

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.1 SROs

#### 13.1.1 IIROC Provisions Respecting the Implementation of the Order Protection Rule

##### INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

##### PROVISIONS RESPECTING THE IMPLEMENTATION OF THE ORDER PROTECTION RULE

#### Summary

This IIROC Notice provides notice that, on January 28, 2011, the applicable securities regulatory authorities approved amendments (“Amendments”) to the Universal Market Integrity Rules (“UMIR”) that are consequential to the implementation by the Canadian Securities Administrators (“CSA”) of changes to National Instrument 23-101 – *Trading Rules* (“Trading Rules”) regarding trade-through protection (“Order Protection Rule”).<sup>1</sup>

In particular, the Amendments which are **effective February 1, 2011**:

- repeal the rule and policies respecting the “best price” obligation of Participants;
- provide that the Order Protection Rule can not be avoided when a Participant is considering a trade on a foreign organized regulated market;
- require a Participant or Access Person to have adequate policies and procedures for the handling of orders that do not rely on a marketplace to ensure compliance with the Order Protection Rule; and
- make a number of consequential changes to UMIR including:
  - repealing those portions of the rules and policies on trading supervision and gatekeeper reports dealing with the “best price” obligation,
  - confirming that the “best execution” obligation is subject to the Order Protection Rule,
  - introducing a marker for a “directed action order” as defined for the Order Protection Rule, and
  - extending the existing provisions of UMIR governing foreign currency translation and the calculation of the value of an order to the determination whether the execution of certain trades on a foreign organized regulated market may give rise to an obligation to fill “better-priced” orders on a marketplace.

***The Amendments and the Order Protection Rule come into force on February 1, 2011.***

#### Summary of the Amendments

##### ***Repeal of the “Best Price” Obligation***

With the adoption of the Order Protection Rule, the “best price” obligation is essentially redundant to the protection of better-priced orders disclosed in a consolidated market display. For this reason, the Amendments repeal Rule 5.2 and Policy 5.2.

##### ***Relationship to the “Best Execution” Obligation***

The obligation not to trade-through, like the previous “best price” obligation, is an obligation which is owed by market participants to the market generally. UMIR recognizes that the “best execution” obligation is owed by a Participant to its client. The

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<sup>1</sup> Canadian Securities Administrators Notice, Notice of Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, (2009) 32 OSCB 9401. Reference should be made to this notice for particulars on the Order Protection Rule including a discussion of the development of the Order Protection Rule and the policy rationale underlying the rule.

Amendments add Part 4 to Policy 5.1 to confirm that the “best execution” obligation is subject to the “trade-through protection” obligation under the Order Protection Rule (in the same manner that the “best execution” obligation was subject to the “best price” obligation).

### ***Trading Supervision Requirements***

The Amendments repeal the requirement under Policy 7.1 that the policies and procedures adopted by a Participant as part of its trading supervision obligation include specific provisions respecting the “best price” obligation. However, this requirement has been replaced by a requirement that a Participant or Access Person adopt policies and procedures to ensure compliance with trade-through obligations under the Order Protection Rule if the Participant or Access Person intends to use a “directed action order” or if a Participant intends to undertake certain trades on foreign organized regulated markets.

The “directed action order” acts as an instruction to the marketplace on which the order is entered not to check for better-priced orders on other marketplaces and to immediately execute or book the order (in which case the Participant or Access Person entering the order assumes the responsibility for the execution or booking of the order not to result in a trade-through). In using a “directed action order”, the Participant or Access Person have assumed the obligation for trade-through protection and the marketplace will be able to execute the order without delay or regard to any other better-priced orders displayed by another marketplace. In order to be able to use a “directed action order”, the Order Protection Rule requires that the person entering the order must “establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs ...”<sup>2</sup>

In the view of IIROC, the policies and procedures which a Participant or Access Person must adopt are comparable to the policies and procedures which a Participant was required to have for compliance with the “best price” obligation under Rule 5.2 of UMIR. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a “directed action order”.<sup>3</sup>

Each Participant or Access Person must test the adequacy of the policies and procedures in preventing trade-throughs on a regular basis which shall not be less than monthly. IIROC expects that the results of the compliance testing are retained by the Participant or Access Person in order that IIROC would be able to review any test and its results as part of trade desk review or other compliance audit by IIROC.

