under Part 2 of Policy 2.1.

### ***Execution of a Pre-Arranged Trade or Intentional Cross***

Presently, Policy 2.1 requires an orderly movement of the market over a period of time if the price movement in a security is at least \$1.00 or \$2.00 in the case of stocks trading above \$20.00. The Policy provides that a period of 10 to 15 minutes be allowed for each movement of \$1.00 in price. This Policy presently applies to any trade executed by a Participant or Access Person.

These amounts provided under the current Policy are not appropriate to govern the price movement of "penny stocks" or "high-priced stocks" (in particular stocks trading at \$50.00 or above). The Revised Proposal would introduce a sliding scale. If the price would move the market the greater of 10 price increments and either 5% above the best ask price or 5% below the best bid price, the Participant would be required to enter orders over a period of not less than 5 minutes in order to move the market in an orderly fashion. In keeping with the notion of a sliding scale, a period of not less than 10 minutes "to move the market" would be required if the price movement is more than 10%. The Revised Proposal would limit the obligation to a Participant or Access Person entering a pre-arranged trade or intentional cross (rather than "any" trade as is currently the requirement). If the price at which an intended trade is to be made would require that the market price be moved over time, the prior consent of a Market Regulator will be required to enter the order on a marketplace.

If the price of the pre-arranged trade or intentional cross is within the 5% price threshold the trade would qualify as a "designated trade" and the prior consent of a Market Regulator will not be required. As a designated trade, the trade may execute on a marketplace if:

- orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
- the Participant enters orders on another marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that other marketplace concurrent with, or immediately following the execution of the designated trade.

If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an "off-marketplace" trade and to report the trade to a marketplace.

### ***"Bypass" Order Marker***

Under the Revised Proposal, the undisclosed portion of the volume of an iceberg order will be ignored or "bypassed" when an order is entered:

- as a "designated trade";
- to satisfy an obligation to fill an order with a better price in accordance with the requirements respecting "trade-through" (Rule 2.4); or
- to obtain the "best price" for a client order (Rule 5.2).

If a Participant or Access Person is "moving the market" to execute a trade, the undisclosed portion of an iceberg order which is at a better price will be executed in full before the Participant or Access Person will be able to execute the intentional cross or pre-arranged trade.

Under the Original Proposal, the undisclosed volume of an iceberg order would only be bypassed on the execution of a "designated block trade", which given the requirement that it have a value of \$25,000,000 or more meant that there would on average be approximately 3 or 4 trades per day. In these circumstances, it was thought that the handling of the execution of such orders could be manually undertaken by marketplaces in conjunction with RS.

With the changes proposed in the Revised Proposal for compliance with trade-through and best price obligations together with an expanded definition of a designated trade, there would be a requirement for a new order marker, applicable to those marketplaces which permit undisclosed order volume, that would systematically enforce the bypass of the undisclosed volume of an iceberg order when permitted by the UMIR requirements. (See "Technological Implications and Implementation Plan" later in this Market Integrity Notice.)

### ***Foreign Currency Translation when determining "better price"***

Presently, UMIR provides that prices on foreign markets are to be translated into Canadian dollars using the mid-market spot rate or 7-day forward exchange rate in effect at the time of the trade, plus or minus 15 basis points. This formula was previously used as part of the rules of the TSX but may no longer be an appropriate benchmark. Under the Revised Proposal, the formula

would be replaced with the exchange rate that would apply to a trade of a similar size on an organized market in the foreign jurisdiction. The same formula is being suggested for converting the price of an internal cross or intentional cross that has been agreed to in a foreign currency for the purpose of reporting or executing the cross on a marketplace. The burden will be on the Participant to justify the foreign currency exchange rate which has been used and the Participant must maintain a record of that currency exchange rate with the information on the execution of the order.

Compliance will be assisted if there is a single foreign exchange formula to be used for various requirements under UMIR. While the suggested formula is less specific than the existing formula, in fact the Participant has less choice in picking the rate to be used as it must relate to the exchange rate used by the Participant in similar transactions undertaken in proximity in value and time. Foreign exchange within a 15 basis point plus or minus range can not be used to “artificially” create a better price on an organized regulated market in a foreign jurisdiction.

### ***Consequential Amendments***

Based on the changes described above, the Revised Proposal will make a number of consequential amendments including:

- clarifying that any short sale undertaken by a Participant to fill an order imposed on a Participant or Access Person by any Rule or Policy is exempt from the restriction that the sale price not be less than the last sale price (and would include any order entered to facilitate the execution of a pre-arranged trade or intentional cross under Part 2 of Policy 2.1);
- clarifying that a trade may be made off-marketplace in a security that has been halted, delayed or suspended by an Exchange or QTRS for “business reasons” if such security is not listed, quoted or traded on another marketplace;
- conforming references throughout the Rules and Policies to newly-defined terms and provisions; and
- clarifying that any trade undertaken “off-marketplace” in accordance with an exemption in Rule 6.4 remains subject to a number of order handling provisions in UMIR including:
  - Rule 2.1 requiring a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace;
  - Rule 4.1 prohibiting a Participant from frontrunning certain client orders;
  - Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;
  - Rule 8.1 governing client-principal trading; and
  - Rule 9.1 governing regulatory halts, delays and suspensions of trading.

### **Technological Implications and Implementation Plan**

If the Revised Proposal is approved, the amendments would introduce a “bypass” marker which would indicate that the order is either a “designated trade” or an order entered on a marketplace to satisfy an obligation to an order with a better price in accordance with the Policies under Rule 5.2. Orders with a bypass marker would not trade with the undisclosed volume of an iceberg order. In order to provide Participants, marketplaces and service providers with an opportunity to make changes to their programming to accommodate the introduction of this marker, implementation of the required marker would be deferred for a period of not less than 90 days following the date on which the Recognizing Regulators approve the Revised Proposal.

Implementation of a “cap” on the displacement obligation with respect to trading a “designated trade” may require each marketplace that permits orders to be entered with undisclosed volume to undertake programming changes to their respective trading system or to have the ability to override trade allocations to permit the trades to be allocated and executed at the time and prices indicated in the suggested execution procedure. Ideally, the adoption of the recommendations would permit designated trades:

- at any time during the trading day of a marketplace;
- without the requirement to halt trading on marketplaces to complete the transactions (though a temporary order inhibition may be required on certain marketplaces to facilitate the handling of the “displacement” trades);

- to be transparent (as a result of the disclosure of the order marker); and
- to establish the “last sale price” for the purposes of UMIR.

Until marketplaces have been able to modify their systems to accommodate changes to their trading allocation algorithms to bypass undisclosed volume in certain circumstances, the obligation on a Participant or Access Person would be quantified by the applicable “disclosed volume” but upon entry to the marketplace these orders would be allocated in accordance with the allocation algorithms then in place. Marketplaces that permit iceberg orders would be expected to have modified their trading systems concurrent with the introduction of the “bypass” marker.

### **Appendices**

The text of the proposed amendments to UMIR related to off-marketplace trades is set out in Appendix “A”.

RS received seven comment letters in response to the Request for Comments on the proposed amendments set out in Market Integrity Notice 2004-018. The comments and the response of RS are summarized in Appendix “B”. Appendix “B” also contains the text of the relevant provisions of the Rules and Policies as they would read on the adoption of the amendments. This text has been marked to indicate changes from the Original Proposal set out in Market Integrity Notice 2004-018.

### **Questions**

Questions concerning this notice may be directed to:

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Appendix "A"

**Universal Market Integrity Rules**

**Amendments to the Rules and Policies  
Related to Off-Marketplace Trades**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by adding the following definitions of "Canadian account", "designated trade", "disclosed volume", "organized regulated market", "pre-arranged trade", "non-Canadian account" and "trading increment":

**"Canadian account"** means an account other than a non-Canadian account.

**"designated trade"** means an intentional cross or a pre-arranged trade of a listed security or quoted security that would be made at a price that:

- (a) would not be less than the lesser of:
  - (i) 95% of the best bid price; and
  - (ii) 10 trading increments less than the best bid price; and
- (b) would not be more than the greater of:
  - (i) 105% of the best ask price, and
  - (ii) 10 trading increments more than the best ask price.

**"disclosed volume"** means the aggregate of the number of units of a listed security or quoted security relating to each order for that security entered on a marketplace and displayed in a consolidated market display that is offered at a price below the intended price of a trade in the case of a purchase or that is bid at a price above the intended price of a trade in the case of a sale, but does not include the volume of:

- (a) a Special Terms Order unless the order could be executed in whole, according to the terms of the order;
- (b) a Basis Order;
- (c) a Call Market Order;
- (d) a Market-on-Close Order;
- (e) an Opening Order; or
- (f) a Volume-Weighted Average Price Order.

**"non-Canadian account"** means an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the *Income Tax Act* (Canada).

**"organized regulated market"** means a market outside of Canada:

- (a) that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with a securities regulatory authority that is an ordinary member of the International Organization of Securities Commissions;
- (b) on which the entry of orders and the execution of trades is monitored for compliance with regulatory requirements at the time of entry and execution by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor the entry of orders and the execution of trades on that market for compliance with regulatory requirements; and

- (c) that displays and provides timely information to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of at least the price, volume and security identifier of each order at the time of entry of the order on that market and at least the price, volume and security identifier of each trade at the time of execution or reporting of the trade on that market,

but, for greater certainty, does not include a facility of a market to which trades executed over-the-counter are reported unless:

- (d) the trade is required to be reported and is reported to the market forthwith following execution;
- (e) at the time of the report, the trade is monitored for compliance with securities regulatory requirements; and
- (f) at the time of the report, timely information respecting the trade is provided to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.

“**pre-arranged trade**” means a trade in respect of which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered.

“**trading increment**” means the minimum difference in price at which orders may be entered in accordance with Rule 6.1.

- 2. Rule 3.1(2) is amended by adding the following as clause (h):

- (h) made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy.

- 3. Rule 4.1 is amended by deleting in clause (a) of subsection (1) the phrase “stock exchange or market” and substituting “organized regulated market or other market”.

- 4. Subsection (1) of Rule 6.1 is amended by adding at the end of the subsection the phrase “in respect of an order with a price of less than \$0.50”.

- 5. Rule 6.2 is amended by inserting the following as subclause (vii.1) in clause (b) of subsection (1):

- (vii.1) part of a designated trade or entered on a marketplace to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy,

- 6. Rule 6.4 is amended by:

- (a) deleting clause (d) and substituting the following:

- (d) **On an Organized Regulated Market** - executed on an organized regulated market.

- (b) deleting clause (e) and substituting the following:

- (e) **Outside of Canada** - executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or an organized regulated market in accordance with the reporting requirements of the marketplace or organized regulated market.

- (c) inserting the following as clause (i):

- (i) **Non-Regulatory Halt, Delay or Suspension** – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.

