

IIROC NOTICE

Rules Notice
Request for Comments
UMIR

Please distribute internally to:
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Trading

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Provisions Respecting the Execution and Reporting of Certain "Off-Marketplace" Trades

Executive Summary

On February 1, 2012, the Board of Directors ("Board") of IIROC approved the publication for comment of proposed amendments ("Proposed Amendments") to UMIR respecting the execution and reporting of certain "off-marketplace" trades. The Proposed Amendments would:

- introduce an anti-avoidance provision to the "Order Exposure Rule"¹ to limit the ability of a small client order to be executed on a foreign organized regulated market unless the order had been entered on a market that displays order

¹ Rule 6.3 of UMIR requires, subject to certain exceptions, that a Participant immediately enter a client order for 50 standard trading units or less on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument. For the purposes of UMIR, 50 standard trading units represents: 5,000 shares of a security with a price of \$1.00 or more; 25,000 shares of a security with a price of at least \$0.10 and less than \$1.00; and 50,000 shares of a security with a price of less than \$0.10.



information (and the order is either displayed or executed on entry) or executed at a better price;

- replace provisions that permitted or required reports to a marketplace of trades executed off-market either outside of Canada or during certain non-regulatory halts, delays or suspension with an ability to make such reports to IIROC; and
- provide an automatic exemption for a trade to be completed "off-marketplace" if the Participant is involved as principal or agent and applicable securities legislation requires to be completed in a private or "non-public" transaction provided such trade is reported to IIROC.

Under the Proposed Amendments, Participants would be expected to revise their policies and procedures to ensure that:

- small client orders that are routed to a foreign organized regulated market would be entered on a market that displays orders (and either exposed for display or executed on entry) or executed at a better price; and
- certain "off-marketplace" trades are reported to IIROC.

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1. Rule-Making Process

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and National Instrument 23-101.

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.² IIROC has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

The Market Rules Advisory Committee of IIROC reviewed the Proposed Amendments. MRAC is an advisory committee comprised of representatives of each of: the marketplaces for which IIROC acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The text of the Proposed Amendments is set out in Appendix "A". The Board has determined that the Proposed Amendments are in the public interest. Comments are requested on all aspects of the Proposed Amendments, including any policy alternatives that may be available to the Proposed Amendments. Comments should be in writing and delivered by **July 13, 2012** to:

James E. Twiss,
Vice President, Market Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 2000,
121 King Street West,
Toronto, Ontario. M5H 3T9

² Presently, IIROC has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") and Canadian National Stock Exchange, each as an "exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Alpha Trading Systems, Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited, Instinet Canada Cross Ltd., Liquidnet Canada Inc., Omega ATS Limited, Sigma X Canada, TMX Select and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS"). CNSX presently operates an "alternative market" known as "Pure Trading" that is entitled to trade securities that are listed on other Exchanges and that presently trades securities listed on the TSX and TSXV.



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

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario. M5H 3S8

Fax: (416) 595-8940
e-mail: marketregulation@osc.gov.on.ca

Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments") upon receipt. A summary of the comments contained in each submission will also be included in a future IIROC Notice.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, staff of IIROC may recommend that revisions be made to the Proposed Amendments. If the revisions are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions are material, the Proposed Amendments as revised will be submitted to the Board for ratification and, if ratified, will be republished for further public comment.

2. Background to the Proposed Amendments

2.1. "Order Exposure" Requirements in Canada

The Order Exposure Rule requires that a client order for 50 standard trading units or less must be immediately entered on a marketplace that displays information regarding orders in a consolidated market display. As part of a package of amendments to UMIR related to dark liquidity ("Dark Liquidity Amendments"),³ IIROC has clarified that such a client order must be entered on a transparent marketplace "for

³ IIROC Notice 12-0130 - Rules Notice - Notice of Approval - UMIR - Provisions Respecting Dark Liquidity (April 13, 2012).



display” and that the order cannot be entered as a “Dark Order”⁴ without the specific consent of the client. IIROC previously has issued guidance that small client orders may be routed to a non-transparent marketplace or facility, without the consent of the client, to determine if liquidity is available provided any unexecuted portion of the client order is immediately entered on a marketplace that did provide order transparency.⁵