### ***Condition on the Conduct of Certain Trades on a Foreign Organized Regulated Market***

#### ***Condition on “Off-Marketplace” Trades***

The Amendments buttress the anti-avoidance provisions in the Order Protection Rule.<sup>4</sup> Rule 6.4 of UMIR requires a Participant, subject to certain enumerated exceptions, to execute a trade in a listed security on a marketplace. One of the enumerated exceptions, allows a Participant to execute a trade on a foreign organized regulated market. The Amendments limit the availability of this exception if the order which is to be entered on a foreign organized regulated market would have executed against better-priced orders on a marketplace had the order been entered on a marketplace. The Amendments do not impose the obligation to consider better-priced orders on a marketplace when a Participant executes a trade on behalf of:

- a non-Canadian account; or
- a Canadian account that is denominated in a foreign currency.

The Amendments also limit the types of orders to which the obligation would apply. The obligation to consider better-priced orders on a marketplace only apply when a Participant is executing on a foreign organized regulated market an order that meets on of the following four conditions:

- is part of an intentional cross;
- is part of a pre-arranged trade;
- is for more than 50 standard trading units; or
- has a value of \$250,000 or more.

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<sup>2</sup> Section 6.4 of NI 23-101.

<sup>3</sup> For more information on the use of a “bypass order” see IIROC Notice 09-0128 – Rules Notice – Guidance Note – UMIR – *Specific Questions Related to the Use of the Bypass Order Marker* (May 1, 2009) and IIROC Notice 09-0034 – Rules Notice – Guidance Note – UMIR – *Implementation Date for Marking of Bypass Orders* (February 3, 2009).

<sup>4</sup> Section 6.7 of NI 23-101. The text of the provision is:

No person or company shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

The Amendments do not impose a similar obligation on Access Persons to consider better-priced orders on a marketplace as UMIR does not require that an Access Person execute trades on a marketplace.

*Compliance with the Condition on Executing “Off-Marketplace” Trades*

For orders which a Participant intends to execute “off-marketplace” on a foreign organized regulated market, the Amendments continue the existing UMIR obligation to consider and honour better-priced orders on a protected marketplace. With the adoption of the Order Protection Rule, a Participant has several means of complying with this obligation, including:

1. *Continuation of Existing Policies and Procedures of the Participant*

If a Participant has access to each protected marketplace, the Participant will be aware at the time that the Participant is considering the entry of the order on a foreign organized regulated market whether better-priced orders are displayed on a protected marketplace. In these circumstances, a Participant would enter a “directed action order” as contemplated by the Order Protection Rule on each of the marketplaces displaying a better-priced order. In order to enter a “directed action order”, the Participant must have in place policies and procedures that, in the opinion of IIROC, are comparable to the existing policies and procedures which a Participant must have for the purposes of complying with the “best price” obligation under Rule 5.2 of UMIR.

2. *Reliance on Marketplace Policies and Procedures*

Under the Order Protection Rule, each marketplace must establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. If at least one marketplace offers trade-through protection by the establishment of direct linkages to all other marketplace that may have a “protected order”, then a Participant would be able to satisfy any obligation that would be imposed by the Amendments by entering a “fill and kill” order on such a marketplace at the intended price that the balance of the order would execute on entry on a foreign organized regulated market. The Participant that entered the order on the marketplace need not have access to all of the other marketplaces or even been aware that better-priced orders were present on other marketplaces in order to be able to comply with the condition under the Amendments. (If no marketplace offers trade-through protection by the establishment of direct linkages to all other marketplaces that may have a “protected order”, a Participant may have to enter orders on one or more marketplaces depending upon the way marketplaces have chosen to provide trade-through protection.)