8. Subsection (4) of Rule 9.1 is amended by deleting the phrase “exchange or organized regulated market that publicly disseminates details of trades in that market” and substituting “organized regulated market”.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:

1. Part 1 of Policy 2.1 is amended by deleting the opening of the last paragraph and substituting the following:

Without limiting the generality of the Rule, the following are example of activities that would be considered to be in violation of requirements to conduct business openly and fairly or in accordance with just and equitable principles of trade:

2. Part 2 of Policy 2.1 is repealed and the following substituted:

**Part 2 – Executing a Pre-arranged Trade or Intentional Cross**

A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps prior to executing the pre-arranged trade or intentional cross to ensure that any order on any marketplace at a price that is “better” than the intended price of the pre-arranged trade or intentional cross price is filled. In filling the “better” priced orders, the Participant or Access Person is expected to move the market in an orderly manner to the price which will permit the trade to be executed on a marketplace. The prior approval of a Market Regulator is required if a Participant or Access Person wants to undertake a pre-arranged trade or intentional cross at a price that:

- will be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; or
- will be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments.

As a condition for granting approval of the trade, the Market Regulator may require the Participant or Access Person to enter a series of orders on one or more marketplaces over a period of time considered reasonable by the Market Regulator in order to move the market price to the price at which the pre-arranged trade or intentional cross will occur. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is 10% or more.

If the price at which the pre-arranged trade or the intentional cross is to be made:

- will **not** be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and
- will **not** be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,

the orders on entry may be marked as a “designated trade”. As a designated trade, the trade may execute on a marketplace if:

- orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
- the Participant enters orders on another marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that other marketplace concurrent with, or immediately following the execution of the designated trade.

If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an “off-marketplace” trade and to report the trade to a marketplace.

The prior approval of the Market Regulator is not required for the entry of a “designated trade”.

3. Part 2 of Policy 5.2 is repealed and the following substituted:



## Part 2 – Orders on Other Marketplaces

Subject to the qualification of the “best price obligation” as set out in Part 1, Participants may not intentionally trade through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on another marketplace or on an organized regulated market. This Policy applies even if the client consents to the trade on the other marketplace or the organized regulated market at the inferior price. Participants may make the trade on that other marketplace or organized regulated market if the better bids or offers, as the case may be, on marketplaces are filled first or coincidentally with the trade on the other marketplace or organized regulated market.

This Policy applies to “active orders”. An “active order” is an order that may cause a trade-through by executing against an existing bid or offer on a marketplace or an organized regulated market at a price that is inferior to the bid or ask price on another marketplace at the time. This Policy applies to trades for Canadian accounts and Participants’ principal (inventory) accounts. The Policy also applies to Participants’ principal trades on foreign over-the-counter markets made pursuant to the outside-of-Canada exemption in clause (e) of Rule 6.4.

A Participant will be considered to have taken reasonable efforts to obtain the best price for a client if, at the time of the entry of the client order on a particular marketplace or organized regulated market, the Participant enters orders on behalf of the client on each other marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume on that marketplace. If following the entry of the client order on the particular marketplace or organized regulated market, the client order does not immediately execute in full, the Participant shall monitor the “best bid price” and “best ask price” displayed in a consolidated market display to determine if the unfilled portion of the client order should be entered on another marketplace.

4. Part 3 of Policy 5.2 is amended by:
  - (a) deleting the phrase “mid-market spot rate or 7-day forward exchange rate in effect at the time of the trade, plus or minus 15 basis points” and inserting “exchange rate the Participant would have applied in respect of a trade of similar size on an organized regulated market in that foreign jurisdiction”;
  - (b) deleting the phrase “one-half of a tick” and inserting “one trading increment”;
  - (c) adding at the end of the Part the following sentence: “A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better price existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.”
5. The following is added as Policy 6.1:

### **POLICY 6.1 – ENTRY OF ORDERS TO A MARKETPLACE**

Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as Call Market Order or a Volume-Weighted Average Price Order may execute and be reported in an increment of one-half of one cent in accordance with the method of calculation of the trade price established by the marketplace on which the order has traded.

6. Policy 6.4 is deleted and the following substituted:

### **Part 1 – Trades Outside of Marketplace Hours**

In accordance with section 6.1 of National Instrument 23-101, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise when a Participant may wish to make an agreement to trade as principal with a Canadian account, or to arrange a trade between a Canadian account and a non-Canadian account, outside of the trading hours of any marketplace that trades the particular security.

Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on an organized regulated market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.

A Participant may make an agreement to trade in a listed security or a quoted security with a Canadian account as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on an organized regulated market. There is no trade until such time as there is an execution on a marketplace or an organized regulated market or the trade is otherwise completed in accordance with one of the exemptions set out in Rule 6.4. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. A Participant may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace or organized regulated market cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.

#### **Part 2 – Application to Foreign Affiliates and Others**

The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.

Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.

#### **Part 3 – Non-Canadian Accounts**

Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal with a non-Canadian account or as agent for the purchase and seller both of whom are non-Canadian accounts. A "non-Canadian account" is defined as an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the *Income Tax Act* (Canada). There may be certain situations arising where a Participant is uncertain whether a particular account is a "non-Canadian account" for the purpose of this exemption. In these situations the account should be treated as a "Canadian account". The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account's status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.

For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.

#### **Part 4 – Reporting Foreign Trades**

Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade in a listed security or a quoted security that is made as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts, unless the trade is reported to an organized regulated market. If such an "outside Canada" trade has not been reported to an organized regulated market, a Participant shall report such trade to a marketplace no later than the close of business on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.

#### **Part 5 – Application of UMIR to Orders Not Entered on a Marketplace**

Under Rule 6.4, a Participant, when acting as principal or agent, may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace except in accordance with an exemption specifically enumerated within Rule 6.4. For the purposes of UMIR, a "marketplace" is defined as an Exchange, QTRS or an ATS and a "Participant" is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. If a person is a Participant, certain provisions of UMIR will apply to every order handled by that Participant even if the order is entered or executed on a marketplace that has not adopted UMIR as its market integrity rules or if the order is executed over-the-counter. In particular, the following provisions of UMIR will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:

- Rule 2.1 requires a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace;
- Rule 4.1 prohibits a Participant from frontrunning certain client orders;
- Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;
- Rule 8.1 governing client-principal trading; and
- Rule 9.1 governing regulatory halts, delays and suspensions of trading.

In accordance with Rule 11.9, UMIR will not apply to an order that is entered or executed on a marketplace in accordance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules or if the order is entered and executed on a marketplace or otherwise in accordance with the rules of an applicable regulation services provider or in accordance with the terms of an exemption from the application of the Trading Rules.

7. The following is added as Policy 7.5:

**POLICY 7.5 - RECORDED PRICES**

If the price of:

- an internal cross or intentional cross to be recorded on a marketplace; or
- a trade that has been executed outside of Canada that is to be reported to a marketplace in accordance with clause (e) of Rule 6.4,

has been agreed to in a foreign currency and the trade is to be recorded or reported in Canadian currency, the price in foreign currency shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on an organized regulated market at the time of the internal cross, intentional cross or execution of the trade outside of Canada. If the trade price converted into Canadian currency falls between two trading increments for the marketplace on which the cross is to be entered or the trade reported, the price shall be rounded to the nearest trading increment. A Participant shall maintain with the record of the order the exchange rate used for the purpose of entering the internal cross or intentional cross or reporting the foreign trade and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with Rule 10.11(3).

8. Part 1 of Policy 8.1 is amended by deleting the last two sentences of the first paragraph and substituting the following:

If the security is traded on more than one marketplace, the client must receive, when the Participant is buying, a higher price than the best bid price, and, if the Participant is selling, the client must pay a lower price than the best ask price.

Appendix “B”

Universal Market Integrity Rules

Comments Received on Proposed Amendments  
Related to “Off-Marketplace” Trades

On August 20, 2004, RS issued Market Integrity Notice 2004-018 requesting comments on proposed amendments to UMIR respecting the ability of Participants and Access Persons to conduct trades of listed or quoted securities other than by the entry of orders on a marketplace. In response to that Market Integrity Notice, RS received comments from the following persons:

- Barclays Global Investors (“Barclays”)
- BMO Nesbitt Burns (“BMO”)
- Canadian Securities Traders Association Inc. (“CSTA”)
- CDP Capital Inc. (“CDP”)
- Markets Inc. (“MI”)
- TD Securities Inc. (“TD”)
- TSX Markets (“TSX”)

The following table presents a summary of the comments received together with the response of RS to those comments. Column 1 of the table is also marked to indicate the revisions to the amendments as published on August 20, 2004 that are proposed by RS in response to the comments. Additions are indicated in “red” font and the added text is underlined while deletions from the August 20, 2004 proposal are indicated in “blue” font and the deleted text is struck out.

Text of Provisions Following Adoption of Revised Proposals	Commentator and Summary of Comment	Response to Comment
<p><b>1.1 Definitions</b></p> <p>“<b>Canadian account</b>” means an account other than a non-Canadian account.</p>		
<p>“<del>designated block trade</del>” means an intentional cross or a pre-arranged trade of a listed security or quoted security that <del>at the time of approval by a Market Regulator:</del></p> <p>(a) <del>would be made at a price that:</del></p>	<p><b>BMO and TSX</b> – Requests a definition for “pre-arranged trade”.</p>	<p>The term “pre-arranged trade” is used in TSX requirements without definition. However, given the importance of the term to the operation of the rules, RS would propose to add a definition for clarity purposes.</p>
<p>(a) would not be less than the lesser of:</p> <p>(i) 95% of the best bid price; and</p> <p>(ii) 10 trading increments less than the best bid price; and</p> <p>(b) would not be more than the greater of:</p>	<p><b>CDC</b> - Queries the impact of the term “trading increments” in the definition suggested. States that, as they understand the reference to Rule 6.1, the reference to trading increments in the definition of “designated block trade” appears to be inappropriate.</p>	<p>The term “trading increment” will be defined as the minimum price variation permitted in accordance with Rule 6.1. Rule 6.1 will provide that the minimum variation is one-half of one cent if the security trades at less than \$0.50 and one cent if the security trades at \$0.50 or more.</p>
<p>(i) 105% of the best ask price, and</p> <p>(ii) 10 trading increments more than the best ask price; <del>and</del></p> <p>(b) <del>if executed, would:</del></p> <p>(i) <del>have a value of</del> <u>\$25,000,000, or</u></p>	<p><b>TD</b> – Suggests removing the band within which designated block trades can occur. Notes that the price of the designated block trade will always be a function of the size of the block and the liquidity and fundamentals of the underlying security. States that a situation may arise where it is appropriate that the designated block trade be effected at levels that are greater than 5% from the posted market.</p>	<p>The originally proposed “designated block trade” was an exception to the general rule that all better-priced orders must be filled before a trade can occur. For the market to be both “fair and orderly”, the obligation to move the market is imposed over a period of time. RS is of the view that a price movement of 5% or less can be considered “orderly” but the market should have an opportunity to respond if</p>