UMIR provides a number of exceptions to the requirement under the Order Exposure Rule⁶ that small client orders be immediately entered on a marketplace that displays orders, including an exception when the order is part of a trade to be made “off-marketplace” in accordance with Rule 6.4 of UMIR. That exception includes when the trade is executed on a foreign organized regulated market.⁷ The theory

⁴ Under the Dark Liquidity Amendments, an order for which no portion is displayed at the time of entry on a marketplace in a consolidated market display would be a “Dark Order” but any order which is immediately executable on entry or which is a “specialty” type of order that may execute at a price outside of the best bid price/best ask price spread would be excluded from the definition of Dark Order.

⁵ See “Question 1” in Market Integrity Notice 2007-019 - *Guidance - Entering Client Orders on Non-Transparent Marketplaces and Facilities* (September 21, 2007). When the Dark Liquidity Amendments are implemented on October 10, 2012, the guidance will be revised to indicate that the client must receive a “better price” if executing against a Dark Order.

⁶ Rule 6.3 - *Exposure of Client Orders* requires that an order for 50 trading units or less must be immediately entered on a transparent marketplace unless otherwise exempted. Permitted exemptions include:

- (a) if the client has specified different instructions;
- (b) if the order is executed immediately at a better price;
- (c) if the order is returned for the terms of the order to be confirmed;
- (d) if the order is withheld pending confirmation that the order complies with applicable securities requirements;
- (e) if entering the order based on market conditions would not be in the interests of the client;
- (f) if the order has a value greater than \$100,000;
- (g) if the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace; or
- (h) if the client has directed or consented that the order be entered on a marketplace as a Call Market Order, an Opening Order, a Special Terms Order, a Volume-Weighted Average Price Order, a Market-on-Close Order, a Basis Order, or a Closing Price Order.

⁷ For the purposes of UMIR, a “foreign organized regulated market” means a market outside of Canada:

- (a) that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with a securities regulatory authority that is an ordinary member of the International Organization of Securities Commissions;
- (b) on which the entry of orders and the execution or reporting of trades is monitored for compliance with regulatory requirements at the time of entry and execution or reporting by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor the entry of orders and the execution or reporting of trades on that market for compliance with regulatory requirements; and
- (c) that displays and provides timely information to information vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of at least the price, volume and security identifier of each trade at the time of execution or reporting of the trade on that market,



underpinning this exception is that, for securities inter-listed between exchanges in Canada and the United States, arbitrage activities between transparent markets will generally keep prices "in line" and that the best execution obligations of a Participant would require it to "diligently pursue the execution of each client order on the most advantageous execution terms reasonably available under the circumstances".⁸

The Order Exposure Rule is intended to support the price discovery mechanism in the Canadian market by adding liquidity in the displayed markets. UMIR and securities legislation then seeks to protect such orders from trade-through. In particular, Part 6 of National Instrument 23-101 ("Order Protection Rule") protects displayed orders including small client orders that have been displayed in accordance with the Order Exposure Rule.

The concern would be that small client orders which are precluded from being entered as a passive order on a non-transparent marketplace in Canada without the specific consent of the client could be entered on a foreign organized regulated market that did not provide transparency without the specific consent of the client.

2.2 "Better Price" Requirements in Canada

Until the Dark Liquidity Amendments become effective on October 10, 2012, UMIR defines a "better price" simply as a lower price than the best ask price in the case of a purchase and a higher price than the best bid price in the case of a sale. One of the exceptions to the Order Exposure Rule permits a small client order to be withheld from an immediate entry on a marketplace if the client order is executed at a "better price". Rule 8.1 of UMIR ("Client-Principal Trading Rule") requires a Participant who intentionally trades as principal with small client orders to provide the client a "better price" in order to avoid conflicts.