***Consequential Amendments***

With the repeal of Rule 5.2 dealing with the “best price” obligation, the Amendments also make several consequential changes to UMIR including:

- *Gatekeeper Requirements* – The Amendments repeal the requirement under Rule 10.16 that a Participant investigate and report on a possible violation of the “best price” obligation that the Participant becomes aware of as part of its gatekeeper obligation.
- *Foreign Currency Translation* - The Amendments move the provisions related to foreign currency translation for the purpose of determining when a better-priced order exists on a marketplace from Part 3 of Policy 5.2 (which was repealed by the Amendments) to Part 6 of Rule 6.4.
- *Interpretation* – Determination of Value of an Order - The Amendments also extend the current methodology used for determining the value of an order for the purposes of Rule 6.3 and Rule 8.1 to the determination of the value of an order in Rule 6.4(3)(d).
- *Order Markers* – The Amendments introduce a requirement in Rule 6.2 for “directed action orders” entered on a marketplace to carry an acceptable designation. While such designation ordinarily would be displayed in the order information provided to the information processor or information vendors, IIROC has directed, in accordance with the provisions of subsection (6) of Rule 6.2, that the designation not be made publicly available.

**Summary of the Impact of the Amendments**

The most significant impacts of the adoption of the Amendments are that Participants are relieved of the obligation of ensuring that when an order entered on a marketplace is executed, better-priced order in the disclosed volume of orders on a protected marketplace are not ignored or traded-through. Effective February 1, 2011, this obligation is placed upon the marketplace

receiving the order, in accordance with their policies and procedures adopted in accordance with the provisions of Part 6 of the Trading Rules.

However, if a Participant or Access Person has marked an order as a “directed action order”, they have an obligation to ensure that better-priced orders on a marketplace displayed in a consolidated market display are honoured when executing that order on a marketplace. A Participant or Access Person is not be entitled to use the “directed action order” marker unless they have established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. Similar policies and procedures would also apply when a Participant intends to execute certain orders at an inferior price on a foreign organized regulated market.

## **Designations and Implementation Plan**

### ***“Best Price” Policies and Procedures***

To the extent that a Participant intends to rely on a marketplace for compliance with the Order Protection Rule, a Participant will be able to delete its policies and procedures that have been put in place to ensure compliance with the “best price” obligation under UMIR. If a Participant or Access Person intends to use the “directed action order”, then the Participant or Access Person must have policies and procedures to reasonably ensure that the entry of their order will not result in a trade-through. These policies and procedures would be essentially the same as those required of a Participant to ensure compliance with the “best price” obligation. A Participant may also have to essentially retain the policies and procedures to ensure compliance with the “best price” obligation if the Participant intends to execute certain types of trades on a foreign organized regulated market.

### ***Gatekeeper Reports on Use of “Directed Action Orders”***

Rule 10.16 of UMIR allows IIROC to designate any requirement for which a Participant or Access Person must undertake a review of any activity that may be a violation of the requirement and to provide a report to IIROC if the review finds that a violation has occurred. With the approval of the Amendments, this IIROC Notice constitutes notice that IIROC has designated, effective February 1, 2011, that a “gatekeeper report”<sup>5</sup> is required from any Participant or Access Person that determined that:

- an order marked as a “directed action order” did not comply with the policies and procedures of the Participant or Access Person; and
- a periodic test of the policies and procedures adopted by the Participant or Access Person found that the policies and procedures with respect to the use of a “directed action order” were not adequate.

## **Appendices**

- Appendix “A” sets out the text of the Amendments to UMIR that are consequential to changes to the Trading Rules regarding the Order Protection Rule; and
- Appendix “B” sets out a summary of the comment letters received in response to the Request for Comments on the proposed amendments as set out in IIROC Notice 09-0328 – Rules Notice – Request for Comments – UMIR – Provisions Respecting the Implementation of the Order Protection Rule (November 13, 2009). Appendix “B” also sets out the response of IIROC to the comments received and provides additional commentary on the Amendments. Appendix “B” also contains the text of the relevant provisions of the Rules and Policies as they read following the adoption of the Amendments.

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<sup>5</sup> For additional information on the filing of a “gatekeeper report”, reference should be made to Market Integrity Notice 2008-011 – *Guidance – New Procedures for Gatekeeper Reports* (May 18, 2008).