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<p>(ii) <del>constitute a trade of 10% or more of the issued and outstanding securities of the listed security or quoted security.</del></p>	<p>Suggests that this band should be either widened or eliminated outright.</p>	<p>price movements are to exceed that amount.</p> <p>RS would note that the TSX is proposing to reduce from 10% to 5% the price variation threshold that would be used in the Market-on-Close Facility to determine whether a "Price Movement Extension" would be invoked. If the closing price would be more than 5% off the last sale price or the trade-weighted average price during the last 20 minutes of the regular session, a 10-minute period would be permitted for further order entry into the Market-on-Close Facility. The reduction from 10% to 5% was one of the amendments that had been suggested following significant public consultation by the TSX.</p> <p>As a result of proposed revisions relating to means of satisfying the "best price" obligation under Rule 5.2, RS is proposing to remove the "size" requirement from the definition. If an order is a pre-arranged trade or an intentional cross, RS is proposing that the order can trade provided "better-priced" orders on the same or another marketplace that are disclosed in a consolidated market display are filled.</p>
<p>"disclosed volume" means the aggregate of the number of units of a listed security or quoted security relating to each order for that security entered on a marketplace and displayed in a consolidated market display <u>that is offered at a price below at or above the intended price of a designated block trade in the case of a purchase or bid at a price above at or below the intended price of a designated block trade or wide distribution trades in the case of a sale, determined at the time of entry on a marketplace, but does not including include the volume of:</u></p> <p>(a) a Special Terms Order unless the order could be executed in whole, according to the terms of the order;</p> <p>(b) a Basis Order;</p>	<p><b>BMO</b> – Requests that the definition of "special terms" orders should be expanded to include spread and contingent orders.</p> <p><b>TSX</b> – Advises that if the Proposal is enacted, there will be no separate provisions in UMIR or in the TSX Rules with respect to wide distributions and as such, this term should be deleted from this definition.</p>	<p>The definition of "special terms order" under UMIR already encompasses a "spread order" or a "contingent order". If such orders have been entered on a marketplace in a special facility they would be included in the calculation of "disclosed volume" only if the orders could be executed in whole according to their terms.</p> <p>The reference in the definition was a drafting error and will be deleted.</p>

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<p>(c) a Call Market Order;</p> <p>(d) a Market-on-Close Order;<del>or</del></p> <p>(e) an Opening Order;<del>or</del></p> <p>(f) a Volume-Weighted Average Price Order.</p>		
<p><b>“non-Canadian account”</b> means an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the <i>Income Tax Act</i> (Canada).</p>		
<p><b>“organized regulated market”</b> means a market outside of Canada:</p> <p>(a) that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with a securities regulatory authority that is an ordinary member of the International Organization of Securities Commissions;</p> <p>(b) on which the entry of orders and the execution of trades is monitored for compliance with regulatory requirements at the time of entry and execution by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor the entry of orders and the execution of trades on that market for compliance with regulatory requirements; and</p> <p>(c) that displays and provides timely information to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of at least the price, volume and security identifier of each order at the time of entry of the order on that market and at least the price, volume and security identifier of each trade at the time of execution or reporting of</p>		

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<p>the trade on that market, but, for greater certainty, does not include a facility of a market to which trades executed over-the-counter are reported unless:</p> <p>(d) the trade <del>is required to must</del> be reported <u>and is reported to the market</u> forthwith following execution;</p> <p>(e) at the time of the report, the trade is monitored for compliance with securities regulatory requirements; and</p> <p>(f) at the time of the report, timely information respecting the trade is provided to data vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.</p>		
<p><u>“pre-arranged trade” means a trade in respect of which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered.</u></p>		
<p><u>“trading increment” means the minimum difference in price at which orders may be entered in accordance with Rule 6.1.</u></p>		
<p><b>3.1 Restrictions on Short Selling</b></p> <p>(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:</p> <p>...</p> <p>(h) <del>made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy in furtherance of the displacement obligation of the Participant or Access Person in accordance with Part 2 of Policy 2.1.</del></p>		
<p><b>4.1 Frontrunning</b></p> <p>(1) A Participant with knowledge of a client order that on entry could</p>		

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<p>reasonably be expected to affect the market price of a security, shall not, prior to the entry of such client order:</p> <p>(a) enter a principal order or a non-client order on a marketplace, organized regulated market or other market, including any over-the-counter market, for the purchase or sale of the security or any related security;</p> <p>...</p>		
<p><b>5.2 Best Price Obligation</b></p> <p>(2) Subsection (1) does not apply to the execution of an order which is:</p> <p>(a) required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4 to be executed other than on a marketplace in order to maintain a fair or orderly market;</p> <p>(b) a Special Terms Order unless:</p> <p>(i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or</p> <p>(ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display; <del>or</del></p> <p>(c) directed or consented to by the client to be entered on a marketplace as:</p> <p>(i) a Call Market Order,</p> <p>(ii) a Volume-Weighted Average Price Order,</p> <p>(iii) a Market-on-Close</p>		



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<p>Order, or (iv) an Opening Order; or  (d) a client order on behalf of a non-Canadian account.</p>		
<p><b>6.1 Entry of Orders to a Marketplace</b></p> <p>(1) No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of cent other than an increment of one-half of one cent in respect of an order with a price of less than \$0.50.</p>		
<p><b>6.2 Designations and Identifiers</b></p> <p>(1) Each order entered on a marketplace shall contain:</p> <p>...</p> <p>(a) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:</p> <p>...</p> <p>(vii.1) <u>part of a designated trade or entered on a marketplace to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy.</u></p>		
<p><b>6.4 Trades to be on a Marketplace</b></p> <p>A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:</p> <p>...</p> <p>(d) <b>On an Organized Regulated Market</b> - <del>executed on an organized regulated market and, if the value of the trade in a listed security or a quoted security was \$25,000,000 or more or if the number of units traded constitutes 10% or more of the issued and outstanding securities of the listed security or</del></p>		

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<p><del>quoted security, the trade shall also be reported to a Market Regulator not later than the commencement of trading in that listed security or quoted security on a marketplace on the next trading day;</del></p> <p>(e) <b>Outside of Canada</b> - executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to:</p> <p>(i) <del>a marketplace or an organized regulated market in accordance with the reporting requirements of the marketplace or organized regulated market;</del> and</p> <p>(ii) <del>if the trade is in a listed security or quoted security and the value of the trade is \$25,000,000 or more or more or if the number of units traded constitutes 10% or more of the issued and outstanding securities of the listed security or quoted security, a Market Regulator not later than the commencement of trading in that listed security or quoted security on a marketplace on the next trading day;</del></p> <p>...</p> <p>(i) <b>Non-Regulatory Halt, Delay or Suspension</b> – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.</p>		
<p><b>9.1 Regulatory Halts, Delays and Suspensions of Trading</b></p> <p>(4) <b>Trading Outside Canada During Regulatory Halts, Delays and Suspensions</b> – If</p>		

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<p>trading in a security has been prohibited on a marketplace in accordance with clauses (1)(b), (c) or (d) or subsection (2), a Participant may execute a trade in the security, if permitted by applicable securities legislation, outside of Canada on an organized regulated market.</p>		
<p><b>POLICY 2.1 – JUST AND EQUITABLE PRINCIPLES</b></p> <p><b>Part 1 – Examples of Unacceptable Activity</b></p> <p>Rule 2.1 provides that a Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities that are eligible to be traded on a marketplace. The Rule also provides that an Access Person shall transact business openly and fairly. As such, the Rule operates as a general anti-avoidance provision.</p> <p><del>Each Participant and Access Person has been granted access to trading on at least one marketplace. Given that access, each Participant and Access Person may have, directly or indirectly, access to orders on other marketplaces and each Participant and Access Person receives the benefit under various Rules of the “best ask price”, “best bid price”, “better price” and “last sale price” as disclosed in a consolidated market display. As a result, each Participant and each Access Person owes an obligation to the “market” generally. The Canadian market envisaged by the Marketplace Operation Instrument consists of integrated marketplaces with pre trade and post trade transparency on some form of consolidated basis. While there would be competition between marketplaces based on the facilities and services which they offered, persons with access to a marketplace would be expected to support the integrity of the overall market by not intentionally bypassing better priced orders on one marketplace in favour of the execution of the order on a particular marketplace or organized regulated market.</del></p> <p><del>In determining whether a Participant or Access Person had undertaken reasonable efforts to satisfy this aspect of the obligation to transact business openly and</del></p>		

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<p><del>fairly, consideration would be given to whether:</del></p> <ul style="list-style-type: none"> <li><del>• the Participant or Access Person had access to the marketplace with the better priced order or orders and the additional costs that would be incurred in accessing such order or orders; and</del></li> <li><del>• the Participant has met the displacement obligation set out in Part 2 of this Policy.</del></li> </ul> <p><del>If the Market Regulator determines that a Participant or Access Person has not undertaken reasonable efforts to ensure that better priced orders are not bypassed, the Market Regulator may require the Participant or Access Person to satisfy the better bid or offer up to the volume of the trade which failed to comply with this Policy.</del></p> <p><del>The requirement to access better priced orders on a marketplace does not apply when a Participant is trading as principal with a non-Canadian account or trading as agent on behalf of the buyer and the seller, both of whom are non-Canadian accounts. These circumstances have been excluded on the basis that requirements of the foreign jurisdiction should be applied. Orders which originate in Canada should be handled, at least initially, in accordance with Canadian requirements. As such, Canadian requirements would determine whether an order originating in Canada is permitted or required to be entered or executed on a foreign market.</del></p> <p><del>The requirement to access better priced orders on a marketplace does not apply to an Access Person when the order of the Access Person is handled as a client order by a Participant or by any dealer in a Canadian jurisdiction as agent for the Access Person.</del></p> <p><del>Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is contrary to the requirements to conduct business openly and fairly. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who "uses" another person to make a trade off of a marketplace (in</del></p>		

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<p>circumstances where an “off-market exemption” is not available) to be violating just and equitable principles of trade.</p> <p>Certain patterns of activity that can be undertaken that affect the marketplace but do not reach the level of manipulative and deceptive trading practices are nonetheless unavailable to Participant and Access Persons. For example, Rule 4.1 dealing with frontrunning is specifically tied to misuse of information when a Participant <i>knows</i> a client order will be entered. Somewhere between the Participant who acts on certain knowledge of a client order and the Participant who acts despite a single, uncertain expression of interest are the Participants that repeatedly take advantage of <i>expressions of interest</i> in particular securities. Such Participants are not conducting business openly and fairly and in accordance with just and equitable principles of trade. The “just and equitable principles” clause and the requirement transact business openly and fairly prevent such activity.</p> <p>Without limiting the generality of the Rule, the following are examples of activities <del>by a Participant</del> that would be considered to be in violation of <u>the obligation to conduct business openly and fairly or in accordance with just and equitable principles of trade:</u></p> <ul style="list-style-type: none"> <li>(a) without the specific consent of the client, entering client and principal orders in such a manner as to attempt to obtain execution of a principal order in priority to the client order; (See Part 2 of Policy 5.3 – Client Priority for examples of the prohibition on “intentional trading ahead”.)</li> <li>(b) without the specific consent of the client, to vary the instructions of the client to indicate that securities held by the client are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the client for the dividend in cash;</li> <li>(c) without the specific consent of the lender of securities, to vary the arrangements in respect of securities borrowed by the Participant to indicate that the</li> </ul>		

