

13.1.7 IIROC Rules Notice – Notice of Approval – UMIR – Provisions Respecting the “Best Price” Obligation

IIROC RULES NOTICE

NOTICE OF APPROVAL - UMIR

PROVISIONS RESPECTING THE “BEST PRICE” OBLIGATION

Summary

This IIROC Rules Notice provides notice of the approval by the applicable securities regulatory authorities (the “Recognizing Regulators”) of amendments to the Universal Market Integrity Rules (“UMIR”) respecting various aspects of the “best price” obligation (“Interim Amendments”). ***The Interim Amendments became effective on May 16, 2008***, the date the proposals related to the Interim Amendments were published.¹

The “best price” obligation requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. In particular, the Interim Amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the “best price” obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

If a Participant uses another means to enter an order on a marketplace, the Interim Amendments expand the factors that may be taken into account by IIROC in determining whether a Participant has made “reasonable efforts” to obtain the best available prices on a “protected marketplace”². The factors have been expanded to include whether:

- the protected marketplace recently launched operations;
- order information from the protected marketplace is available through a data vendor used by the Participant;
- the protected marketplace has recently had a material malfunction or interruption of services; and
- the protected marketplace has demonstrated an inordinate proportion of “inferior fills” with respect to tradeable orders routed to it.

The Interim Amendments also remove transaction costs as a factor in determining the “best price” obligation and clarify that “reasonable efforts” do not require a Participant to maintain a connection to each protected marketplace.

Each Participant must adopt policies and procedures to ensure compliance with its “best price” obligation, which will include the relevant factors upon which it is relying in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

With the approval of the Interim Amendments, IIROC will continue to monitor the steps which each Participant has taken to be in a position to comply with the “best price” obligation. Since the introduction of multiple protected marketplaces in 2007, IIROC (including its predecessor, Market Regulation Services Inc.) has been understanding of the difficulties faced by Participants (as a result of issues with systems, service providers, data vendors and marketplaces) and has worked with Participants to identify their problems and has encouraged the development and implementation of appropriate plans to address the problems. If a Participant continues to account for a disproportionately greater share of the instances where “better-priced” orders have not been protected in comparison

¹ Market Integrity Notice 2008-009 – *Request for Comments – Provisions Respecting the “Best Price” Obligation* (May 16, 2008).

² Market Integrity Notice 2008-008 – *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008) provided notice of the approval by the Recognizing Regulators of various amendments to UMIR including the adoption of a definition of “protected marketplace” as a marketplace that:

- disseminates order data in real-time and electronically through one or more information vendors in accordance with the Marketplace Operation Instrument;
- permits dealers to have access to trading in the capacity as agent;
- provides fully-automated electronic order entry; and
- provides fully-automated order matching and trade execution.

to the overall share of trading by the Participant and IIROC concludes that the imbalance is due to the fact that the Participant has not made reasonable efforts to develop and implement a plan, IIROC will initiate appropriate disciplinary proceedings.

Proposed CSA Trade-through Protection Rule

The Canadian Securities Administrators (“CSA”) have proposed changes to National Instrument 21-101 – *Marketplace Operation* (“Marketplace Operation Instrument”) and National Instrument 23-101 – *Trading Rules* (“Trading Rules”) regarding trade-through protection (“Proposed CSA Trade-through Protection Rule”).³ Depending upon the final form of this trade-through regime, conforming changes may be required to UMIR, in particular to the “best price” obligation under Rule 5.2 as modified by the Interim Amendments.⁴

On October 27, 2008, IIROC published for comment proposed amendments to UMIR that would be consequential to the implementation of the Proposed CSA Trade-through Protection Rule. If the Proposed CSA Trade-through Protection Rule is adopted in substantially the published form, IIROC would expect UMIR to be amended to:

- repeal the rule and policies respecting the “best price” obligation of Participants; and
- make a number of consequential changes to UMIR including:
 - the repeal of the provisions regarding the “best price” obligation from the rules and policies dealing with trading supervision and gatekeeper reports, and
 - confirmation that the “best execution” obligation is subject to the “trade-through protection” obligation (in the same manner that it had been subject to the “best price” obligation).

Until the Marketplace Operation Instrument and Trading Rules are amended to provide for trade-through protection and amendments have been made to UMIR respecting the implementation of trade-through protection, Participants remain subject to the “best price” obligation under Rule 5.2 of UMIR as modified by the Interim Amendments.

Background to the Interim Amendments

Impact of the Amendments Respecting “Off-Marketplace” Trades

Concurrent with the original publication for comment of the Interim Amendments, IIROC published Market Integrity Notice 2008-008 - *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008) which provided notice that various amendments to UMIR (“Off-Marketplace” Amendments) became effective May 16, 2008 that, among other changes:

- adopted the definition of a “protected marketplace” as a marketplace that:
 - disseminates order data in real-time and electronically through one or more information vendors in accordance with the Marketplace Operation Instrument,
 - permits dealers to have access to trading in the capacity as agent,
 - provides fully-automated electronic order entry, and
 - provides fully-automated order matching and trade execution;
- incorporated into Rule 5.2, the guidance of IIROC that the “best price” obligation arises at the time of the execution of an order;⁵
- eliminated the distinction between “active” and “passive” orders when determining which orders owe a “best price” obligation;

³ Canadian Securities Administrators Notice, Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, (2008) 31 OSCB 10033. Those proposed amendments build upon proposals contained in a joint notice by the CSA and Market Regulation Services Inc. See Market Integrity Notice 2007-007 – *Request for Comments – Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* (April 20, 2007).

⁴ IIROC Notice 08-0163 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Implementation of Trade-through Protection* (October 27, 2008.)

⁵ Rule 5.2 previously provided that the Participant was to make reasonable efforts “prior to” the execution of an order but IIROC had issued guidance on the interpretation of this requirement. See Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006).

- confirmed that the obligation of a Participant to fill better-priced orders is not limited by the size of the trade executed by the Participant; and
- specifically provided that a Participant will be considered to have taken “reasonable efforts” to obtain the best price if, at the time of the execution of the order on a particular marketplace or foreign organized regulated market, the Participant enters orders on behalf of the client, non-client or principal account on each other protected marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume⁶ on that protected marketplace.

Status of Current Marketplaces as Protected Marketplaces

Of the current marketplaces, only Alpha, Chi-X, CNSX (including Pure Trading), Omega, TSX and TSXV meet all four conditions to qualify as a protected marketplace. None of Bloomberg, Liquidnet and MATCH Now qualify as a “protected marketplace”.

A Participant has an obligation to execute against better-priced orders on Alpha, Chi-X, CNSX, Omega, Pure Trading, TSX and TSXV before executing at an inferior price on any marketplace or foreign organized regulated market. For a description of the basic features of each these marketplaces, see “Summary Comparison of Current Equity Marketplaces” available on the IIROC website: www.iiroc.ca.

A Participant owes a “best price” obligation to only the “visible” portion of a “better-priced” order on a protected marketplace. If a marketplace permits the entry of an “iceberg” order for which only a portion of the volume is disclosed, no “best price obligation” is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under Rule 5.2. At the present time, iceberg orders are permitted on Alpha, CNSX, Pure Trading, TSX and TSXV.

If a protected marketplace has visible orders but the marketplace is not open for trading at that time, the “best price” obligation does not apply to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. The “best price” obligation does apply to a special trading facility of a marketplace that conducts trading before or after “regular” trading hours if orders in such special facility are visible.

Description of the Interim Amendments

The “best price” obligation requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. The Interim Amendments:

- set out certain order handling methods which will be considered to be “reasonable efforts”;
- expand on the factors that IIROC will take into account in determining whether “reasonable efforts” have been made if a Participant is using an order handling method other than one which is automatically considered “reasonable efforts”;
- provide specific requirements for each Participant to adopt policies and procedures to ensure compliance with the “best price” obligation;
- clarify that “reasonable efforts” does not require a Participant to maintain a connection to each protected marketplace; and
- remove transaction costs as a factor to be taken into consideration in determining compliance with the “best price” obligation.