**Appendix "A"**

***Provisions Respecting Implementation of the Order Protection Rule***

The Universal Market Integrity Rules are amended as follows:

1. Subsection (3) of Rule 1.2 is amended by deleting the word "and" and inserting the phrase ", Rule 6.4 and Rule" after the phrase "Rule 6.3".
2. Rule 5.2 is deleted.
3. Rule 6.2 is amended by inserting the following as subclause (v.4) in clause (b) of subsection (1):
  - (v.4) a directed action order as defined in the Trading Rules,
4. Rule 6.4 is amended by:
  - (a) inserting a period after the first occurrence of the word "marketplace" and renumbering that sentence as subsection (1);
  - (b) deleting the phrase "unless the trade is" and substituting the phrase "Subsection (1) does not apply to a trade" and renumbering the sentence as subsection (2); and
  - (c) inserting the following as subsection (3):
    - (3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that:
      - (a) is part of an intentional cross;
      - (b) is part of a pre-arranged trade;
      - (c) is for more than 50 standard trading units; or
      - (d) has a value of \$250,000 or moreif the entry of the order on a foreign organized regulated market would avoid execution against a better-priced order entered on a marketplace pursuant to Part 6 of the Trading Rules.
5. Rule 7.1 is amended by adding the following as subsection (5):
  - (5) Notwithstanding any other provision of this Rule, a Participant or Access Person shall not mark an order on entry to a marketplace as a directed action order unless the Participant or Access Person has established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs other than those trade-throughs permitted in Part 6 of the Trading Rules.
6. Rule 10.16 is amended by deleting clause (f) of subsection (1) and renumbering the remaining clauses accordingly.

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

1. Part 4 of Policy 5.1 is deleted and the following substituted:

**Part 4 – Subject to Order Protection Rule**

Notwithstanding any instruction or consent of the client, the provision of "best execution" for a client order is subject to compliance with the "order protection rule" under Part 6 of the Trading Rules by the marketplace on which the order is entered or by the Participant if the Participant has marked the order as a directed action order in accordance with Rule 6.2. Similarly, if a Participant considers a foreign organized regulated market in order to provide a client with "best execution", the Participant must ensure that the condition in subsection (3) of Rule 6.4, if applicable, is satisfied prior to the execution on the foreign organized regulated market.

2. Policy 5.2 is deleted.

3. Policy 6.4 is amended by adding the following as Part 6:

**Part 6 – Foreign Currency Translation**

If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as "marginal" because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11

4. Part 6 of Policy 7.1 is deleted and the following substituted:

**Part 6 – Specific Provisions Respecting Trade-throughs**

Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure that an order:

- marked as "directed action order" in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules; or
- entered on a foreign organized regulated market complies with the conditions in subsection (3) of Rule 6.4.

Each Access Person must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Access Person, to ensure that an order marked as a "directed action order" in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules.

The policies and procedures must set out the steps or process to be followed by the Participant or Access Person to ensure that the execution of an order does not result in a trade-through. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a "directed action order". These policies and procedures must address the steps which the Participant or Access Person will undertake on a regular basis, which shall not be less than monthly, to test that the policies and procedures are adequate.

Appendix “B”

Comments Received in Response to

IIROC Notice 09-0328 – Rules Notice - Request for Comments – UMIR -

Provisions Respecting Implementation of the Order Protection Rule

On November 13, 2009, IIROC issued IIROC Notice 09-0328 requesting comments on proposed revised amendments to UMIR (“Revised Proposed Amendments”) consequential to the implementation by the Canadian Securities Administrators of changes to National Instrument 23-101 – *Trading Rules* regarding the implementation of trade-through protection.<sup>6</sup> IIROC received comments on the Revised Proposed Amendments from:

Questrade Inc. (“Questrade”)

RBC Dominion Securities Inc. (“RBCDS”)

A copy of each comment letter submitted in response to the Request for Comments is publicly available on the IIROC website ([www.iroc.ca](http://www.iroc.ca) under the heading “Policy” and sub-heading “Market Proposals/Comments”). The following table presents a summary of the comments received on the Revised Proposed Amendments together with the response of IIROC to those comments.