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<p>borrowed securities are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the lender for the dividend in cash; and</p> <p>(d) when trading a combined board lot/odd lot order for a listed security on an Exchange, entering the odd lot portion of the order prior to executing the board lot portion of the order as such order entry exposes the Registered Trader on the TSE or the Odd Lot Dealer on the CDNX to automatic odd lot trades at unreasonable prices.</p>		
<p><b>POLICY 2.1 – JUST AND EQUITABLE PRINCIPLES</b></p> <p><b>Part 2 – <u>Executing a Pre-Arranged Trade or Intentional Cross Moving Markets to Execute a Trade</u></b></p> <p>A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps prior to executing the pre-arranged trade or intentional cross to ensure that any order on any marketplace at a price that is <del>the “same” or “better”</del> than the intended price of the pre-arranged trade or intentional cross price is filled. In filling the <del>“same” or “better”</del> priced orders, the Participant or Access Person is expected to move the market in an orderly manner to the price which will permit the trade to be executed on a marketplace. <del>The prior approval of a Market Regulator is required if a</del> Participant or Access Person <del>wants wanting</del> to undertake a pre-arranged trade or intentional cross <del>at a shall obtain the prior approval of the Market Regulator if the price that at which the pre-arranged trade or the intentional cross is to be made:</del></p> <ul style="list-style-type: none"> <li>• will be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; or</li> <li>• will be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments.</li> </ul> <p>As a condition for granting approval of the trade, the Market Regulator may require</p>	<p><b>TD</b> - Believes that there should be rules established for instances in which a designated block trade is taken on and/or redistributed after market hours. Notes that it is not uncommon for large blocks of stock to trade off-market hours, often in a competitive tender process that results in significant information leakage. Notes that in these instances, orders intended to interfere with the block cross are entered into the TSX book prior to the opening of trading, often times by market participants with specific knowledge of the pending cross.</p> <p><b>TSX</b> - Notes that the first line of the fifth paragraph of Part 2 of Policy 2.1 refers to “block trades”, yet this Policy refers to pre-arranged trades or intentional crosses and suggests that for consistency, “block trades” be replaced with “pre-arranged trades and intentional crosses”.</p>	<p>The original version of the proposed amendments to Policy 2.1 required that the “disclosed volume” be measured after the opening of the marketplace on which the designated block trade would be executed. Under the revised version, the calculation of the “disclosed volume” will be made at the time of the entry of the “designated trade”. To key the obligation to orders at the close of each marketplace on the previous trading day ignores the ordinary impact of “after-hours” disclosures of market or economic information. In addition, there would be equitable concerns unless all marketplaces maintained the same “closing time”.</p> <p>The provision in question has been deleted from the revised proposal.</p>

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<p>the Participant or Access Person to enter a series of orders on one or more marketplaces over a period of time considered reasonable by the Market Regulator in order to move the market price to the price at which the pre-arranged trade or intentional cross will occur. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is 10% or more.</p> <p>If the price at which the pre-arranged trade or the intentional cross is to be made:</p> <ul style="list-style-type: none"> <li>• will <b>not</b> be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and</li> <li>• will <b>not</b> be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,</li> </ul> <p><u>the orders on entry may be marked as a "designated trade". As a designated trade, the trade may execute on a marketplace if:</u></p> <ul style="list-style-type: none"> <li>• <u>orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and</u></li> <li>• <u>the Participant enters orders on another marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that other marketplace concurrent with, or immediately following the execution of the designated trade.</u></li> </ul> <p><u>If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an "off-marketplace" trade and to report the trade to a marketplace.</u></p> <p><del>The prior approval of the Market Regulator is not required for the entry of a "designated trade", and the market may be moved concurrent with the entry of the pre-arranged trade or the intentional cross.</del></p> <p><del>If the pre-arranged trade or intentional cross would qualify as a "designated block</del></p>		

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<p>trade”, a Participant can limit the number of securities that have to be bought or sold in an attempt to move the market. A Participant may request that a Market Regulator approve a pre-arranged trade or intentional cross as a “designated block trade” prior to the entry of the orders on a marketplace. If the Market Regulator provides approval for such order, the obligation of the Participant to move the market will be “capped” at the disclosed volume at the time of the approval of the Market Regulator (the “displacement obligation”).</p> <p>Where the block trade has been negotiated outside of the trading hours of a marketplace, the disclosed volume would be determined at or after the opening of a marketplace on which that security is traded (as this would ensure that the disclosed volume reflected all “after hours” news regarding the market generally or the particular issuer whose securities were included in the block trade).</p> <p>Prior to the entry on a marketplace of the order that would qualify as a “designated block trade”, the Participant would obtain the approval of a Market Regulator. Upon receiving the approval of the Market Regulator, the Participant would enter a “fill and kill order” on each marketplace for the disclosed volume on that marketplace. The designated block trade may then be executed on a marketplace at the intended price without further interference from any orders on that or any other marketplace. At the option of the Participant, the sales or purchases required to meet the displacement obligation may reduce the size of the designated block trade or be settled from or to the inventory of the Participant. If the designated block trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an “off-marketplace” trade and to report the trade to a marketplace.</p> <p>Upon approval of a “designated block trade”, the Market Regulator will coordinate with the Participant and each marketplace the entry and execution of the orders to satisfy:</p> <ul style="list-style-type: none"> <li>• the displacement obligation; and</li> <li>• the designated block trade.</li> </ul> <p>In particular:</p>		



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<ul style="list-style-type: none"> <li>• <del>orders included in the disclosed volume would be guaranteed a fill; and</del></li> <li>• <del>the undisclosed volume of any "iceberg" orders would not be filled.</del></li> </ul> <p><del>If the marketplace on which the Participant enters orders in fulfillment of the displacement obligations has a market making system, the market maker may participate in the trades as a result of automatic rights or entitlements in accordance with the applicable Marketplace Rules governing Market Maker Obligations provided such participation reduces the displacement obligation of the Participant. Orders of a market maker which are included in the disclosed volume are entitled to be filled.</del></p> <p><del>Any short sale undertaken by a Participant to meet displacement obligations would be exempt from the price restrictions on short sales.</del></p>		
<p><b>POLICY 5.2 – BEST PRICE OBLIGATION</b></p> <p><b>Part 2 – <u>Orders on Other Trade-Through of Marketplaces</u></b></p> <p>Subject to the qualification of the "best price obligation" as set out in Part 1, Participants may not intentionally trade through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on another marketplace or on an organized regulated market. This Policy applies even if the client consents to the trade on the other marketplace or the organized regulated market at the inferior price. Participants may make the trade on that other marketplace or organized regulated market if the better bids or offers, as the case may be, on marketplaces are filled first or coincidentally with the trade on the other marketplace or organized regulated market. <del>The time of order entry is the time that is relevant for determining whether there is a better price on a marketplace.</del></p> <p>This Policy applies to "active orders". An "active order" is an order that may cause a trade-through by executing against an existing bid or offer on a marketplace or an organized regulated market at a price that is inferior to the bid or ask price on another marketplace at the time. <u>This Policy applies to trades for Canadian accounts and Participants' principal (inventory) accounts.</u></p>	<p><b>TSX</b> - Agrees that marketplace participants owe an obligation to the market generally to ensure that better-priced orders on a marketplace are honoured. Agrees with RS's proposal to amend UMIR to preclude a Participant from by-passing better-priced orders on a marketplace when trading principal and non-client orders. Understands the reason for drafting this requirement in Policy 2.1 rather than Rule 5.2, however, states that despite the fact that Rule 5.2 is drafted to provide the obligations that a Participant has to its clients, submits that it may be clearer to Participants to insert the best price obligation for principal and non-client orders directly into Rule 5.2. Believes that drafting the obligation in Rule 5.2 would clarify that the best price obligation extends equally to client orders and to principal and non-client orders. States that if the obligation is drafted in Rule 5.2(1), then it is clear that the list of exemptions that are set out in Rule 5.2(2) would also apply to non-client and principal orders. Concerned that, if obligation for non-client and principal orders is placed in Policy 2.1, a principal</p>	<p>Rule 5.2 was intended to be a "fiduciary" rule setting out the obligation of a Participant for client orders. For this reason, the language in the Policy regarding application to principal and non-client orders was inappropriate. RS is presently undertaking a strategic review of UMIR. One of the items that will be encompassed by that review is whether it would be appropriate to subsume the "best price obligation" within the "best execution obligation".</p> <p>At this time, RS has deferred the matter of whether an Access Person should have an obligation to take reasonable efforts to execute first as against better-priced orders on any marketplace to which they have access as an Access Person.</p>

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<p>The Policy also applies to Participants' principal trades on foreign over-the-counter markets made pursuant to the outside-of-Canada exemption in clause (e) of Rule 6.4.</p> <p><del>A trade by a Participant as agent for a non-Canadian account is not subject to this Policy. For example, an order to sell from a non-Canadian account on the New York Stock Exchange, NASDAQ or other organized regulated market at a price below the bid price on a marketplace may be executed by the Participant</del></p> <p><u>A Participant will be considered to have taken reasonable efforts to obtain the best price for a client if, at the time of the entry of the client order on a particular marketplace or organized regulated market, the Participant enters orders on behalf of the client on each other marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume on that marketplace. If following the entry of the client order on the particular marketplace or organized regulated market, the client order does not immediately execute in full, the Participant shall monitor the "best bid price" and "best ask price" displayed in a consolidated market display to determine if the unfilled portion of the client order should be entered on another marketplace.</u></p>	<p>order entered into the TSX MOC book, for example, would be in contravention of the best price obligation because the exemption that this trade would otherwise have in Rule 5.2(2) is not provided for in Policy 2.1. Believes that the best price obligation should be set out explicitly in Rule 5.2(1). States in the alternative that the proposed amended drafting to Policy 2.1 should be modified slightly such that it states in absolute terms that the best price obligation extends to principal and non-client orders. Specifically advises inserting a sentence to this effect near the end of new proposed paragraph 2 of Policy 2.1, directly before the discussion of how RS determines whether a Participant or Access Person has undertaken reasonable efforts to satisfy this obligation. Also suggests adding to Policy 2.1 exemptions similar to those available to client orders in Rule 5.2(2).</p> <p>Submits that it will be clearer to market participants if the best price obligation for Access Persons who trade on a marketplace directly and not through a Canadian dealer, is placed in Rule 5.2(1). Notes that if this obligation is set out directly in Rule 5.2(1), it will be evident that this requirement is the same for Access Persons trading on an ATS as for Participants trading on an exchange. Notes that this will also provide that any exemptions available to a Participant under Rule 5.2(2) are also available to an Access Person trading directly and not through a Canadian dealer.</p>	
<p><b>POLICY 5.2 – BEST PRICE OBLIGATION</b></p> <p><b>Part 3 – Foreign Currency Translation</b></p> <p>If a trade is to be executed on a foreign market, the Participant shall determine whether there is in fact a better price on a marketplace. The foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on an organized regulated market in that</p>	<p><b>BMO</b> – Notes the reference to "similar transactions undertaken in proximity in value and time". States that, in the context of Designated Block Trades, which occur infrequently, it may be difficult to establish "proximity in value". Assumes that RS intends for this to apply to all transactions, not just those that can be characterized as "off-marketplace" trades. Suggests</p>	<p>The test which is being suggested by the amendment is not a reference to "similar transactions undertaken in proximity in value and time". Rather the test is what would have been the exchange rate the Participant would have applied in respect of a trade of similar size on an organized regulated market in the foreign jurisdiction. As such, the Participant is given considerable</p>