One of the objectives of the Dark Liquidity Amendments is to

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

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

⁸ See Rule 5.1 of UMIR and, in particular, Parts 3 and 4 of Policy 5.1.



establish the minimum amount of price improvement which an order must receive in order to execute with a "non-protected" order.⁹ Under the Dark Liquidity Amendments, the term "better price" is redefined to require at least one trading increment price improvement except when the difference between the best ask price and the best bid price is a single trading increment, price improvement of at least a half-increment would be accepted. Under the Dark Liquidity Amendments, the revised definition sets the minimum amount of price improvement that would be acceptable for a "small" order (of 50 standard trading units or less or with a value of \$100,000 or less) when it executes with a "Dark Order".

Upon the implementation of the Dark Liquidity Amendments, the concern then would be that orders which would receive "price improvement" in Canada quantified as a "better price" could nonetheless be directed to a non-transparent foreign organized regulated market and be executed at an inferior price to that which would be required on a "dark marketplace" in Canada.

2.3 History of Reporting "Off-Marketplace" Trades in Canada

One of the ways by which the Marketplace Operation Instrument supports the price discovery mechanism is the requirement for post-trade transparency. In particular, Part 7 of the Marketplace Operation Instrument requires each marketplace provide "accurate and timely information" related to trades in exchange-traded securities executed on that marketplace to the information processor and/or information vendors.

Rule 6.4 of UMIR requires that a Participant acting as principal or agent may not trade or participate in a trade of a listed security or a quoted security other than by the entry of an order on a marketplace. The rule contains a number of exceptions, including when the trade is:

- required or permitted by a Market Regulator to be executed "off-marketplace" in order to maintain a fair or orderly market;
- a correction of an error in the execution of a client order;
- executed on a foreign organized regulated market;

⁹ In particular, see "Dark Orders and Price Improvement" and "Meaningful Price Improvement" in IIROC Notice 10-0303 - Rules Notice - Request for Comments - UMIR - *Joint Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada - Position Paper 23-405 Dark Liquidity in the Canadian Market* (November 19, 2010).



- executed as principal with a non-Canadian account or when the trade is between non-Canadian accounts;
- a redemption, retraction, exchange or conversion in accordance with the terms of the security;
- exercise of an option, right, warrant or similar pre-existing contractual arrangement;
- pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction; and
- in a listed security or quoted security that has been halted, delayed or suspended on the applicable Exchange or QTRS for non-regulatory purposes and which is not then traded on another marketplace.

At the time of the introduction of UMIR, the Toronto Stock Exchange ("TSX") collected and published, on a monthly basis, information concerning foreign over-the-counter trades in securities listed on the TSX. UMIR contained a requirement that Participants continue to make such reports to a marketplace to the extent that the trade was not otherwise reported to a foreign organized regulated market. The UMIR provisions related to the reporting of specific "off-marketplace" trades, together with marketplace disclosure of information on such off-marketplace trades, augmented the transparency requirements in the Marketplace Operation Instrument related to information on trades executed on a marketplace.

The TSX has since ceased providing public transparency of such trades and no other marketplace has offered this facility. Notwithstanding that there is no marketplace providing transparency for such reports, the UMIR requirement for reporting continues to exist. Similarly, UMIR requires the reporting to a marketplace of "off-marketplace" trades when a listed security is halted, delayed or suspended on an exchange for non-regulatory reasons and the security is not trading on another marketplace.

2.4 U.S. Restrictions on the Execution of U.S.-originated Orders in Canada

Adopted in 1988, NASD Rule 2320(f) (the "Three Quote Rule") generally required dealers executing client orders in non-exchange-listed securities to contact a minimum of three dealers to obtain quotes, if there were fewer than two quotes listed on an inter-dealer quotation system. Since adoption, the Three Quote Rule has been amended a



number of time. In particular, in 2001, transactions in foreign securities on a foreign market that is the primary market for that security were excluded.¹⁰

More recently in 2007, the Securities and Exchange Commission ("SEC") approved amendments to the Three Quote Rule to exclude certain transactions in non-exchange-listed securities of foreign issuers that are part of the FTSE All-World Index and to exclude certain transactions in Canadian securities executed on a Canadian exchange.¹¹ With respect to Canadian securities transactions, as amended (2007), a member firm is not subject to the Three Quote Rule in connection with any transaction for or with a customer in a non-exchange-listed security executed on a Canadian exchange, provided that: (i) the firm or person associated with the firm conducts, pursuant to Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities; and (ii) the orders are executed either in an agency or riskless principal capacity.