The Interim Amendments were effective as of May 16, 2008 and the Interim Amendments have been approved by the Recognizing Regulators without any revisions to the text published for comment on May 16, 2008.

⁶ The term “disclosed volume” is defined as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

The following is a summary of the principal components of the Interim Amendments:

Order Handling Methods That Are Automatically Considered “Reasonable Efforts”

The Interim Amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the “best price” obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

Reliance on Marketplace Router or Functionality

A Participant will be considered to have taken “reasonable efforts” to satisfy its “best price” obligation in respect of a particular order if the Participant has entered the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that will, upon receipt of the order:

- route all or any part of the order required to comply with Rule 5.2 to a protected marketplace;
- execute the order at a price that will comply with Rule 5.2; or
- automatically vary the price of the order to a price that will comply with Rule 5.2.

IIROC expects that the Participant will monitor and document the performance of any marketplace order router or marketplace trading system functionality. If the Participant becomes aware that the marketplace is failing to handle orders in a manner that will comply with Rule 5.2, the Participant can no longer rely on the arrangements with that marketplace to demonstrate “reasonable efforts” to obtain the “best price”.

IIROC expects that a marketplace which makes a router or functionality available to Participants to comply with their “best price” obligation will devote sufficient resources to the upgrade and maintenance of the router or functionality to be able to incorporate new protected marketplaces as they become available. In particular, IIROC expects that the marketplace will have taken reasonable efforts to obtain order information from each protected marketplace. IIROC expects that a marketplace offering these routers or functionality will obtain the order information either directly from the protected marketplace or from an information vendor. A marketplace would not be required to take into account a particular protected marketplace if order information from that particular protected marketplace is not available in a form and format that readily permits the use of such order information in the trading system of the marketplace. IIROC does not expect that each marketplace offering these routers or functionality will be in a position to integrate information from any new protected marketplace on its launch date. In the ordinary course, IIROC would expect that a marketplace should have integrated the new protected marketplace into its router or functionality within 90 days of the launch of the new marketplace. Unless IIROC has granted an exemption to a marketplace, if the marketplace has not integrated the new protected marketplace into its router or functionality within 90 days of launch of the new marketplace, a Participant would no longer be able to rely on its arrangements with the marketplace to demonstrate “reasonable efforts” to obtain the “best price”.

IIROC recognizes that, in certain circumstances, a marketplace may on a temporary basis cease taking into account orders on a particular protected marketplace as a result of interruption of service or the unavailability of quotes on the particular protected marketplace. For a discussion of IIROC’s expectations in these circumstances, see “Interruption of Marketplace Service” on pages 9 and 10 and “Unavailability of Quotes” on pages 11 and 12.

Reliance on Smart Order Router Technology

A Participant will be considered to have taken “reasonable efforts” to satisfy its “best price” obligation in respect of a particular order if the Participant has entered the order on a marketplace using an order router developed and operated by the Participant or a service provider if:

- the order router has demonstrated an ability to access any order on a protected marketplace required to comply with Rule 5.2; and
- the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace.

IIROC expects that the Participant or service provider will monitor the performance of their order router to ensure that the router is performing adequately. In particular, IIROC expects that with the launch of a new marketplace which qualifies as a protected marketplace the performance of the order router will be re-evaluated.

If a Participant proposes to rely on the use of an order router developed and operated by the Participant or a service provider, IIROC expects that the Participant or service provider will make reasonable efforts to obtain order information from each protected marketplace. For a discussion of IIROC's expectations of "reasonable efforts" in this context, see "Availability of Marketplace Data" on pages 10 and 11.

IIROC recognizes that, in certain circumstances, an order router may on a temporary basis cease taking into account orders on a particular protected marketplace as a result of interruption of service or the unavailability of quotes on the particular protected marketplace. For a discussion of IIROC's expectations in these circumstances, see "Interruption of Marketplace Service" on pages 9 and 10 and "Unavailability of Quotes" on pages 11 and 12.

Reliance on Another Participant

If a Participant routes orders to another Participant for entry on a marketplace, IIROC will consider the first Participant to have complied with their best price obligations and will look to the second Participant to ensure that "reasonable efforts" are undertaken to obtain "best price". The Participant that receives an order from another Participant as part of an introducing/carrying broker arrangement or as an individual jitney order takes on the obligation to undertake "reasonable efforts" to obtain the best price on the execution of the order in accordance with the other requirements of Rule 5.2.

Additional Factors to be Considered When Using Other Order Handling Methods

If a Participant uses a means to enter an order on a marketplace other than one of the methods which will be automatically considered to comply with the "best price" obligation, the Interim Amendments expand the factors that may be taken into account by IIROC in determining whether a Participant has made "reasonable efforts" to obtain the best available prices on a "protected marketplace". For example, these additional factors will be relevant if a Participant uses an order router that does not meet the requirements described above under the heading "Reliance on Smart Order Router Technology" or if the Participant has decided to manually route a particular order or a particular component of its order flow.

Under the Interim Amendments, the additional factors that IIROC may take into account include the following:

Launch of a New Marketplace

IIROC acknowledges that a significant lead time is required for Participants, information vendors, service providers and other marketplaces to be able to adapt all of their systems to accommodate the introduction of a new protected marketplace. The lead time that is required reflects the need for co-ordination and the reality that all parties have other priorities and commitments with respect to their systems and technology initiatives. Section 12.3 of the Marketplace Operation Instrument provides that a new marketplace must provide at least two months public notice of technology requirements regarding interfacing with or access to the marketplace and that they must make testing facilities available to the public at least one month prior to the launch of trading operations. The longer the period of time that such technology specifications and testing facilities are available to the public prior to the launch of operations the easier for all market participants to adapt their systems to accommodate the launch of the new protected marketplace.

IIROC also recognizes there is a degree of uncertainty regarding whether new marketplaces are able to meet announced launch timeframes and there is some reluctance to make the required investments and commitments to systems and technology until the commencement of trading operations is either certain or in fact a reality. In connection with the launch of a new marketplace, if no or minimal testing is performed by the marketplace prior to launch, there will be a period after launch during which Participants may wish to assess the capacity, integrity and security of marketplace systems before directing order flow to such marketplace.

The Interim Amendments include as a relevant factor whether the protected marketplace provided testing facilities to the public for a sufficient period of time prior to launch in accordance with section 12.3 of the Marketplace Operation Instrument. If a new protected marketplace made testing facilities available for a sufficient period of time prior to launch, the Participant would be expected to take orders from the new protected marketplace into account and to obtain the best available price on that marketplace.

In the view of IIROC, a reasonable period of time during which to accommodate the launch of a new protected marketplace would be the longer of:

- three months following the launch of the new protected marketplace; and

- six months following the date that testing facilities were available to the public in accordance with section 12.3 of the Marketplace Operation Instrument.

As such, if a new protected marketplace provided only the minimum of one month for the availability of testing facilities as required by section 12.3 of the Marketplace Operation Instrument, IIROC would consider a reasonable period to be five months from the launch of the new protected marketplace before a Participant would be expected to fill better-priced orders on the new protected marketplace.

Interruption of Marketplace Service

IIROC will take into account as a relevant factor whether the protected marketplace has recently had a material malfunction or interruption of services. This factor may be taken into account in a decision by a Participant to initially connect to the protected marketplace or to continue to direct order flow to that particular protected marketplace.