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<p>foreign jurisdiction. A better price on a marketplace must be "taken out" if there is more than a marginal difference between the price on the marketplace and the price on the other stock exchange or organized market. The Market Regulator regards a difference of <del>one-half of a trading increment tick</del> or less as "marginal" because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better price existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.</p>	<p>that because this will have much broader implications in terms of recordkeeping by Participants, and the introduction of additional risks caused by potential time lags in volatile currency markets, this part of the proposal merits a separate Request for Comments to bring it to the attention of Participants and Access Persons that would not have an interest in "off-marketplace" transactions.</p>	<p>flexibility, but must nonetheless be able to justify the exchange rate which is used in making the determination.</p> <p>The same test is being proposed for the reporting of trades to a marketplace which have been agreed to in a foreign currency. (See Policy 7.5.)</p>
<p><b>POLICY 6.1 – ENTRY OF ORDERS TO A MARKETPLACE</b></p> <p>Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as Call Market Order or a Volume-Weighted Average Price Order may execute and be reported in an increment of one-half of one cent in accordance with the method of calculation of the trade price established by the marketplace on which the order has traded.</p>		
<p><b>POLICY 6.4 – TRADES TO BE ON A MARKETPLACE</b></p> <p><b>Part 1 – Trades Outside of Marketplace Hours</b></p> <p>In accordance with section 6.1 of National Instrument 23-101, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise when a Participant may wish to make an agreement to trade as principal with a Canadian account, or to arrange a trade between a Canadian account and a non-Canadian account, outside of the trading hours of any marketplace that trades the particular security.</p> <p>Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. <del>This Policy clarifies the procedure to be followed when a Participant wishes to make such a transaction.</del> Participants are</p>		

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<p>reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on an organized regulated market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.</p> <p>A Participant may make an agreement to trade in a listed security or a quoted security with a Canadian account as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on an organized regulated market. There is no trade until such time as there is an execution on a marketplace or an organized regulated market or the trade is otherwise completed in accordance with one of the exemptions set out in Rule 6.4. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. A Participant may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed <del>or the trade is completed as a designated block trade in accordance with Part 2 of Policy 2.4.</del> If the Participant determines that the condition of recording the agreement to trade on a marketplace or organized regulated market cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.</p>		
<p><b>POLICY 6.4 – TRADES TO BE ON A MARKETPLACE</b></p> <p><b>Part 2 – Application to Foreign Affiliates and Others</b></p> <p>The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.</p> <p>Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or</p>		

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<p>book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.</p>		
<p><b>POLICY 6.4 – TRADES TO BE ON A MARKETPLACE</b></p> <p><b>Part 3 – Non-Canadian Accounts</b></p> <p>Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal <u>with a non-Canadian account</u> or as agent <u>for the purchaser and seller both of whom are with a non-Canadian accounts</u>. A "non-Canadian account" is defined as an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the <i>Income Tax Act</i> (Canada). There may be certain situations arising where a Participant is uncertain whether a particular account is a "non-Canadian account" for the purpose of this exemption. In these situations the account should be treated as a "Canadian account". The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account's status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.</p> <p>For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.</p>		
<p><b>POLICY 6.4 – TRADES TO BE ON A MARKETPLACE</b></p> <p><b>Part 4 – Reporting Foreign Trades</b></p> <p>Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade in a listed security or a quoted security that is made as principal with a</p>	<p><b>BMO</b> – States that, if a trade has all of the characteristics of a Designated Block Trade (value or volume, as appropriate) and a Participant or Access Person chooses to transact on an Organized Regulated Market such that all better bids or offers are satisfied, including the</p>	<p>Orders which are executed on an organized regulated market do not require the prior approval of a Market Regulator either currently or under the proposed amendments.</p> <p>With the elimination of the concept of a "designated block</p>

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<p>non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts, unless the trade is reported to an organized regulated market. If such an “outside Canada” trade has not been reported to an organized regulated market, a Participant shall report such trade to a marketplace no later than the close of business on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.</p> <p><del>In addition, clauses (d) and (e) of Rule 6.4 require a Participant to report to a Market Regulator any trade in a listed security or quoted security with a value of \$25,000,000 or more if the trade has been executed on an organized regulated market or has been executed as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts. The report to the Market Regulator shall be made not later than the commencement of trading in that listed security or quoted security on a marketplace on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade. If the trade has been executed on an organized regulated market, the report to the Market Regulator shall identify the organized regulated market. If the trade has been reported to or will be reported to an organized regulated market, the report to the Market Regulator shall identify the organized regulated market and the time of the report to that market or the deadline for filing of the report with the organized regulated market if the report has not yet been filed.</del></p>	<p>undisclosed portion of any iceberg orders, within the appropriate price differential, prior approval by the Market Regulator should not be required and the trade should not be required to be additionally reported to the Market Regulator as required by proposed Rule 6.4.</p>	<p>trade”, RS would no longer propose that trades with a value of \$25,000,000 or more which are executed by a Participant outside of Canada be reported to a Market Regulator.</p>
<p><b>POLICY 6.4 – TRADES TO BE ON A MARKETPLACE</b></p> <p><b>Part 5 – Application of UMIR to Orders Not Entered on a Marketplace</b></p> <p>Under Rule 6.4, a Participant, when acting as principal or agent, may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace except in accordance with an exemption specifically enumerated within Rule 6.4. For the purposes of UMIR, a “marketplace” is defined as an Exchange, QTRS or an ATS and a “Participant” is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an</p>		

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<p>Exchange, a user of a QTRS or a subscriber to an ATS. If a person is a Participant, certain provisions of UMIR will apply to every order handled by that Participant even if the order is entered or executed on a marketplace or market that has not adopted UMIR as its market integrity rules or if the order is executed over-the-counter. In particular, the following provisions of UMIR will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:</p> <ul style="list-style-type: none"> <li>• Rule 2.1 requires a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace;</li> <li>• Rule 4.1 prohibits a Participant from frontrunning certain client orders;</li> <li>• Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;</li> <li>• Rule 8.1 governing client-principal trading; and</li> <li>• Rule 9.1 governing regulatory halts, delays and suspensions of trading.</li> </ul> <p>In accordance with Rule 11.9, UMIR will not apply to an order that is entered or executed on a marketplace in accordance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules or if the order is entered and executed on a marketplace or otherwise in accordance with the rules of an applicable regulation services provider or in accordance with the terms of an exemption from the application of the Trading Rules.</p>		
<p><b>POLICY 7.5 - RECORDED PRICES</b></p> <p>If the price of:</p> <ul style="list-style-type: none"> <li>• an internal cross or intentional cross to be recorded on a marketplace; or</li> <li>• a trade that has been executed outside of Canada that is to be reported to a marketplace in accordance with clause (e) of Rule</li> </ul>		

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<p>6.4,</p> <p>has been agreed to in a foreign currency and the trade is to be recorded or reported in Canadian currency, the price in foreign currency shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on an organized regulated market at the time of the internal cross, intentional cross or execution of the trade outside of Canada. If the trade price converted into Canadian currency falls between two trading increments for the marketplace on which the cross is to be entered or the trade reported, <u>the price shall be rounded to the nearest trading increment</u><del>trades shall be recorded or reported at each of the trading increments immediately above and below the converted price for the number of units of the security that yields the appropriate average price per unit of the security.</del> A Participant shall maintain with the record of the order the exchange rate used for the purpose of entering the internal cross or intentional cross or reporting the foreign trade and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with Rule 10.11(3).</p>		
<p><b>POLICY 8.1 – CLIENT-PRINCIPAL TRADING</b></p> <p><b>Part 1 - General Requirements</b></p> <p>Rule 8.1 governs client-principal trades. It provides that, for trades of 50 standard trading units of less, a Participant trading with one of its clients as principal must give the client a <i>better</i> price than the client could obtain on a marketplace. A Participant must take reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market. If the security is traded on more than one marketplace, the client must receive, when the Participant is buying, a higher price than the best bid price, and, if the Participant is selling, the client must pay a lower price than the best ask price.</p> <p>For client-principal trades greater than 50 standard trading units, the Participant may do the trade provided the client could not obtain a better price on a marketplace in accordance with the best execution</p>		



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<p>obligations under Rules 5.1 and 5.2. The Participant must take reasonable steps to ensure that the best price is obtained and the price to the client is justified by the condition of the market.</p>		
<p><b>General or Other Comments</b></p>	<p><b>CSTA</b> - Concerned that rules implemented in Canada but not other markets where Canadian stocks are listed may force order flow to go elsewhere not as restrictive.</p>	<p>Regulatory arbitrage is a concern. It was for this reason that the amendments proposed that a subscriber to an ATS should not be able to undertake directly a trade on the ATS that a dealer acting on behalf of the subscriber would not be able to make on the ATS or another marketplace. If all persons with access to a Canadian marketplace have the same obligations to honour better-priced orders on a Canadian marketplace then there is not the opportunity for "order flow to go elsewhere".</p>
<p><b>MI</b> – Disagrees with RS statement in MIN 2004-018 that the goals of the ATS Rules are to "create an integrated Canadian market based on competitive marketplaces" and "provide for pre- and post-trade transparency based on a consolidated data display" as integration and data consolidation requirements were repealed and the ATS Rules do not require pre-trade reporting if orders are not displayed. Proposed RS amendments should be drafted to be consistent with ATS Rules.</p>	<p>The form of "market integration" has evolved with changes to National Instrument 21-101. While amendments effective January 4, 2004 removed the requirements for markets to maintain electronic connections and for a "market integrator", the CSA indicated its intention to focus on ensuring compliance with best execution for dealers and fair access requirements for marketplaces. The amendments to National Instrument 21-101 were based on the report of the Industry Committee on Data Consolidation and Marketplace Integration which recommended a market-driven solution to provide for data consolidation and market integration, stating that a more open model should be adopted. The Industry Committee also recommended that a consolidated market be achieved by the specification of minimum standards for data publishing requirements and that a common protocol should be adopted for market data feeds.</p>	
<p><b>TSX</b> – Notes that, although regulatory approval has been received by TSX V for iceberg orders in October of 2003, the systems programming changes necessary to provide for the entry and trading of iceberg orders on</p>	<p>The suggested changes to UMIR were drafted such that the undisclosed volume portion of "iceberg" orders on any marketplace could be by-passed when undertaking a "designated block trade". Under the revised</p>	

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	TSX V have not yet been effected.	proposal, undisclosed volume can be bypassed when a trade qualifies as a "designated trade" or the orders have been entered on the marketplace in satisfaction of obligations to orders with a better price when a trade has been executed by a Participant at an "inferior price" on another marketplace or organized regulated market.