Text of Provisions Following Adoption of the Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p><b>1.2 Interpretation</b></p> <p>(3) In determining the value of an order for the purposes of Rule 6.3, Rule 6.4 and Rule 8.1, the value shall be calculated as of the time of the receipt or origination of the order and shall be calculated by multiplying the number of units of the security to be bought or sold under the order by:</p> <p>(a) in the case of a limit order for the purchase of a security, the lesser of:</p> <p style="padding-left: 20px;">(i) the specified maximum price in the order, and</p> <p style="padding-left: 20px;">(ii) the best ask price;</p> <p>(b) in the case of a limit order for the sale of a security, the greater of:</p> <p style="padding-left: 20px;">(i) the specified minimum price in the order, and</p> <p style="padding-left: 20px;">(ii) the best bid price;</p> <p>(c) in the case of a market order for the purchase of a security, the best ask price; and</p> <p>(d) in the case of a market order for the sale of a security, the best bid price.</p>		
<p><b>5.2 Best Price Obligation – repealed</b></p>		

<sup>6</sup> IIROC originally published proposed amendments and a concept proposal related to the implementation of trade-through protection as IIROC Notice 08-0163 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Implementation of Trade-through Protection* (October 27, 2008).

Text of Provisions Following Adoption of the Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p><b>6.2 Designations and Identifiers</b></p> <p>(1) Each order entered on a marketplace shall contain:</p> <p>...</p> <p>(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:</p> <p>...</p> <p>(v.4) a directed action order as defined in the Trading Rules,</p>		
<p><b>6.4 Trades to be on a Marketplace</b></p> <p>(1) A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace.</p> <p>(2) Subsection (1) does not apply to a trade:</p> <p>(a) <b>Unlisted or Non-Quoted Security</b> - in a security which is not a listed security or a quoted security;</p> <p>(b) <b>Regulatory Exemption</b> – required or permitted by a Market Regulator to be executed other than on a marketplace in order to maintain a fair or orderly market and provided, in the case of a listed security or quoted security, the Market Regulator requiring or permitting the order to be executed other than on a marketplace shall be the Market Regulator of the Exchange on which the security is listed or of the QTRS on which the security is quoted;</p> <p>(c) <b>Error Adjustment</b> - to adjust by a journal entry an error in connection with a client order;</p> <p>(d) <b>On a Foreign Organized Regulated Market</b> – executed on a foreign organized regulated market;</p> <p>(e) <b>Outside of Canada</b> – executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a</p>	<p><b>Questrade</b> – Believes that there should not be a requirement to take into account prices on foreign markets. Also believes that the application of the restriction to Canadian accounts denominated in Canadian currency may be problematic for “registered” accounts and for those that allow access to multiple currencies. Clients should be able to continue to have the right to determine when they want to execute a trade in the U.S. marketplace and when they don’t.</p>	<p>The amendment does not add a “foreign smart routing requirement”. The provision is applicable only if the Participant chooses to take into account a foreign market and seeks to execute on that organized foreign regulated market when there are better priced orders displayed on a marketplace in Canada.</p> <p>Registered accounts will, by definition, be considered to be Canadian denominated as would other accounts that are not explicitly and exclusively denominated in a foreign currency.</p> <p>Rule 5.2 of UMIR did not permit clients to direct execution on a market away from the displayed marketplace with the “best price”. In any event, the amendment applies only to a limited subset of trades that have the greatest likelihood of trading-through a displayed price - namely an intentional cross, a pre-arranged trade, a trade for more than 50 standard trading units or with a value of more than \$250,000. These qualifications would in the ordinary course not have an effect on the order routing decisions of individual retail clients. In effect, the Amendments permit greater latitude in the execution of small orders than previously existed under Rule 5.2.</p>