If, in the course of ongoing marketplace operations, a Participant experiences an interruption of service with a particular protected marketplace, IIROC would expect that the Participant would document the nature of the interruption and the provision of notice of the interruption to the protected marketplace, any relevant service provider used by the Participant and the technology staff of the Participant so that the causes of the interruption could be identified and the responsible party could take remedial action. If a protected marketplace has experienced a material malfunction or interruption of service on any trading day, IIROC would not expect the Participant, depending upon the circumstances, to take that marketplace into account for the balance of the trading day should trading resume on that marketplace. For example, if the interruption was “momentary” as the marketplace moved trading to its back-up systems or if the nature and duration of the interruption of service are known at the outset of the interruption of service and the marketplace resumes trading as scheduled, the Participant would be expected to take that marketplace into account on the resumption of trading.

If the Participant has experienced persistent or prolonged material malfunctions or interruptions of service, including delays in:

- the processing of orders;
- the execution of trades;
- the communication of the status of orders or trades; or
- the dissemination to the applicable data vendor of order or trade information,

the Participant would not be expected to route orders to such marketplace until such time as the protected marketplace had demonstrated that its systems are reliable and fully-functioning. Participants are required to continue to monitor the system performance of the marketplace and to once again take into account best available prices on that marketplace once it has returned to normal operations.

As a general guideline, IIROC would view malfunctions or interruptions of service which affects the ability of a Participant to conduct trading on a marketplace on three days in any thirty day period to constitute a material malfunction or interruption of service that is “persistent or prolonged”. In these circumstances, IIROC would accept that a Participant was acting reasonably if the Participant did not route further orders to that protected marketplace until such time as the protected marketplace had demonstrated that its systems are reliable and fully-functioning. Once a Participant has determined that a particular protected marketplace was having persistent or prolonged material malfunctions or interruptions of service, IIROC would expect that the Participant would continue to monitor and document the system performance of that marketplace and, as a general guideline, IIROC would expect that a Participant would consider orders on that marketplace if there has not been a material malfunction or interruption of service for a period of at least thirty days and consideration of that marketplace is not otherwise excluded by the application of one of the other factors. IIROC acknowledges that information on the reliability and status of a marketplace system may not be readily available⁷ and that a Participant may have to rely on representations made by the marketplace.

Availability of Marketplace Data

IIROC will take into account as a relevant factor whether order information from the protected marketplace is available through an information vendor used by the Participant in a form and format that readily permits the use of such order information in the trading systems of the Participant. In the absence of an information processor and a single official consolidated market display, IIROC acknowledges that each Participant must rely on one or more information vendors to provide order and trade information

⁷ Marketplace information may become available if the CSA proceeds with amendments to the Marketplace Operation Instrument to require periodic reports of market quality information. See proposed Part 11.1 of the Marketplace Operation Instrument in Canadian Securities Administrators Notice, Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, (2008) 31 OSCB 10033, 10078.

from the various marketplaces trading a particular security. IIROC is aware that not all information vendors make information available from all marketplaces, or even all protected marketplaces. IIROC expects that a Participant will request their information vendors to access the data of all protected marketplaces. IIROC recognizes that a reasonable period of time is required to permit a Participant to integrate additional data feeds (whether from an existing information vendor or an additional information vendor) into the trading system of the Participant. If an information vendor used by the Participant makes order and trade information available from a particular protected marketplace, IIROC would expect, in the ordinary course, that the Participant would take steps to be able to integrate that data into the trading systems of the Participant within 90 days following the date that the information vendor is first able to make the data available. If the Participant is not able to integrate the data within that time period, IIROC would expect that the Participant would document the steps which the Participant and the information vendor had taken prior to the expiry of the 90-day period in order to be able to demonstrate that they had diligently pursued the integration of the data as part of the reasonable efforts to comply with the “best price” obligation of the Participant.

If the information vendor used by a Participant does not make available order information from a particular protected marketplace in a format that can be readily integrated into the Participant’s systems and the Participant determines that the trading activity on that particular marketplace is such that the Participant must consider that particular marketplace in accordance with its “best execution” obligations under Rule 5.1⁸, IIROC would expect that the Participant would make alternate arrangements with information vendors in order to obtain information on orders and trades on that protected marketplace. In the ordinary course, IIROC would expect that the Participant would implement these arrangements within 90 days following the date the Participant determined that the protected marketplace must be considered in accordance with the Participant’s “best execution” obligations. Once again, if the Participant is not able to enter a new arrangement and integrate the data within that time period, IIROC would expect that the Participant would document the steps which the Participant and the information vendor had taken prior to the expiry of the 90-day period in order to be able to demonstrate that they had diligently pursued the integration of the data from the particular protected marketplace.

Unavailability of Quotes

Compliance with the “best price” obligation is measured by reference to the information which was available to the Participant at the time of the entry of an order. Given the speed at which trades occur and at which orders are entered, changed or cancelled, a Participant cannot necessarily execute with every order that appeared to be “available” at the time the Participant decided which marketplace to access. However, if a protected marketplace has demonstrated that, of the immediately tradeable orders sent to that particular protected marketplace, an inordinate proportion of:

- market orders are executed at a worse price than indicated on that marketplace at the time the decision was made to route the order to that particular protected marketplace; and
- limit orders fail to execute for the price and volume indicated on that marketplace at the time the decision was made to route the order to that particular protected marketplace,

a Participant may take this factor into account when determining whether to connect to or otherwise obtain access to that marketplace. IIROC acknowledges that information on the “fill” rates of a particular marketplace may not be readily available and that a Participant may have to rely on representations made by the marketplace.

Adverse results for immediately tradeable orders would be expected to occur on a marketplace that does not have sufficient “depth of book” to support the trading of average or above-average sized orders of liquid securities. Participants who intend to rely on this factor when making order routing decisions must monitor their “fill” rates for orders entered on the various protected marketplaces. A Participant would be expected to continue to monitor and document the trading activity on a protected marketplace which it had stopped utilizing due to the unavailability of quotes. If the monitoring discloses that trading activity on a particular marketplace has “matured” to the level that the marketplace has a demonstrated capacity to handle small or average size orders for a specific security, the Participant must consider order information from such marketplace in making “reasonable efforts” to comply with the “best price” obligation.

Adherence to Policies and Procedures

In determining if a Participant has undertaken “reasonable efforts” in obtaining best price, regardless of the method chosen by the Participant to enter orders on a marketplace, IIROC will consider whether the Participant has followed the policies and procedures regarding the “best price” obligation which the Participant has adopted in accordance with Rule 7.1 of UMIR. (See “Adoption of Policies and Procedures” on page 13 and 14.) In conducting a trade desk review or other inquiry to determine

⁸ Reference is made to “Rule 5.1 – Best Execution Obligation” on pages 8 and 9 of Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006). IIROC expects that each Participant will monitor of trading activity on each marketplace for the purpose of determining whether the marketplace should be considered for compliance with the “best execution” obligation. IIROC also expects each Participant to document their analysis of trading activity on each marketplace that supports their decisions. See “Adoption of Policies and Procedures” on pages 13 and 14.

whether the Participant has undertaken “reasonable efforts” to obtain the best price, IIROC will first ascertain whether the Participant’s policies and procedures are adequate to ensure compliance with the “best price” obligation and then whether the Participant has followed those policies and procedures. In particular, the trade desk review will be looking to determine whether a Participant has monitored and documented:

- trading activity levels on each marketplace (including any marketplace which the Participant has stopped utilizing due to the unavailability of quotes);
- the performance of any marketplace router or functionality which the Participant has relied on to satisfy “best price” obligations;
- the performance of any smart order router or functionality developed and operated by the Participant or a service provider and on which the Participant has relied on to satisfy “best price” obligations; and
- the system performance of any protected marketplace that the Participant has determined has had a material malfunction or interruption of service.

Additional Unspecified Factors

The Interim Amendments provide that IIROC may consider additional factors beyond those specifically listed in Policy 5.2. Such additional factors may be a response to a number of developments including the emergence of new marketplaces, the introduction of new functionality by marketplaces or the recognition of a single consolidated market display produced by an information processor. If IIROC proposes to take into consideration a factor which is not specifically listed in Policy 5.2, IIROC will provide guidance on the application of such new factor through the issuance of a Rules Notice at least 90 days prior to the date that IIROC proposes to take such new factor into account.