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<p><b>Definition of Designated Block Trade</b></p> <p>1. The proposal recommends that a “designated block trade” has a value of \$25,000,000 or more. This dollar amount corresponds to the minimum size of a block that can presently be distributed by a wide distribution in accordance with the rules of the TSX.</p> <p><i>Is the recommended value of \$25,000,000 appropriate to be a designated block trade?</i></p> <p>2. The proposal recommends that, as an alternative to the value of a block, a trade could qualify as a “designated block trade” if the trade involved 10% or more of the issued and outstanding shares of the issuer. In these circumstances, the vendor is an insider of the issuer and the purchaser (if there is a single purchaser) would become an insider.</p> <p><i>Is it appropriate to have a test based on the size of the block of securities to be traded? If so, should the test be based on the size of the block in relation to the number of securities outstanding? Should “large” blocks nonetheless be subject to a minimum value test (e.g. \$1,000,000)?</i></p>	<p><b>Barclays</b> – States that the definition of “designated block trade” is appropriate as it is appropriate to base the test on the size of the block of securities to be traded. Notes that the test considers not only the value of the trade but also the size of the trade in relation to the shares outstanding. States that for trades that are 10% or more of the issued and outstanding shares of a security, a minimum value test is justified.</p> <p><b>BMO</b> - States that, given that the marketplaces will be required to manually override their systems to accommodate the displacement obligations for designated block trades and that the proposal will add a layer of complexity to the execution process, the proposed \$25,000,000 cap is acceptable. Notes that, for large cap stocks, a value test is appropriate. Would support a minimum value test of \$5,000,000 (equivalent to a market cap of \$50,000,000). Notes that micro cap stocks would not fall under the designated block trade umbrella and states that the relatively illiquid trading patterns of the micro cap stocks could result in investors being unfairly disadvantaged by the proposed displacement obligations.</p> <p><b>CSTA</b> – States that a measure based on the size and value of the block in relation to the outstanding shares is appropriate.</p> <p><b>TD</b> – Feels that the \$25 million test is appropriate.</p>	<p>Generally, commentators endorsed the \$25,000,000 minimum size for a designated block trade. However, with proposed revisions to the manner whereby a Participant complies with the “reasonable efforts” to trade at the “best price” under Rule 5.2, RS is now suggesting that any pre-arranged trade or intentional cross within 5% of the prevailing market be permitted to trade upon filling the “disclosed volume”.</p>

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	<p><b>TSX</b> - Is of the view that a designated block trade should have a value of at least \$25,000,000, subject to the minimum limit of 10% of the issued and outstanding securities. Agrees that, as an alternative to the value of a block, a trade should also qualify as a designated block trade if it involves 10% or more of the issued and outstanding shares of the issuer. Agrees that the test should be based on the size of the block in relation to the number of securities outstanding. Does not feel that it is necessary to subject these large blocks to a minimum value test.</p>	
<p><b>Displacement Obligation</b></p> <p>3. The proposal recommends that the displacement obligation be set at the “disclosed volume” in the case of a designated block trade. All orders included in the disclosed volume would be guaranteed execution. Undisclosed volume associated with “iceberg” orders would be ignored.</p> <p><i>Should all orders included in the disclosed volume be guaranteed execution prior to the execution of the designated block trade? Should the undisclosed volume of iceberg orders at a better price be ignored?</i></p>	<p><b>Barclays</b> – States that, ideally, all orders on a marketplace would be ranked for order of fill by price time priority and under normal circumstances it should not be possible to trade through better-priced orders, including iceberg orders, entered in the limit order book of a marketplace. Notes that if trade-throughs of better priced limit orders were frequent then investors could lose confidence in the market and would not have the incentive to enter orders into the limit order book resulting in less liquid, more volatile markets and less meaningful prices, however, when a broker is attempting to place a large block of stock the broker must call potential counterparties and build a book of orders to clear the market. Notes that this process inevitably results in information leakage that can make it difficult for the broker to execute the trade. States that, normally the market clears at a price that leaves unsatisfied demand so orders in the book are not filled completely. Notes that some investors who learn that the book is oversubscribed and that they will not receive their desired fill may attempt to obtain priority and a larger fill by entering a limit order on the marketplace with a slightly better price. Other marketplace participants who are not involved in the trade may learn that a large trade is about to</p>	<p>The “cap” on the displacement obligation proposed by RS is equal to the “disclosed volume” at the time of the entry of the designated trade. RS did not propose to limit the obligation to 20% of the amount of the order. (This is an attribute of a “wide distribution” undertaken under the rules of the Toronto Stock Exchange.) In the view of RS, the size of the order should not be used to quantify the displacement obligation. (For example, the displacement obligation for a 10,000,000 share order that needs to move the market \$0.10 should be less than a 1,000,000 share order that seeks to move the market \$1.00.)</p> <p>Currently, all marketplaces in Canada that trade equity securities are “fully electronic”. In the Canadian context, there is presently not a need to contemplate the distinctions between a “fast market” and a “slow market” that was a central focus of much of the discussion in the review of Regulation NMS in the United States. If a non-electronic marketplace were to be recognized or registered for the purposes of the Marketplace Operation Instrument, the requirements of UMIR would have to be re-evaluated generally (and not simply the requirements with respect to “moving markets”).</p>

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	<p>take place and enter orders on the marketplace with slightly better prices. Notes that both of these factors are obstacles to the execution of the trade. States that iceberg orders complicate this situation further as the broker can not determine whether or not they will be able to execute the trade at the agreed upon price. Notes that, for a trade that meets the definition of a designated block trade RS proposes to cap the displacement requirement at the greater of 20% of the volume of the order and the disclosed volume at the same and better prices on marketplaces. Agrees that this is a reasonable compromise that recognizes the realities of the marketplace, however, feels that there are practical issues with satisfying same and better priced orders on marketplaces that are not fully electronic, and this displacement obligation should be limited to fully electronic marketplaces.</p>	
	<p><b>BMO</b> – Agrees that for designated block trades, which trade within the proposed 5% thresholds, all orders included in the disclosed volume should be guaranteed execution. States that, to maintain the integrity of the market, they would choose this option and would not be in favour of the Market Regulator having the ability to artificially set a cap in order to limit the amount of a possible give-up. Notes that if the guaranteed execution is limited to the disclosed volume, then the Participant will know with certainty the amount required to be given-up. Notes that the depth of the iceberg orders would not have an impact and an artificial cap would not have to be implemented. Iceberg orders are used to protect against adversely impacting the market price of a security by virtue of the large size of a bid or offer. Notes that the protection will not be without potential cost—undisclosed volume at a better price will be ignored during the execution of a designated block trade. Is in favour of the give-up being limited to disclosed volume</p>	<p>The proposal was designed to allow a Participant to determine its “displacement” obligation independent of intervention by a Market Regulator.</p>

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	only.	
	<b>CDC</b> – Answers both questions in the affirmative.	
	<b>CSTA</b> – Notes that as, in order to place a large block of stock, dealers must build a book of orders by communication with multiple parties, information leakage is inevitable and can make it difficult to complete the trade as a result of "opportunistic" reaction on the part of marketplace participants who are not part of the trade or indeed participants in the trade wishing to increase their fill, who enter orders at a slightly better price. Notes further that iceberg orders make it impossible for the dealer to determine their ability to complete the trade at the pre-determined price.	<p>In part, the concern of Participants was that the "information leakage" surrounding the placement of a large block trade would lead to "iceberg orders". To the extent that an iceberg order is bypassed, the person attempting to use the information will not benefit. To take advantage of the information the person would have to enter a "disclosed order" at a better price. In the view of some commentators, the attempt to abuse the situation would be "self-policing" in that future opportunities would not be presented to the person attempting to take advantage of the undisclosed information.</p> <p>Abuse of this type of information is one of the items being considered as part of the strategic review of UMIR.</p>
	<b>TD</b> - Likes the fact that displacement is a function of disclosed volume only. Suggests that the volume cap on the PO's displacement obligation be set firm as a percentage of the intended designated block trade volume. Suggests that this number be dramatically reduced from the current 20% level and would suggest a number of 5% or less. Recognizes that RS's proposal to set the cap as a percentage or multiple of disclosed volume solves the current problem posed by iceberg orders, however believes opportunistic orders that are entered into the marketplace specifically because of the information leakage suffered by a PO attempting to arrange a large block trade will be fully disclosed in the continuous book at a very small increment to the agreed upon block price (such as 1 cent better). Notes that this makes it difficult for the PO to have a clear understanding as to exactly how much of the designated block trade they have to satisfy in the continuous book.	See response to CSTA above.