In October of 2011, Financial Industry Regulatory Authority ("FINRA") filed a proposal with the SEC to adopt NASD Rule 2320 as a FINRA rule and re-number it as Rule 5310. This proposal was approved by the SEC on December 5, 2011. As part of this process, FINRA indicates that it believes the requirements in the Three Quote Rule are still overly prescriptive and can result in unnecessary delays in the execution of a customer's order. FINRA has issued Supplementary Material emphasizing a member's best execution obligations when handling an order involving any security, equity or debt, for which there is limited pricing information available. The Supplementary Material requires members to have written policies and procedures in place to address the steps the member will take to determine the best market for such a security in the absence of multiple quotations or pricing information and to document how they have complied with those policies and procedures.

The Supplementary Material also makes specific reference to orders for foreign securities with no U.S. market, and requires that members handling such orders must have specific written policies and

¹⁰ Primary market was defined as the market with at least 50% of the worldwide trading volume, or any market whose quotations are part of a consolidated quotation system that includes quotations from the market which had at least 50% of the worldwide trading volume.

¹¹ This relief did not extend to transactions conducted on a marketplace in Canada that was either an alternative trading system or a quotation and trade reporting system.



procedures regarding the handling of such orders that are reasonably designed to obtain the most favorable terms for the customer.

3. Discussion of the Proposed Amendments

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

3.1 Restriction on Execution of a Trade on a Foreign Organized Regulated Market

With the introduction of the Order Protection Rule effective February 1, 2011, Rule 6.4 of UMIR was amended to include an "anti-avoidance" provision that restricted the ability of certain orders of Canadian accounts denominated in Canadian funds to be traded on a foreign organized regulated market if the execution outside of Canada would avoid execution against a better-priced order displayed on a marketplace in Canada.¹²

With the Dark Liquidity Amendments, UMIR will provide that an order for 50 standard trading units or less must receive a "better price" when trading with a "Dark Order". While IIROC believes that the provisions of UMIR may preclude a Participant from routing client orders in "bulk" to a foreign organized regulated market, the Proposed Amendments would specifically introduce an "anti-avoidance" provision to the Order Exposure Rule to limit the ability of a client order for 50 standard trading units or less to be executed on a foreign organized regulated market unless the order had been entered on a market that displays order information (and the order is either displayed or executed on entry) or executed at a better price.¹³ This

¹² IIROC Notice 11-0036 - Rules Notice - Notice of Approval - UMIR - *Provisions Respecting the Implementation of the Order Protection Rule* (January 28, 2011). The obligation to consider better-priced orders on a marketplace only applies when a Participant is executing on a foreign organized regulated market an order from a Canadian account denominated in Canadian funds that meets one 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.

¹³ Rule 1.1 of UMIR presently defines "better price" as follow:

"better price" means, in respect of a particular security:

- (a) a price lower than the best ask price, in the case of a purchase; and
- (b) a price higher than the best bid price in the case of a sale.

Effective October 10, 2012, the definition of "better price" will be replaced with the following:

"better price" means, in respect of each trade resulting from an order for a particular security:



change will ensure that client orders receive a comparable level of price improvement whether executed with a "Dark Order" in Canada or on a foreign organized regulated market that is non-transparent.

3.2 Regulatory Requirement to Execute "Off-Marketplace"

Rule 11.1 of UMIR provides that IIROC may exempt a particular transaction from the application of a provision of UMIR, provided that such exemption:

- would not be contrary to the provisions of any applicable securities legislation and the regulation and rules thereunder;
- would not be prejudicial to the public interest or to the maintenance of a fair and orderly market; and
- is warranted after due consideration of the circumstances of the particular person or transaction.