Text of Provisions Following Adoption of the Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p>foreign organized regulated market in accordance with the reporting requirements of the marketplace of foreign organized regulated market;</p> <p>(f) <b>Term of Securities</b> – as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security;</p> <p>(g) <b>Options</b> – as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement;</p> <p>(h) <b>Prospectus and Exempt Distributions</b> – pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction including any distribution of previously unissued securities by an issuer; or</p> <p>(i) <b>Non-Regulatory Halt, Delay or Suspension</b> – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(8) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.</p> <p>(3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that:</p> <p>(a) is part of an intentional cross;</p> <p>(b) is part of a pre-arranged trade;</p> <p>(c) is for more than 50 standard trading units; or</p> <p>(d) has a value of \$250,000 or more</p> <p>if the entry of the order on a foreign organized regulated market would avoid execution against a better-priced order on a marketplace pursuant to Part 6 of the Trading Rules.</p>		

Text of Provisions Following Adoption of the Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p><b>7.1 Trading Supervision Obligations</b></p> <p>(5) Notwithstanding any other provision of this Rule, a Participant or Access Person shall not mark an order on entry to a marketplace as a directed action order unless the Participant or Access Person has established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs other than those trade-throughs permitted in Part 6 of the Trading Rules.</p>	<p><b>RBCDS</b> – Urges that IIROC and the CSA to continue to work together to ensure that all marketplaces meet minimum technology standards (e.g. clock synchronization, latency tests and standards).</p>	<p>The standards will evolve with the development of technology employed by Participants, marketplaces and service providers. Policies and procedures that are acceptable for marketplaces and Participants on the date the Order Protection Rule comes into effect may cease to be so if industry standards improve with the deployment of new technology. See also the response to RBCDS comment under Policy 7.1.</p> <p>UMIR imposes existing requirements with respect to Participants and marketplaces synchronizing to the standards used by IIROC.</p>
<p><b>10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons</b></p> <p>(1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal, non-client or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of:</p> <p>(a) Subsection (1) of Rule 2.1 respecting just and equitable principles of trade;</p> <p>(b) Rule 2.2 respecting manipulative and deceptive activities;</p> <p>(c) Rule 2.3 respecting improper orders and trades;</p> <p>(d) Rule 4.1 respecting frontrunning;</p> <p>(e) Rule 5.1 respecting best execution of client orders;</p> <p>(f) Rule 5.3 respecting client priority;</p> <p>(g) Rule 6.4 respecting trades to be on a marketplace; and</p> <p>(h) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.</p>	<p><b>RBCDS</b> – Does not believe that there should be a requirement to file a “gatekeeper report” applied to matter “relating to internal policies and procedures”.</p>	<p>Rule 10.16 of UMIR presently requires a Participant to inform IIROC if a review conducted by supervisory or compliance personnel of the Participant conclude that there may have been a violation of various rules under UMIR including Rule 6.4 respecting trades to be on a marketplace. The Participant is not reporting whether they have concluded that their policies and procedures are inadequate but rather whether there has been a possible violation of the requirement to execute trades on a marketplace.</p>
<p><b>Policy 5.1 – Best Execution of Client Orders</b></p> <p><b>Part 4 – Subject to Order -Protection Rule</b></p> <p>Notwithstanding any instruction or consent of the client, the provision of “best execution”</p>	<p><b>Questrade</b> – Requests additional guidance with respect to the effects on best execution.</p>	<p>The point of Part 4 of Policy 5.1 is simply to confirm that “best execution” is subject to compliance with the “best price” obligation under Rule 5.1 of UMIR until February 1, 2011 and thereafter to compliance</p>