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	<p><b>TSX</b> - Believes that all better-priced disclosed orders in the central limit order book should be guaranteed execution prior to the execution of a designated block trade. Is of the view that the displacement obligation should be limited only to the disclosed volume in the central limit order book and that undisclosed volume associated with iceberg orders should be ignored. Acknowledge that the cost of programming changes to the TSX and TSX V trading systems to alter the current trade allocation process will be significant. States that if the consensus of marketplace participants and regulators is that the undisclosed portion of iceberg orders should be ignored in these circumstances, TSX will agree that further research should be undertaken to confirm that the number of designated block trades that will be executed on TSX and TSX V justifies the cost of the programming changes. Urges RS to discuss with TSX the manner in which this displacement obligation may be effected on TSX and TSX V. Notes that either a systems programming change on TSX and TSX V will need to be made in order to ensure that the undisclosed volume is not picked up during the displacement process, or manual systems overrides will need to be made each time a designated block trades, to ensure that only the disclosed portion of orders are included in the displacement obligation. Advise that such changes will use considerable technology resources and will require amendment of TSX and TSX V rules.</p>	<p>The proposal by RS recognizes that marketplaces may not have a “systems solution” to allow undisclosed iceberg orders to be bypassed. For this reason, the proposal recognizes that to the extent that a designated trade can not be executed on a marketplace after complying with the displacement obligations the trade may be executed “off-marketplace” and merely reported to the marketplace.</p>
<p><b>Wide Distributions</b></p> <p>4. The proposal recommends that no distinction be drawn between an intentional cross or pre-arranged trade and one which is a “wide distribution” to a minimum number of accounts.</p> <p><i>Should there be a different displacement obligation to complete a wide distribution as compared to an</i></p>	<p><b>Barclays</b> – Notes that an intentional cross that is not a wide distribution and would not satisfy the definition of a designated block trade should be required to displace all better-priced limit orders, including icebergs, on the marketplace where the trade is executed. If the recognizing regulators do not approve the designated block trade concept</p>	<p>As noted in the Market Integrity Notice, the TSX has indicated an intention to repeal the provisions in the TSX rules regarding wide distributions if the proposal for “designated block trades” is adopted. Generally, none of the commentators saw a need to continue the concept of a “wide distribution” if the “designated block trade” proposal is adopted.</p>

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<p><i>intentional cross or pre-arranged trade? If so, should a “wide distribution” be allowed to displace less than the disclosed volume or should an intentional cross or pre-arranged trade that is not a wide distribution be required to displace more than the disclosed volume (e.g. there would be some allocation to the undisclosed volume of iceberg orders)?</i></p> <p><i>If provision is to be made for “wide distributions”, are the requirements under the current TSX rules appropriate that the distribution be made to not less than 25 separate and unrelated accounts with no one account participating to the extent of more than 50% of the value of the sale; and by a Participant as principal?</i></p>	<p>then the current TSX wide distribution rules should be amended to eliminate the requirements that the trade be executed by a participant as principal to not less than 25 separate and unrelated accounts with no one account participating to the extent of more than 50% of the value of the sale.</p> <p><b>BMO</b> – Is of the opinion that the implementation of the Designated Block Trade proposal will eliminate the need for the “wide distribution” provisions. Notes that the proposed Designated Block Trade rules are less restrictive than the current “wide distribution” provisions with respect to when transactions can occur and how the shares must be distributed.</p> <p><b>TSX</b> – Has no comment with respect to whether a different displacement obligation should be required based on the type of trade executed. Notes that, if RS determines that separate provisions should be made for wide distributions, TSX advocates that the current requirements under the TSX Rules are appropriate. Specifically advocates that the requirement that a Participant act as principal in connection with the wide distribution should remain in effect.</p>	<p>To the extent that the concept of a “designated trade” set out in the Revised Proposal will not be defined using a size component, the need for “wide distributions” is reduced even more.</p>
<p><b>Price Thresholds for a Designated Block Trade</b></p> <p>5. The proposal recommends that a designated block trade (with its cap on displacement obligations) can be undertaken if the price is:</p> <ul style="list-style-type: none"> <li>• not less than the lesser of: <ul style="list-style-type: none"> <li>○ 95% of the best bid price; and</li> <li>○ 10 trading increments less than the best bid price; and</li> </ul> </li> <li>• not more than the greater of: <ul style="list-style-type: none"> <li>○ 105% of the best ask price, and</li> </ul> </li> </ul>	<p><b>Barclays</b> - Notes that RS recommends that a designated block trade can be undertaken if the price is within 5% of the posted market, but a 5% band may not allow the execution of a designated block trade at a price that reflects the size of the trade and the liquidity and fundamentals of the security. Recommends a 10% band based upon the best bid and offer.</p> <p><b>BMO</b> – States that bid and offer provide the best indication of where an interest to trade exists.</p>	<p>The proposed 5% band is generally in line with the current requirements on moving the market. Price movements of more than 5% would generally require a movement of the market over a period of time in an orderly manner.</p> <p>RS would note that the TSX is presently proposing to reduce the thresholds on price movement in the Market-on-Close facility from 10% to move 5% in response to comments that the 10% threshold permitted too much volatility.</p> <p>See response to Barclays above.</p>



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<p>o 10 trading increments more than the best ask price.</p> <p><i>Should the thresholds be based on the best ask price and best bid price at the time of the entry of the order or should the thresholds be determined by reference to the last sale price (e.g. the price of the trade could vary from the last sale price by not more than the greater of 5% and 10 trading increments)?</i></p>	<p>Notes that this may only be tenuously related to a trade of the size contemplated for a Designated Block Trade. Finds the use of last sale problematic, particularly for illiquid stocks that may trade infrequently. Is not convinced that a restriction of 5% or 10 trading increments deviation is a sufficiently wide range. Recommends that the trading range be defined as not less than the lesser of 90% of the best bid price and 20 trading increments or not more than the greater of 110% of the best ask price and 20 trading increments, as this would be consistent with our trading experience with the types of transactions that would in the future fall under the proposed Designated Block Trade rules.</p>	
	<p><b>CDC</b> - Reference to the last sale price.</p>	<p>The consensus of the other commentators was a preference for the use of the bid/ask prices which represents the "current market".</p>
	<p><b>TSX</b> - Believes that the threshold should be based on the best ask price and best bid price at the time of the entry of the order. Is of the view that using a threshold determined by reference to the last sale price is a dangerous practice, particularly for illiquid securities where the last sale price could have occurred hours or even possibly days prior to the proposed designated block trade. States that it is preferable to use the price discovery mechanism (i.e. the best ask and best bid in the central limit order book) in order to determine how to price a designated block trade. States that the best bid price and best ask price represent the existing possible price range for a particular security, whereas the last sale price may not be reflective of where the true value of the security has moved since the last sale was executed.</p>	
<p><b>Moving the Market Obligations</b></p> <p>6. The proposal would require the prior approval of a Market Regulator for a trade that would be at a price that is:</p>	<p><b>BMO</b> – Bid and ask. The thresholds for determining if the transaction falls under the definition of a Designated Block Trade should be 90% or 110%, as</p>	<p>The current guidelines under UMIR are \$1 for a security trading at less than \$20 and \$2 for securities trading at \$20 or more. For securities that presently trade at</p>

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<ul style="list-style-type: none"> <li>• less than the lesser of:                             <ul style="list-style-type: none"> <li>○ 95% of the best bid price; and</li> <li>○ 10 trading increments less than the best bid price; and</li> </ul> </li> <li>• more than the greater of:                             <ul style="list-style-type: none"> <li>○ 105% of the best ask price, and</li> <li>○ 10 trading increments more than the best ask price.</li> </ul> </li> </ul> <p>In these circumstances, the Market Regulator may require that the market be moved over a period of time. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is more 10% or more.</p> <p><i>Should the thresholds be based on the best ask price and best bid price at the time of the entry of the order or should the thresholds be determined by reference to the last sale price (e.g. the price of the trade could vary from the last price sale by not more than the greater of 5% and 10 trading increments)?</i></p> <p><i>Are the suggested time periods for moving the markets (5 minutes if the variation greater than 5% but less than 10% and 10 minutes if the variation is 10% or more) appropriate?</i></p>	<p>appropriate. States trades that move the market up to 10% should be subject to the Designated Block Trade rules and hence subject to no time restriction. States that, for trades where the variation is 10% or more, a time period of 5 minutes would be sufficient, as this recognizes the efficiency of electronic markets and the proliferation of direct access to the marketplaces.</p> <p><b>CSTA</b> - Concerned that the proposed 5% spread may not take into consideration the size, liquidity and fundamental nature of the security and recommends a wider spread based on the best bid and offer. Strongly opposes the 5 minute minimum time period. States that traders can and do enter orders in seconds and that the potential for non-participants to interfere by entering opportunistic orders is too great with a 5 minute period. States that it is possible that interference would prevent the participants from receiving the agreed price and that this will prompt non-Canadian accounts to avoid transacting in the Canadian marketplace. Strongly recommends that, upon application to RS to execute a block trade, a picture of the current displayed orders in the marketplace be taken (not including iceberg orders) and the stock is "frozen" while the transaction takes place. States that this would allow legitimate orders to be filled. New orders placed to make an opportunistic trade would not and could not interfere with the orderly progression of the transaction. States that, unless simultaneous execution is permitted in multiple markets at differing prices, the concept of liquidity should be included in amendments to rules governing "better priced" orders.</p> <p><b>CDC</b> - Reference to the last sale price.</p>	<p>prices above \$40, the requirement to move the market over a period of time applies when the movement is less than 5%.</p> <p>The point of the time requirements is to provide all market participants with an opportunity to respond to significant developments. The reasoning in this circumstance is comparable to the imposition of a regulatory halt for the purpose of disseminating material information with respect to an issuer. Interference by "non-participants" is expected. All market participants are expected to consider the new information (being either the material information that is disclosed by the press release or the movement in the market for the security) and respond accordingly.</p> <p>The consensus of the other commentators was a preference for the use of the bid/ask prices which represents the "current market".</p>

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	<p><b>TSX</b> - Best ask price and the best bid price at the time of the entry of the order rather than by reference to the last sale price. Believes that the suggested time frames for moving markets may be too long for all but the most liquid securities, and may encourage front-running ahead of block trade printing. Notes that, as it becomes obvious to Participants that the market is being moved to execute a block, the liquidity of the central limit order book and cost of the market displacement obligation may be negatively affected. States that the longer the mandated time frame to move the market the greater the chance of information leakage and increased trade execution cost. Believes that the time frame for moving the market greater than 5% should be discussed with RS prior to trade execution and should be decided based on the liquidity of the security in question. States that a balance must be struck between maintaining an orderly market and ensuring rapid trade execution.</p>	<p>The current policy contemplates a time period of 10 to 15 minutes for each price movement of \$1.00. The proposed time frames are more realistic by contemplating a 5-minute period for price movements of between 5% and 10% and a 10-minute period for a price movement of 10% or more. The proposed time frames are more in line with the general practice on regulatory halts for the purpose of dissemination of material information. RS was of the view that the existing requirements were both too onerous and inequitable in their application (in drawing a distinction between \$1.00 price movement for securities trading at less than \$20 and \$2 for securities trading at \$20 or more). RS was of the view that an “objective” test (rather than a subjective test to be determined by RS based on historic or current liquidity) was easier to administer and fairer in its application.</p> <p>As a general principle, the more the price of the trade is intended to vary from the prevailing market the greater the interference that should be contemplated.</p>
<p><b>Application to Access Persons</b></p> <p>7. The proposal recommends that an Access Person when trading directly and not through a dealer should be subject to the requirement that they execute first as against better-priced orders on any marketplace to which they have access as an Access Person.</p> <p><i>Should an Access Person who is neither a dealer nor trading through a dealer be subject to the requirement to take reasonable steps to execute first as against better priced orders on any marketplace to which the Access Person has access? Should the proposal apply to an Access Person who is a non-resident?</i></p>	<p><b>Barclays</b> – Agrees that Access Persons should have various obligations to marketplaces including transacting ‘openly and fairly’ and not acting in a manner that is ‘manipulative or deceptive’ that could reasonably be expected to create a false or misleading appearance of trading activity or an artificial price for a security as outlined in UMIR Rule 2.2. However, states that an Access Person’s obligation to the “market” generally should not include an obligation to fill ‘better-priced’ orders on any marketplace to which the person has access. States that Access Persons who are institutional investors and manage assets on behalf of clients are fiduciaries who have a duty to seek ‘best execution’ for their orders. States that the responsibility of fiduciaries to seek to maximize the value of their clients’ portfolios subject to their goals and objectives are of</p>	<p>At the request of the Recognizing Regulators, RS has deleted from the “Off-Marketplace” Proposals the provision to extend to an Access Person the obligation to take reasonable efforts to execute first as against better-priced orders on any marketplace to which they have access as an Access Person. The matter of trade-through obligations will be the subject of a separate proposal.</p>