Adoption of Policies and Procedures

Rule 7.1 requires each Participant to adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the requirements of UMIR, including the “best price” obligation under Rule 5.2. IIROC expects that each Participant will have adopted policies and procedures which set out the steps or process to constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:

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

The policies and procedures adopted by the Participant must take into account the relevant factors and other requirements set out in Policy 5.2 giving effect to the Interim Amendments.

IIROC acknowledges that each Participant may also take into account additional factors which are reasonable and of particular importance to the type of business conducted by the Participant. However, any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument. For example, section 12.3 of the Marketplace Operation Instrument establishes minimum standards to be met by new marketplaces with respect to the availability of technical information and testing facilities. In addition, section 12.1 of the Marketplace Operation Instrument sets out requirements regarding the capacity of the trading system of a marketplace. Finally, the relevant factors enumerated in Part 1 of Policy 5.2 as provided by the Interim Amendments allow a Participant to take into account the actual operational performance of a protected marketplace. In these circumstances, IIROC would consider it unreasonable for a Participant to adopt as part of its policies and procedures a provision which would allow the Participant to disregard order information from a marketplace that did not have a minimum number of successful “industry wide” tests prior to launch or did not have certain redundancies or back-up capacity.

IIROC expects that each Participant will re-evaluate the appropriateness of its policies and procedures with the launch of each new marketplace, particularly a marketplace that qualifies as a protected marketplace. IIROC also expects that each Participant will monitor and document the levels of trading activity on each marketplace taken into account by the Participant in determining whether to establish or to maintain access to a particular marketplace (either for compliance with the “best price” obligation or the “best execution” obligation). In particular, if a Participant has ceased to take into account orders from a particular protected marketplace as a result of an interruption of marketplace services or the unavailability of quotes, the policies and procedures should indicate how the Participant will monitor and document developments on that particular protected marketplace that would be relevant to determining when orders on that particular protected marketplace should once again be taken into consideration

for the purposes of complying with the “best price” obligation.

On a monthly and quarterly basis, IIROC makes publicly available summary data on trading activity on each marketplace related to the percentage of trades, volume and value of each of the marketplaces regulated by IIROC. The summary is available on the IIROC website (at www.iiroc.ca) and may be accessed on the homepage under the heading “Marketplaces We Regulate”.

Connectivity to Marketplaces

Rule 5.2 requires Participants to make reasonable efforts to fill better-priced orders on a protected marketplace before executing a trade at an inferior price on another marketplace or foreign market. IIROC has indicated in previous guidance that UMIR does not require that a Participant maintain trading access to every Canadian marketplace on which a security may trade. The Interim Amendments have amended the provisions of Part 1 of Policy 5.2 to specifically confirm that making “reasonable efforts” to obtain best price does not require that a Participant become a member, user or subscriber of each protected marketplace.

If a Participant directs its order flow to a marketplace that offers a smart order router that will route, upon receipt, all or any part of an order entered by the Participant to a protected marketplace with “better-priced” orders to comply with the Rule 5.2, IIROC will consider the Participant to have complied with their best price obligations. In order to access the marketplace router, the marketplace may require that the Participant be a member, user or subscriber of each protected marketplace to which orders may be routed. Alternatively, the marketplace (or a Participant acting on its behalf) may itself be a member, user or subscriber of each protected marketplace and the marketplace may take on the responsibility for the order in a manner comparable to that of a “jitney”. In this latter case, since the particular marketplace has taken on the responsibility to consider prices on protected marketplaces and to access those protected marketplaces, the Participant would not be required to determine whether to directly connect to any new protected marketplace or to indirectly access any new protected marketplace through a Participant that had access to that marketplace.

Transaction Costs

On July 18, 2008, IIROC published notice of the approval by the Recognizing Regulators of various amendments to UMIR regarding the “best execution” obligation that became effective on September 12, 2008. Under the amendments, one of the general factors to be taken into account under the “best execution” obligation is the overall cost of the transaction.⁹

In setting out the Proposed CSA Trade-through Protection Rule, the CSA requested comment on whether there should be a maximum amount that a marketplace would be able to charge for access to a quote for trade-through purposes.¹⁰

In contemplation of the change to the “best execution” requirements and the proposed cap on trading fees under the Proposed CSA Trade-through Protection Rule, the Interim Amendments repealed the factor under Part 1 of Policy 5.2 that allows the consideration of the transaction costs and other costs that would be associated with executing the trade on a marketplace. With the repeal of this factor, each Participant when following its policies and procedures to obtain the “best price” will take account of the price of the orders displayed by each of the protected marketplaces without regard to any transaction fee that would be payable or any rebate or fee that may be earned if the order was executed on a particular marketplace. The repeal of this factor simplifies the logic for determining which marketplace an order should be routed to as the decision will now be made by comparing only the displayed prices on each of the protected marketplaces subject to the application of the factors identified in the Policy to Rule 5.2.

Summary of the Impact of the Interim Amendments

The most significant impacts of the adoption of the Interim Amendments are:

- confirmation that “reasonable efforts” does not automatically require a Participant to have a direct connection to each protected marketplace;
- providing that each Participant must adopt policies and procedures for obtaining “best price” which must take into account the factors set out in Policy 5.2 together with other factors that are relevant to the business conducted by the Participant;
- providing that a Participant will be considered to have made “reasonable efforts” if the Participant has entered the order using an acceptable order router or similar facility operated by the Participant, a service provider, marketplace or other Participant;

⁹ IIROC Notice 08-0039 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Best Execution* (July 18, 2008)

¹⁰ Canadian Securities Administrators Notice, Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, (2008) 31 OSCB 10033, 10039. In particular, Question 5 asked: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes?

- expanding the factors taken into account in determining whether a Participant has made “reasonable efforts” to obtain the best available prices to include whether:
 - order information from the protected marketplace is available through a data vendor used by the Participant,
 - the protected marketplace has recently launched operations or had any material malfunction or interruption of services,
 - the protected marketplace has demonstrated an inordinate proportion of “inferior fills” with respect tradeable orders routed to it; and
- removing differences in transaction costs between protected marketplaces as a factor that may be taken into account in determining whether a Participant has made “reasonable efforts” .

Appendices

- Appendix “A” sets out the text of the Interim Amendments to the Rules and Policies respecting the “best price” obligation; and
- Appendix “B” sets out a summary of the comment letters received in response to the Request for Comments on the Interim Amendments as set out in Market Integrity Notice 2008-009 - *Request for Comments – Provisions Respecting the “Best Price” Obligation* (May 16, 2008). Appendix “B” also sets out the response of IIROC to the comments received and provides additional commentary on the Amendments. The Interim Amendments as approved by the Recognizing Regulators did not make any revisions to the text published in the Request for Comments. Appendix “B” also contains the text of the relevant provisions of the Rules and Policies as they read following the adoption of the Interim Amendments.

Appendix "A"

Provisions Respecting the "Best Price" Obligations

The Universal Market Integrity Rules are hereby amended as follows:

1. Subsection (3) of Rule 5.3 is repealed.

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

1. Part 1 of Policy 5.2 is deleted and the following substituted:

Part 1 – Qualification of Obligation

The "best price obligation" imposed by Rule 5.2 is subject to the qualification that a Participant make "reasonable efforts" to ensure that an order receives the best price. "Reasonable efforts" does not require that a Participant become a member, user or subscriber of each protected marketplace.