<b>Text of Provisions Following Adoption of the Amendments</b>	<b>Commentator and Summary of Comment</b>	<b>IIROC Response to Comment and Additional IIROC Commentary</b>
<p>for a client order is subject to compliance with the “order protection rule” under Part 6 of the Trading Rules by the marketplace on which the order is entered or by the Participant if the Participant has marked the order as a directed action order in accordance with Rule 6.2. Similarly, if a Participant considers a foreign organized regulated market in order to provide a client with “best execution”, the Participant must ensure that the condition in subsection (3) of Rule 6.4, if applicable, is satisfied prior to the execution on the foreign organized regulated market.</p>		<p>with the Order Protection Rule. In other words, attempts to obtain “best execution” for a client can not justify a violation of the obligation which the Participant owes to the market under the “best price” obligation or the Order Protection Rule.</p>
<p><b>Policy 5.2 – Best Price Obligation Part 1 – Qualification of Obligation – repealed</b></p>		
<p><b>Policy 5.2 – Best Price Obligation Part 2 – Orders on Other Marketplaces – repealed</b></p>		
<p><b>Policy 5.2 – Best Price Obligation Part 3 – Foreign Currency Translation – repealed</b></p>		
<p><b>Policy 6.4 – Trades to be on a Marketplace Part 6 – Foreign Currency Translation</b> If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as “marginal” because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.</p>		
<p><b>Policy 7.1 – Trading Supervision Obligation Part 6 – Specific Provisions Respecting Trade-throughs</b> Each Participant must adopt written policies and procedures that are adequate, taking</p>	<p><b>RBCDS</b> – Requests further guidance on what would be considered “adequate” for the purposes of testing policies and procedures in respect of preventing trade-throughs with the use of</p>	<p>There is no pre-determined amount of testing that IIROC would consider adequate. The level of testing will vary with the degree of use the Participant makes of Directed Action Orders and whether prior tests have</p>

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<p>into account the business and affairs of the Participant, to ensure that an order:</p> <ul style="list-style-type: none"> <li>• marked as “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules; or</li> <li>• entered on a foreign organized regulated market complies with the conditions in subsection (3) of Rule 6.4.</li> </ul> <p>Each Access Person must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Access Person, to ensure that an order marked as a “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules.</p> <p>The policies and procedures must set out the steps or process to be followed by the Participant or Access Person to ensure that the execution of an order does not result in a trade-through. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a “directed action order”. These policies and procedures must address the steps which the Participant or Access Person will undertake on a regular basis, which shall not be less than monthly, to test that the policies and procedures are adequate.</p>	<p>Directed Action Orders. In particular, seeks guidance on an acceptable number of trade-throughs and acceptable level of latency.</p>	<p>indicated that the level of trade-throughs is within acceptable limits.</p> <p>IIROC will be monitoring the levels of trade-through in conjunction with the use of Directed Action Orders. IIROC expects to be able to bring to the attention of a Participant the fact that their proportion of trade-throughs associated with the use of Directed Action Orders is out of line with the Participant’s proportion of trading undertaken through Direct Action Orders. Such a finding may be an indicator that the policies and procedures of the Participant are not “adequate”. However, IIROC acknowledges that information and processing latencies between IIROC and the Participants will produce different results. The test for the Participants is whether they have used reasonable efforts to obtain timely order and trade data for all relevant marketplaces.</p>
<p><b>General Comments</b></p>	<p><b>RBCDS</b> - Urges minimum capital requirements for marketplaces in order to promote liquidity and foster confidence.</p>	<p>The financial viability of an exchange or QTRS is dealt with by the CSA under National Instrument 21-101 (in particular in Part 7 of Form 21-101F1). Each ATS must be registered as a dealer and be subject to minimum capital requirements of IIROC.</p>
	<p><b>Questrade</b> – Believes that “price” should take into account transaction costs.</p>	<p>UMIR and National Instrument 23-101 recognize that transaction costs are properly a factor in determining “best execution”. Currently, the “best price” obligation under UMIR and the Order Protection Rule that becomes effective on February 1, 2011 exclude transaction costs from the determination of price.</p> <p>In amendments to section 8.2 of Companion Policy 21-101, the CSA addressed the issue of transaction fees in stating: “With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC’s Universal Market</p>

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		<p>Integrity rules, as amended, would unreasonably condition or limit access to an ATS's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to an ATS's services when taking into account factors including those listed above. [5 factors to be taken into account in determining fees are in compliance with section 6.13 of National Instrument 21-101].</p> <p>To the extent that the transaction costs must be less than a trading increment, the net proceeds/cost to the client will always be better as a result of an execution on the marketplace with the "best" displayed price.</p>