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	<p>paramount importance. Notes that an institution's best execution obligation can conflict with the proposed obligation to displace 'better-priced' orders on any marketplace to which the institution has access and this conflict is exacerbated when marketplaces have different microstructures that affect the timeliness and certainty of order completion. Notes examples of different market structures are electronic markets that provide firm quotes and immediate execution and manual floor based markets where investors cannot immediately execute against the order book. Notes that, if a manual marketplace has posted a higher bid or a lower offer than an electronic marketplace and so displays the 'best price' as defined by UMIR then an Access Person may be forced to route their order to the manual marketplace and accept slower and less certain executions that can compromise execution quality. Notes that these issues have been well debated in submissions related to Reg. NMS in the United States. Notes that a requirement to displace 'better-priced' orders on any marketplace that an institution has access to coupled with more restrictive short sale tick-rules could mean that the institution is not able to execute at all making it impossible for the institution to provide best execution and the extension of the trade through rule to Access Persons introduces uncertainty whether an order is 'permitted or required to be entered or executed in a foreign market' and could delay trading decisions and hurt execution quality. Further notes that the amendment could require institutions who are Access Persons to monitor many marketplaces resulting in higher monitoring costs. Institutions cannot take comfort that they are not an Access Person of a marketplace because they do not have a direct connection to the marketplace. Notes that MIN 2003-014 expanded the definition of an Access Person to include a</p>	

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	<p>person who has been granted access rights to the trading system of an Exchange or a QTRS either directly or by the means of an electronic connection to the order routing system of a member or user. Notes that, if the Recognizing Regulators approve the expanded definition of Access Persons then many institutions could indirectly become Access Persons to marketplaces that they do not monitor if any counterparty that they have an electronic connection to also has a connection to a marketplace that displays quotes. Notes that the requirement would introduce uncertainty and delays that would result in lower quality of execution. States that many buy-side institutions wrongly believe that this Request for Comments only addresses the replacing of the current wide distribution rules. States that any extension of the obligations of an Access Person to the market such as a new displacement obligation should not be buried within a proposal that many investment managers believe to be unimportant. States that such an extension merits a separate Request for Comment.</p>	
	<p><b>BMO</b> – Is of the opinion that the rules as proposed are too restrictive. Notes that an informed consent opt-out provision is appropriate for Access Persons and for Participants engaging in proprietary trading. States that an order-by-order, case-by-case requirement would provide sufficient protection of the integrity of the market. Requests clarification of the word “access” in the phrase “access as an Access Person”. Notes that there are significant differences between being able to effect a transaction, by giving an order to an intermediary or by direct, electronic access. States that Commissions, settlement complexities, errors, f/x transactions, timing differences, disparate liquidity pools, and allocation algorithms for managers of multiple accounts</p>	<p>The question of whether an “opt-out” should be permitted depends largely on whether the obligation to trade at the best available prices is considered to be a fiduciary obligation which is owed by a dealer to its client (who would be in a position to provide an informed waiver of compliance with that obligation) or is an obligation which is owed by a dealer to the “markets”. In the United States, the SEC originally contemplated “opt-outs” as part of its proposed Regulation NMS. The SEC removed the provisions for “opt-outs” when the SEC republished the proposed Regulation NMS in December of 2004.</p> <p>In contrast, UMIR presently provides that a client may not opt out of the “best price” obligation. The current UMIR provision built upon the Canadian tradition that saw that obligation to trade at the</p>

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	<p>may all contribute to an informed and reasonable decision to opt-out of the obligation to pursue a nominally best price bid or offer. Notes that an Access Person who is a non-resident should not be held to a different standard, in theory, but practically jurisdiction cannot be ignored. States that RS must be satisfied that it can enforce the regulations with respect to non-residents and that no entity will be disadvantaged by virtue of geographic location.</p>	<p>best prices as general obligation owed to the markets. For example, prior to the realignment of the Canadian stock exchanges in 2000, the TSX required members of the exchange to honour best prices on other Canadian exchanges (even though this requirement took trading activity away from the TSX).</p>
	<p><b>CSTA</b> – Very concerned regarding the proposed amendments to Rule 2.1 concerning Access Persons. Strongly disagrees with the extension of the obligations of institutions to include displacing "better priced" orders on any market where the institution meets the definition of Access Person. States that institutional investors managing client investments have a fiduciary responsibility to seek best execution for their orders, which does not necessarily mean filling "better-priced" orders on any marketplace should the consequences mean missing liquidity on another. Notes that being obliged to fill 100 shares and therefore running the risk of missing a larger amount of stock on another market would go against this responsibility. Notes that orders might have to be routed to a manual market, showing a better price but offering slower and less certain execution, by-passing an electronic market that provides firm quotes and instant execution. States that if "Access Person" is expanded then institutions would indirectly become Access Persons to markets they do not monitor if any party they have an electronic connection to also has a connection to a marketplace that displays quotes.</p>	<p>Securities legislation contemplates that institutional investors may undertake trading activity without the need for the trade to be intermediated by a dealer registered in accordance with securities legislation. UMIR recognizes this possibility and does not impose an obligation on an Access Person to conduct all trading activities on a marketplace. If an institution decides to avail itself of trading on a marketplace, then the institution should expect to "play" by the rules of the marketplace. Honouring better-priced orders becomes part of the "cost" of accessing the marketplace.</p> <p>Securities legislation requires that most investors undertake trading activity through a person registered as a dealer under applicable securities legislation. UMIR requires dealers who are Participants to conduct trading activity, when acting as principal or agent, through the entry of orders on a marketplace subject to certain exceptions and exemptions which are enumerated in UMIR. In addition, UMIR requires that a Participant immediately enter on a marketplace "small" orders received from clients. These persons and orders would be disadvantaged if an institutional investor could simply choose to "bypass" them.</p> <p>Institutions have always had "fiduciary responsibilities" to their clients. Prior to the realignment of exchanges in 2000, orders of an institution traded on a Canadian</p>

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		<p>exchange were subject to the trade-through rules of the Canadian exchanges. Presumably, compliance with the requirements of the Canadian exchanges did not result in the breach of “fiduciary responsibilities”.</p>
	<p><b>MI</b> – Agrees that all market participants should be required to abide by rules of marketplaces and securities laws, but strongly disagrees that this justifies extension of trade-through rule (ie. obligation to fill orders on any marketplace) to Access Persons. States that trade-through is incorporated into best execution, making narrower best price obligation redundant and conflicting. Desire to ensure clients aren’t misled by dealers with more information no longer applicable when institutions and individuals can access market data, control trading directly and make informed choices. Notes that justifications for trade-through may be applicable to dealers but not to institutions, as institutions only know their own trades and public information, whereas dealers are in the privileged position of cumulative knowledge of the market through their proprietary and client trades. States that, as trade-through is effectively a “tax” on this privileged position, it should not apply to institutions. Notes that fiduciary obligations to clients are primary; trade-through exists to protect “other people’s orders” and therefore should be secondary. Suggests that RS should not conclude that “economic self interest” is not sufficient motivator for institutions, but rather should note that intentional by-passing of better priced orders is evidence that sophisticated investors may conclude that price is not the dominant factor in every trade. Trade-through favours marketplaces with published quotes. States that the rule as drafted may force institutions to avoid direct market access thus avoiding transparency and</p>	<p>Upon the introduction of Marketplace Operation Instrument, it was contemplated that, in the absence of a formal market integrator, each marketplace trading a security would be under an obligation to maintain an electronic connection to every other marketplace trading the same security. With amendments to Marketplace Operation Instrument that became effective on January 4, 2004, the need for each marketplace to maintain an electronic connection was deleted as part of the repeal of Part 9 on “Market Integration for Marketplaces”. In making this change, the Canadian Securities Administrators added section 11.5 to the Companion Policy to the Marketplace Operation Instrument which states: “Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.”</p> <p>At the request of the Recognizing Regulators, RS has deleted from the “Off-Marketplace” Proposals the provision to extend to an Access Person the obligation to take reasonable efforts to execute first as against better-priced orders on any marketplace to which they have access as an Access Person. The proposed amendments respecting trade-through obligations will be the subject of a separate proposal.</p> <p>The changes to the Marketplace</p>

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	<p>regulatory oversight and less liquidity. Suggests instead that such policy results in a decline in overall market quality. Recommends RS re-assess necessity of trade-through for both institutions and dealers, complete with cost-benefit analysis. Notes that UMIR trade-through rule is actually in UMIR policy 5.2 Part 2, while UMIR 5.2 states the best price obligation. States that trade-through must be stated as a rule (not a policy open to interpretation) with opt-out provisions. Suggests strongly that any extension of trade-through should be proposed as a separate rule with a new comment period.</p>	<p>Operation Instrument removed the mechanism which would have allowed orders to “migrate” to other marketplaces with “better-priced” orders. The proposed extension of the obligation to Access Persons is designed to address the “gap” which was created with the elimination of the electronic connection between marketplaces.</p> <p>The order and trade transparency requirements of Marketplace Operation Instrument are designed to ensure that all persons have access to certain basic information. The consolidated market display will provide information on better-priced orders on marketplaces which choose to disclose order information.</p> <p>See response to the comment of Barclays above.</p>
	<p><b>TSX</b> - Believes that, to the extent possible, UMIR should apply equally to participants who place orders on an exchange and to Access Persons that trade directly on an ATS. Agrees that an Access Person must be subject to the requirement to take reasonable steps to execute first as against better priced orders on any marketplace to which the Access Person has access. States that this ensures that Access Persons who are able to trade securities that are inter-listed between an ATS and an exchange are subject to the same market integrity requirement. If this requirement did not exist, retail customers’ orders in the central order book of an exchange could be by-passed by an Access Person entering an order on an ATS at a price that is outside the best bid and best ask on the exchange. Is of the view that to allow such regulatory arbitrage to occur would not adequately ensure the integrity of the Canadian marketplace. Believes that Access Persons who are non-resident should be treated the same as resident Access Persons.</p>	<p>See response to the comment of Barclays above.</p> <p>Currently under UMIR, a Participant that acts on behalf of a non-resident client is able to execute the client’s order without reference to the price for the security on a Canadian marketplace. This exemption recognizes that the execution of the order on behalf of the non-resident will be subject to requirements in the jurisdiction where the client resides. If an Access Person is a non-resident that person should have an obligation to honour the “better-priced” orders on a marketplace only if the Access Person trades directly and its order is not handled as a client order by a Participant or dealer.</p>