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

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

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

Factors Related to Initial Consideration of a Particular Marketplace

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

Factors Related to On-going Compliance

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

2. Policy 7.1 is amended by adding the following as Part 6:

Part 6 – Specific Provisions Respecting the Best Price Obligation

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

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

The policies and procedures adopted by the Participant:

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

Appendix “B”

**Comments Received in Response to
Market Integrity Notice 2008-009 – Request for Comments –
Provisions Respecting the “Best Price” Obligation**

On May 16, 2008, Market Regulation Services Inc. (“RS”) issued Market Integrity Notice 2008-009 requesting comments on proposed amendments to UMIR respecting the “best price” obligation (“Best Price Amendments”). While the Best Price Amendments were effective on the publication of Market Integrity Notice 2008-009, the Best Price Amendments were subject to public comment and review and approval by the applicable Recognizing Regulators.

Effective June 1, 2008, RS merged with the Investment Dealers Association of Canada to form the Investment Industry Regulatory Organization of Canada (“IIROC”). References to “IIROC” include RS prior to June 1, 2008. IIROC received comments on the Best Price Amendments from:

Alpha Trading Systems (“Alpha”)

BMO Financial Group (“BMO”)

Canadian Security Traders Association, Inc. (“CSTA”)

CIBC World Markets (“CIBC”)

ITG Canada Corp (“ITG”)

Omega ATS (“Omega”)

RBC Dominion Securities Inc. (“RBC”)

A copy of each comment letter submitted in response to the Best Price Amendments is publicly available on the IIROC website (www.iiroc.ca under the heading “Policy” and sub-heading “Market Proposals/Comments”). The following table presents a summary of the comments received on the Best Price Amendments together with the response of IIROC to those comments. Column 1 of the table highlights the revisions to the Best Price Amendments made by IIROC in response to these comments and the comments of the Recognizing Regulators.

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>5.2 Best Price Obligation</p> <p>(1) A Participant shall make reasonable efforts at the time of the execution of an order to ensure that:</p> <p>(a) in the case of an offer, the order is executed at the best bid price; and</p> <p>(b) in the case of a bid, the order is executed at the best ask price.</p>	<p>Alpha – Supports U.S. approach; limited application of order protection rule to regular trading hours. Recommends that IIROC confirm current practice; allow Participants to make determination not to enter orders to trade on marketplaces outside of standard trading hours where they believe that such a practice would be in best interests of clients.</p>	<p>The Marketplace Operation Instrument does not establish “standard” trading hours (and in fact the CSA specifically rejected this suggestion on the introduction of the Marketplace Operation Instrument). If marketplaces are able to compete on the basis of their hours of operation, then IIROC does not see any reason not to continue to protect orders on protected marketplaces if two or more protected marketplaces operate outside of “regular” hours.</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</p>	<p>Alpha, BMO and RBC – The “best price” obligation should apply at time of entry. Do not agree that best price obligation arises at time of execution. Currently available smart routers determine “best price” at time of routing. In the alternative, UMIR should include an active-passive distinction with respect to the best-price obligation to allow Participants to enter orders on a marketplace with</p>	<p>The “best price” obligation applies to trades executed on both transparent and non-transparent marketplaces. The change in the rule simply incorporates the guidance on the application of the “best price” obligation that has been in place since 2005 with the launch of operations by BlockBook. If an order is entered at a price which would not immediately be executable against orders displayed on a transparent market then such order is</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>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>a transparent continuous limit order book without having to check other marketplaces.</p>	<p>compliant with the best price obligation and the Participant entering the order does not have to monitor other marketplaces. If orders are entered on other marketplaces which could have executed with the order entered by the Participant at a better price than what is achieved on the other marketplace, it is the Participant that entered the other order that is in breach of the requirements of the best price obligation.</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;</p>	<p>BMO – In the absence of including transaction costs, recommended that the CSA consider capping trading fees (as in the U.S.) to avoid the emergence of a predatory pricing regime.</p>	<p>The question of limiting fees to access better-priced orders was asked by the CSA as part of the <i>Joint Notice of the Canadian Securities Administrators and Market Regulation Services Inc. on Trade-Through Protection, Best Execution and Access to Marketplaces</i> (April 20, 2007). IIROC therefore anticipates that the matter will be addressed in the next round of proposals that will be issued by the CSA on trade-through protection.</p>
<p>(c) directed or consented to by the holder of the account 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>BMO and CIBC – Transaction costs and other costs associated with executing a trade should be taken into consideration.</p>	<p>As noted in the Market Integrity Notice, changes to the “best execution” requirements will specifically add the overall cost of the transaction as a factor. Reference should be made to IIROC Notice 2008-0039 – Rule Notice – Notice of Approval – UMIR – <i>Provisions Respecting Best Execution</i>.</p>
<p>(iii) a Market-on-Close Order,</p> <p>(iv) an Opening Order,</p> <p>(v) a Basis Order, or</p> <p>(vi) a Closing Price Order; or</p>	<p>CSTA – Under the “time of execution” scenario a Participant would be required to constantly monitor all existing order flow and if necessary, route an order to another marketplace. Participant should be able to enter an order on a marketplace and establish a best bid/offer and not be required to check on other marketplaces, post time of order entry.</p>	<p>A Participant can rely on the fact that an order entered on a protected market will not be traded-through as every other Participant has a similar best price obligation. The order does not have to be the “best” price at the time of entry in order for the Participant to be able to rely on the expected compliance of others.</p>
<p>(d) a client order on behalf of a non-Canadian account executed other than on a marketplace pursuant to clause (d) or (e) of Rule 6.4 provided such client order does not execute with a principal order or non-client order of the Participant.</p>	<p>RBC – Who will confirm that a marketplace meets the criteria for a “protected marketplace” and will that be tested on an ongoing basis?</p>	<p>The criteria for a “protected marketplace” are set out in UMIR. IIROC has provided guidance on which marketplaces presently qualify as a “protected marketplace” (Chi-X, CNSX, Pure Trading, Omega, TSX and TSXV). IIROC intends to continue the practice of RS of providing guidance on the qualification of each new marketplace prior to its launch.</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>Policy 5.2 – Best Price Obligation</p> <p>Part 1 – Qualification of Obligation</p> <p>The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that an order receives the best price. “Reasonable efforts” does not require that a Participant become a member, user or subscriber of each protected marketplace.</p> <p>The Market Regulator will accept that a Participant has made “reasonable efforts” to obtain the “best price” if the Participant:</p> <ul style="list-style-type: none"> • enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if: <ul style="list-style-type: none"> ○ the order router has demonstrated an ability to access orders on a protected marketplace, and ○ the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace, • enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order: <ul style="list-style-type: none"> ○ route all or any part of the order required to comply with Rule 5.2 to a protected marketplace, ○ execute the order at a price that will comply with Rule 5.2, or ○ automatically vary the price of the order to a price that will comply with 	<p>Alpha – Uncertain of the implications of a Participant relying on another party to fulfil the best price obligation. Should be clear that the obligation remains with the Participant.</p>	<p>While the obligation remains with the Participant, the Participant is required to undertake “reasonable efforts”. IIROC is of the opinion that a Participant will be considered to have undertaken reasonable efforts if the Participant relies on a third party (another Participant, a marketplace or a service provider) but the Participant must monitor the performance of the third party on a periodic basis.</p>
	<p>Alpha – Testing should be left to a new marketplace and its customers. By imposing specific testing period of 6 months, IIROC will encourage marketplaces to conduct meaningless early testing. Suggest more principle based regulation, providing for a “reasonable period.” The amount of time to integrate new marketplace should depend on the circumstances.</p>	<p>The testing requirements are established in National Instrument 21-101 and not in UMIR. The guidance which accompanied the amendment simply references the requirements under the National Instrument and recognize that the longer testing has been available prior to the launch of the marketplace the less the period of time that may be required to integrate that marketplace after launch.</p>
	<p>Alpha – With respect to monitoring and enforcing requirements, some of the obligations imposed on a party to monitor are not feasible because the data is outside the control or is not available to such party.</p>	<p>IIROC has not attempted to prescribe the level of “monitoring” that is required. The guidance that IIROC has provided acknowledges that the obligation is measured in accordance with the information and data that is reasonably available. Simply because the “ideal” data is not available, does not mean that a Participant should be relieved of the obligation.</p>
	<p>BMO – Requests clarification of what is an acceptable “form and format” for the integration of order information.</p>	<p>IIROC has previously issued guidance on the availability of marketplace data. With the launch of each new marketplace, IIROC will continue the practice of RS and issue additional guidance on the data dissemination arrangements of the marketplace prior to the launch of the marketplace.</p>
	<p>BMO, CIBC, ITG and RBC – More time is required to integrate a new marketplace. Any time period should be determined from the point when the marketplace systems code is final. In light of the myriad interdependencies and the inherent complexities of integration, at both the Participant and vendor levels, a “one-size fits all” approach to defining a timeline is neither realistic nor advisable. A 6 month timeframe to accommodate launch of new</p>	<p>The Policy does not set a specific time frame for a Participant to integrate a new marketplace. Rather the guidance indicates that IIROC will consider a “reasonable period” to be the longer of six months after the new marketplace makes testing facilities available and three months following the launch of the marketplace. Longer periods may be acceptable but the burden will be on the Participant to establish that it has been taking “reasonable efforts” to integrate the new marketplace.</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>Rule 5.2; or</p> <ul style="list-style-type: none"> provides the order to another Participant for entry on a marketplace. 	<p>marketplace does not take into consideration that marketplaces require signed legal agreements before providing access for testing or market data.</p>	
<p>In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:</p> <p>Factors Related to Initial Consideration of a Particular Marketplace</p> <ul style="list-style-type: none"> whether the marketplace qualifies as a “protected marketplace”; whether the protected marketplace has recently: <ul style="list-style-type: none"> commenced operations, or had any material malfunction or interruption of service; whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered. 	<p>BMO, CSTA and RBC – The market regulator will accept that a Participant has made “reasonable efforts” if, upon receipt of the order, the marketplace will automatically “vary the price” .Will the marketplace router be expected to monitor other markets <u>after</u> the order has been booked? Will IIROC monitor the ongoing performance of marketplace routers? Can the marketplace fill the order at the better price instead of rerouting it?</p>	<p>Certain marketplaces have proposed to preclude the entry of orders which would otherwise have constituted a “bid-through” or an “offer-through”. Limit orders at a price which would not be in compliance with the “best price obligation” could either be rejected on entry or “re-priced” by the marketplace to a level which is in compliance with the best price obligation. (Certain marketplaces already offer this type of functionality with respect to entry of short sales.) Once an order has been “booked” there is no expectation that the router will monitor other marketplaces as those other marketplaces can not trade-through the price of the booked order. The marketplace will provide notice to the Participant or Access Person that entered the order that the order has been “varied” and it will be the obligation of the person that entered the order to monitor.</p>
<p>Factors Related to On-going Compliance</p> <ul style="list-style-type: none"> whether a “better-priced” order is on a protected marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered; 	<p>CIBC – For most Participants, providing jitney orders to another Participant for entry on a marketplace is not a viable option as the Participant would be required to deal with this portion of its order flow on a fully-manual basis.</p>	<p>IIROC recognizes that the options available to each Participant to fulfil their best price obligations will vary depending upon a number of factors including: the volume of order flow, the sophistication of the systems of the Participant and its service providers, the marketplaces to which the Participant has direct trading access and the functionality offered by those marketplaces. The Participant is given the latitude and the responsibility to devise a solution that fits its circumstances.</p>
	<p>CIBC – Given differences between Participants in terms of size and scope of operations, consistent application of single “test” would be difficult, if not impossible.</p>	<p>The regulatory approach is sufficiently flexible to accommodate Participants of varying size and scope. The standard imposed on all Participants is “reasonable efforts” and Participants are afforded significant discretion as to how they meet the standard.</p>
	<p>CSTA and RBC – Regulators and not Participants should decide whether or not to continue to direct order flow to a particular “protected marketplace” that is experiencing a material malfunction or interruption of services. IIROC should adopt U.S. practices which ensure that</p>	<p>If a marketplace is experiencing a “general” malfunction or interruption of service that affects substantially all persons with access to that marketplace, IIROC would expect that the marketplace would voluntarily halt trading operations or be directed to do so by IIROC. However, the provisions also recognize that the effect of</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<ul style="list-style-type: none"> • whether the Participant has experienced: <ul style="list-style-type: none"> ○ disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or ○ an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being executed only in part for a volume less than that displayed at the time the order was entered by the Participant; and • whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be considered on an on-going basis. 	<p>marketplaces, not Participants, manage this process. What is the obligation of the Participant to notify IIROC of these occurrences? A marketplace should provide industry-wide notification of material malfunction or interruption of services.</p>	<p>the malfunction or interruption could be isolated to particular Participants and the problem originates with service or communication providers or even the systems of the Participant. The provision is drafted to allow the Participant greater flexibility when the problems are not actually with the marketplace itself.</p>
	<p>ITG – Marketplaces should prevent the entry of orders which at the time of entry bid-through a better offer (or offer-through a better bid) on another protected marketplace. If there is a legitimate reason for a bid- or offer-through, a Participant should be able to use a special order marker such as “bypass” order marker.</p>	<p>IIROC has issued guidance that a Participant can not, when entering an order on a protected marketplace, “offer-through” or “bid-through” a better-priced order on another protected marketplace. If the CSA proceeds with the implementation of a trade-through protection regime based on the proposal published in April of 2007, marketplaces would have an obligation to have appropriate policies and procedures to prevent the execution of an order that would be an “offer-through” and “bid-through”.</p>
	<p>ITG and RBC – 90-day timeframe for integration of new protected marketplaces into marketplace router or functionality appears to be a short timeframe. 90 days does not provide adequate time to develop, implement and test functionality. Less prescriptive timeline recommended requirements should be mandated on marketplace not participants. Where data is not integrated within time period, this would be an industry-wide issue or at a minimum, would affect more than one firm.</p>	<p>The Policy does not set a specific time frame for a marketplace that is offering an order router or functionality for “best price” compliance to integrate data from a new “protected” marketplace. The guidance indicates that IIROC will consider a “reasonable period” for the integration of data to be 90 days after the launch of the new protected marketplace. Longer periods may be acceptable but the burden will be on the marketplace to establish that it has been taking “reasonable efforts” to integrate the data from the new marketplace.</p>
	<p>RBC – Unavailability of quotes is an industry-wide issue. Why has onus been placed on Participants to monitor and document availability of quote on a given marketplace?</p>	<p>A limited “communications” problem that affects just one or a few dealers is far more common than the general “market outage”. The guidance has been drafted to be as flexible as possible to take into account problems with the systems of a marketplace, information vendor, service provider or the dealer.</p>
	<p>RBC – Seeks guidance on the effects of routing orders to other Participants as the latency inherent in re-routing an order, particularly one that is manually handled, to another dealer may cause the order to miss a better price. What is the obligation for jitney dealers to re-sweep for best price?</p>	<p>A Participant that receives an order as an individual jitney order takes on the obligation to undertake “reasonable efforts” in order to comply with the best price obligation under Rule 5.2. A Participant which wishes to reduce the possible “latency” problems associated with jitney orders would consider establishing direct trading access to each “protected marketplace”.</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
	<p>RBC – What recourse would be available to Participants in event that order information from particular protected marketplace is not available in a form and format that readily permits the use of such order information in the trading system of the Participant?</p>	<p>IIROC would not expect a Participant to take into account information from a protected marketplace that is not available in a form and format that is readily incorporated into the systems of the Participant.</p>
	<p>RBC – What is an “acceptable order router”? Responsibility to monitor and document performance of marketplace order router or marketplace trading system functionality should not be placed on Participants but on independent regulatory body.</p>	<p>The performance of an order router is dependent in part on how that router interacts with other features of the systems of the Participant and the trading system of the marketplace. What is “acceptable” performance for one Participant may not be replicated by another Participant. It is the expectation of IIROC that the Participant or service provider will monitor the performance of their router.</p>
<p>Policy 7.1 – Trading Supervision Obligation</p> <p>Part 6 – Specific Provisions Respecting the Best Price Obligation</p> <p>Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:</p> <ul style="list-style-type: none"> • initially in determining whether orders on a protected marketplace needs to be considered; and • on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered. <p>The policies and procedures adopted by the Participant:</p> <ul style="list-style-type: none"> • must take into account the 	<p>Alpha – Regulatory policy should focus on requiring a Participant to establish policies and procedures that identify criteria for access and best price obligation; processes for decision-making or routing; processes for monitoring and documenting the effect of such procedures and responses to the findings.</p>	<p>Rule 7.1 requires each Participant to adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, <u>taking into account the business and affairs of the Participant</u>, to ensure compliance with the requirements of UMIR, including the best price obligation under Rule 5.2. The Rule is not prescriptive in that it is left to each Participant to develop policies and procedures in order to demonstrate that the Participant is undertaking “reasonable efforts” to comply with the “best price” obligation. However, the Participant can not adopt policies and procedures that are inconsistent with the requirements of Policy 5.2 or the provisions of the Marketplace Operation Instrument.</p>
	<p>RBC – Data not being available or insufficient granularity of data cause problems with developing monitoring program. If data is only available to the whole second, false positives will increase. If multiple data sources are used, there are time synchronization problems. What are the expectations for monitoring: real time to aid in remedy of potential trade-through or T+1?</p>	<p>IIROC recognizes that time synchronization is a significant problem and for this reason provides that marketplaces undertake “continual” synchronization throughout a trading day. IIROC has issued guidance that each Participant should also consider “continual” synchronization in order to minimize discrepancies with times for entry and execution provided by a marketplace. IIROC expects that each Participant will periodically test any automated solution to verify that the “solution” remains effective. The results of these tests must be retained by the Participant and IIROC expects to be in a position to review the results of these tests during regularly scheduled trade desk reviews.</p>

Text of Provisions Following Adoption of Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>factors and other requirements enumerated in Policy 5.2; and</p> <ul style="list-style-type: none"> may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument. 		
<p>General Comments: <i>Deferral for "Trade-Through Protection"</i></p>	<p>CIBC and CSTA – Reliance on a marketplace router or functionality represents the most cost effective and practical path to complying with "best price" obligation. This functionality will be provided by several "protected marketplaces" in very near future. IIROC's expectation that Participants will commit resources to address issue that will eventually be addressed by marketplaces is wasteful and unnecessary.</p>	<p>Smart routers and marketplace functionality that will be considered compliance with the "best price" obligation presently exist. Additional alternatives are also expected to emerge. However, a Participant must recognize that the rule can not be simply enforced at the marketplace level. Based on data for June of 2008, more than 62% of the value of trading on marketplaces is in securities which are inter-listed with markets outside of Canada. Before a Participant trades such securities on a foreign organized regulated marketplace, over-the-counter or by some other "off-marketplace" transaction at an inferior price to that displayed on a protected marketplace, the Participant must ensure that any "better-priced" orders on the protected marketplace are filled.</p>
	<p>RBC – Only appropriate solution is for CSA to finalize and implement an effective trade-through rule that requires orders to be routed to the marketplace or marketplaces with the best prevailing prices. CSA must implement minimum conditions for approval for every new marketplace.</p>	<p>See response to CIBC comment above.</p>
<p><i>"foreign organized regulated market"</i></p>	<p>BMO, CSTA and RBC – Definition of "foreign organized regulated market." Are Participants required to access such markets as part of "best price" obligation?</p>	<p>UMIR was amended to add a definition of "foreign organized regulated market". Reference should be made to Market Integrity Notice 2008-008 – <i>Notice of Approval – Provisions Respecting "Off-Marketplace" Trades</i> (May 16, 2008). The "best price" obligation applies to orders entered on a marketplace. The term "marketplace" applies only to an exchange, QTRS or ATS that operates in Canada.</p>

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		<p>The “best price” obligation does not apply to an order on a “foreign organized regulated market”. A Participant may have an obligation to consider orders on a foreign organized regulated market as part of its “best execution” obligation.</p>
<p><i>“inferior fills” and “recently launched operations”</i></p>	<p>CSTA and RBC – In determining whether a Participant has made “reasonable” efforts, definitions for “recently launched operations” and “inferior fills” sought.</p>	<p>The term “inferior fill” is not used in the Amendments but is part of the commentary which explains the Amendments. Reference should be made to the second bullet under the heading “Factors Related to On-going Compliance” under Part 1 of Policy 5.2. The time periods which IIROC would accept for a “recently launched operations” are part of the guidance set out in Market Integrity Notice 2008-009.</p>
<p><i>Locked Markets</i></p>	<p>RBC – “Locked markets” may affect how the router of a Participant treats an order and Participant may end up being charged a fee on active orders when it was the intention of the Participant to post a bid or offer.</p> <p>ITG – IIROC should clearly state that it is a violation of UMIR when a Participant intentionally and repeatedly enters orders designed to “lock” consolidated best bid and offer for protected markets.</p>	<p>Presently, if markets are locked, it is permissible for the order to be entered on any marketplace and, as such, the Participant could determine whether the order was to be “booked” or executed. The CSA has proposed amendments to the Trading Rules to preclude the intentional locking of markets.</p> <p>In the view of IIROC, it is not acceptable for a particular marketplace to “lock” itself. However, if marketplaces “lock”, there has been no violation of the “best price” requirements and Participants simply have a choice whether any order at the “locked” price is executed or “booked” depending upon the marketplace on which any order at the same price is entered. . The CSA has proposed amendments to the Trading Rules to preclude the intentional locking of markets.</p>
<p><i>Market Maker Obligations</i></p>	<p>RBC – How do the requirements affect registered traders and participation on orders within the minimum guaranteed fill facility?</p>	<p>Each exchange may establish its own market making system and impose obligations on the market makers. A market maker can not purchase at a price above the “best ask price” or below the “best bid price” as displayed on any protected marketplace either intentionally or automatically in accordance with the operation of the trading system of the marketplace or requirements of the market making system.</p>
<p><i>Marketplace “Best Price” Functionality</i></p>	<p>Alpha – Guidance limits how the marketplace can comply and is prescriptive as compared to the U.S. principle-based approach. Moreover,</p>	<p>The Amendments are flexible. The guidance which accompanies the Amendments sets out that if a Participant is relying on the functionality of the</p>

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	<p>it changes the nature of what a limit order is or what a marketplace should do, by empowering the marketplace to change the price of a limit order.</p>	<p>marketplace to provide compliance with the “best price” obligation then the marketplace must handle the order in one of the ways listed. The list given in the guidance is based on the current functionality offered by marketplaces. If a marketplace develops a new functionality which provides an acceptable method of complying, IIROC will issue supplemental guidance.</p>
<p><i>Marketplace Data Requirements</i></p>	<p>BMO – Believes that a marketplace must ensure that its data is integrated into data feeds that are widely used by Participants.</p>	<p>The view of the Industry Committee was that an “industry solution” would emerge. In the near term, the Amendments recognize the problems faced by a Participant if the data from a marketplace is not made available in a form and format which is readily integrated into the systems of the Participant.</p>
<p><i>Marketplace Policies</i></p>	<p>ITG – Protected marketplaces should have robust policies and procedures for handling “outages” during the trading day. Recommends the establishment of standard procedures for the cancellation of “booked” orders during a malfunction or before executions resume on that marketplace (in order to reduce risks associated with duplicate fills).</p>	<p>The securities regulatory authorities may impose obligations on marketplaces pursuant to the Marketplace Operation Instrument. In the absence of regulatory requirements, Participants should consider the risks of encountering these problems when determining the particular marketplace on which limit orders that are not immediately executable will be booked.</p>
<p><i>Marketplace Systems Requirements</i></p>	<p>ITG – IIROC should require that all protected marketplaces implement filters designed to protect market integrity. Filters would cover issues like “fat finger” errors and malfunctioning order routers or automated trading systems.</p> <p>Filters that freeze price movement of an individual stock that are currently employed by TSX and TSXV should be uniformly implemented across all protected markets. The next step would be to implement other filters to address multiple order price movements from the same trader.</p> <p>Participants that provide DMA to clients are required to implement order parameters or filters. To ensure market integrity, the marketplace filters need to be consistent to ensure that if one marketplace rejects an order because it exceeds specific parameters, that same order would not simply reroute to another</p>	<p>Generally, the obligations of marketplaces are imposed by the securities regulatory authorities pursuant to the Marketplace Operation Instrument and not through UMIR as adopted by IIROC. IIROC has an “unreasonable trades” policy which sets out when IIROC will intervene to vary or cancel orders or trades for regulatory purposes. Those requirements may be augmented by requirements of each marketplace.</p> <p>“Price freezes” which are used by the TSX and TSXV are “business” rather than “regulatory” halts and the provision for such halts are within the purview of each marketplace.</p> <p>Each of the marketplaces that permits “direct market access” have requirements that are the same or similar to those established by the TSX. While a Participant must set parameters for orders from the DMA client, the level of the parameters is not prescribed by the marketplace and is set by the Participant.</p>

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	marketplace with more liberal parameters.	
<i>Marketplace Testing Requirements</i>	<p>BMO – Recommends enhancing these proposed changes with the requirement for adequate testing when there is a material technology change/migration undertaken by a marketplace.</p>	<p>The imposition of technology testing requirements is within the purview of the CSA under the Marketplace Operation Instrument.</p>
	<p>CSTA – Recommends minimum of 60 days plus 30 additional days of stress testing for every new marketplace.</p>	<p>The imposition of technology testing requirements is within the purview of the CSA under the Marketplace Operation Instrument.</p>
<i>National Best Bid / Offer System</i>	<p>BMO – Given the lack of a consolidated national best bid and offer (NBBO) in Canada, recommends a minimum one-second grace period be provided to Participants consistent with Reg NMS.</p>	<p>Whether or not an information processor emerges to create a “consolidated feed”, the obligation under UMIR to use “best efforts” is based on the information which is available to the Participant at the time the Participant is making the routing decision.</p>
	<p>CSTA – Until the industry has a NBBO or a smart router that can sweep all protected marketplaces, traders should be exempted from any type of trade-through violations.</p>	<p>Following the introduction of the Marketplace Operation Instrument in 2001, the Industry Committee recommended that the data integration requirements be deleted in favour of an “industry solution” that would take shape with the introduction of additional marketplaces. While a “consolidated feed” has not emerged, new marketplaces have emerged and order routers are presently available through both marketplaces and service providers. In any event, the current rule recognizes the difficulties and requires only “reasonable efforts” rather than strict adherence to best price.</p>
<i>Normal Course Issuer Bids</i>	<p>RBC – What is the impact for normal course issuer bids?</p>	<p>Whether the normal course issuer bid is made through a bid approved by an exchange or as filed with a securities regulatory authority, the notice of the bid must indicate where purchases will be made. If purchases are limited to the exchange which approved the bid, purchases may only be made when that exchange has the “best ask price”. If the notice does not limit the place where purchases may be made, purchases should be made on the marketplace with the “best ask price”.</p>

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<i>Order Router Criteria and Certification</i>	BMO – IIROC should consider (i) establishing minimum criteria for marketplaces and smart order routers, (ii) certifying marketplaces and vendor smart order routers and (iii) requiring marketplaces to supply auditable performance data to be published on a regular basis. Implementation of uniform criteria would ensure consistency across all marketplaces, vendors and Participants. The costs to meet this proposed certification and ongoing monitoring should be borne by the marketplaces and vendors and then passed on to Participants.	In the view of IIROC, monitoring the performance of an order router offered by a marketplace, service provider or Participant falls to the Participant. Since the performance of an order router is dependent on external factors including the systems of the Participant and its service providers and information vendors, the certification of the system would not guarantee its “performance”. IIROC is aware that one marketplace is offering at least three distinct forms of order routing capability. IIROC does not wish to limit innovation and does not see any material benefit in prescribing a particular functionality for order routers.
<i>Potential Violation Alert Notifications</i>	CSTA – Potential Violation Alert Notifications” replacing Notifications of Trade-Through Alerts. Will a “PVAN” be issued to a trader’s employer or be kept on RS records?	The purpose of the notices was to assist Participant in evaluating whether the policies and procedures adopted by the Participant were adequate. Reference should be made to Question 4 in Market Integrity Notice 2008-010 - Guidance – Complying with “Best Price” Obligations.
<i>Protected Marketplace</i>	Alpha and CSTA – Consideration should be given to introducing a <i>de minimis</i> exemption similar to 5% threshold in U.S. Order Protection Rule. U.S. Rule only applies to one pricing level. “Best price” obligation should only apply to limited level of prices; suggestion: maximum of five levels of prices.	Historically, equity marketplaces in Canada have enforced trade-through protection for <u>all</u> orders at a better price. In contrast, in the United States no such protection historically existed. In an environment like the United States with securities trading on multiple marketplaces and fragmentation of order flow, applying protection to depth-of-book is much more complicated. Not all marketplaces in the United States are automated and some exchanges had adopted a specialist system where orders could be filled manually. As a result, in the United States, trade-through protection has focused on an approach that only requires the execution of the level of the national best bid and offer (NBBO), or “top-of-book”, and not full depth-of-book. The implementation of a threshold test has been considered and rejected by both IIROC and the CSA given the state of the development of multiple marketplaces in Canada.
<i>“Self-help”</i>	Alpha – A Participant or other entity providing functionality to satisfy “best price” obligation should have ability to ignore a marketplace if there is an interruption of service or a problem with its data provided that parties should adopt policies and procedures reasonably designed to deal with the	If a protected marketplace has recently had a material malfunction or interruption of services, this factor may be taken into account in a decision by a Participant whether to continue to direct order flow to that particular protected marketplace. The expectation is that a Participant would provide notice to the protected

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	<p>failure of a marketplace to respond.</p>	<p>marketplace, any relevant service provider and the Participant's technology staff in order that the causes of the interruption could be identified and the responsible party could take remedial action. If a protected marketplace has experienced a material malfunction or interruption of service on any trading day, IIROC would not expect the Participant, depending upon the circumstances, to take that marketplace into account for the balance of the trading day should trading resume on that marketplace.</p>
	<p>BMO, ITG and RBC – Three days of malfunctions / interruptions of service in any thirty day period is an unacceptably high threshold.</p>	<p>Every marketplace, just like every Participant, will experience occasional systems problems. Guidance is provided to Participants as to their obligations on the day that a marketplace experiences a material malfunction or interruption of services. Additional guidance is provided if those problems are continuing or persistent which allows a Participant to ignore that marketplace until it has been problem-free for a period of 30 days.</p>
	<p>Omega – IIROC should provide further guidance regarding “self – help” procedures. The “self help exception” under U.S. Reg. NMS allows trading centers and market participants to bypass otherwise protected quotations of automated market centers that are inaccessible for whatever reason – usually system failure.</p>	<p>IIROC has proposed a more flexible framework for “self-help” than that which is contained in Regulation NMS which can take into account problems with the systems of a marketplace, information vendor, service provider or the dealer. The cornerstone of this approach relies on the Participants informing both the marketplace and IIROC of any problems which lead to the use of “self-help”. If the problem affects the “market” generally, IIROC may pursue a regulatory halt in respect of the trading operations of the affected marketplace. If the problem affects only a limited number of Participants, IIROC will be in a position to monitor the steps taken by each affected Participant to use “reasonable efforts” to comply with the best price obligation.</p>