Presently, Rule 6.4 of UMIR provides that a trade may be executed "off-marketplace" when required or permitted by a Market Regulator in order to maintain a fair or orderly market. As such, a Participant wishing to obtain approval to complete a trade "off-marketplace" for regulatory reasons must apply for and receive an exemption from IIROC granted pursuant to Rule 11.1.¹⁴

The four most common exemptions to complete a trade "off-marketplace" that are sought and granted by IIROC involve:

- an exempt distribution from control pursuant to section 2.8 of National Instrument 45-102 - *Resale of Securities* ("NI 45-102");
- an exempt take-over bid in accordance with the provisions of Multilateral Instrument 62-104 - *Take-Over Bids and Issuer Bids* or Part XX of the *Securities Act* (Ontario);
- a purchase from a shareholder in a control position under a normal course issuer bid in accordance with ss. 101.2(1) of the

(a) in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and

(b) in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher.

¹⁴ For information of the process for obtaining such an exemption, see IIROC Notice 12-0029 - Rules Notice - Technical - UMIR - *Obtaining a Trading Exemption or Rule Interpretation* (January 27, 2012).



Securities Act (Ontario) or comparable securities legislation in other jurisdictions and with the rules of the Exchange on which the securities of the issuer are listed; and

- the sale of securities which are subject to resale restrictions in accordance with applicable securities legislation or the requirements of the Exchange on which the securities are listed.

The Proposed Amendments would provide an automatic exemption (without the need to apply for an exemption under Rule 11.1) when the transaction in one of these four circumstances is undertaken in a private transaction. The Proposed Amendments would also introduce a "blanket exemption" from the requirements of Rule 6.4 for any trade in which a Participant is involved as principal or agent that, in accordance with applicable legislation, must be completed in a private or "non-public" transaction that precludes the entry of an order on a marketplace. The Proposed Amendments would also provide that such trades be reported to IIROC.

To the extent that a transaction in a listed security may be completed either in a private transaction or on a marketplace, a Participant would still be required to obtain an exemption from IIROC before completing the transaction "off-marketplace" as principal or agent. Generally speaking, the preference of IIROC is that every trade that is capable of being executed on a marketplace without being disruptive of a fair and orderly market should be executed on a marketplace. In accordance with the provisions of the Marketplace Operation Instrument, information on all trades executed on any marketplace must be made available in a timely manner to the information processor and information vendors. This transparency ensures that market participants are aware of trading activity in a particular listed security to the greatest extent possible. (IIROC is seeking public comment on whether this public transparency should be augmented by information on "off-marketplace" trades reported to IIROC. See "Questions" on pages 13 and 14.)

3.3 Reporting of Certain "Off-Marketplace" Trades

The Proposed Amendments would replace the ability to report certain "off-marketplace" trades to a marketplace with the ability to make a report to IIROC as the Market Regulator. In particular, this change in reporting structure would affect a Participant who executes a trade "off-marketplace":



- outside of Canada as principal with a non-Canadian account or as agent on behalf of non-Canadian accounts as purchaser and seller; or
- during certain non-regulatory halts, delays or suspension of a listed security by the listing Exchange.

The Proposed Amendments would also permit an "off-marketplace" trade executed outside of Canada to be reported to a foreign organized regulated market or to a self-regulatory organization recognized by the securities regulatory authority of the jurisdiction in which the trade was executed. In particular, this would permit an "off-marketplace" trade executed in the United States to be reported to a trade reporting facility such as the Automated Confirmation Transaction service ("ACT") operated by FINRA.

3.4 Timing and Contents of the "Off-Marketplace" Report to IIROC

If a Participant executes an "off-marketplace" trade that either has to be reported to IIROC or the Participant elects to report to IIROC, the Proposed Amendments would introduce a requirement that the report be made to the Market Regulator within twenty-four hours following the execution of the trade.

The report of the trade would have to be in such form as may be required by the Market Regulator. The report shall contain:

- such information as would have been publicly disclosed in a consolidated market display if the trade had been executed on a marketplace;
- if applicable, the identification of the provision of applicable securities legislation that required or permitted the transaction to be completed in a private or non-public transaction; and
- such other information as the Market Regulator may require to confirm that the transaction could be completed by means other than the entry of an order on a marketplace.

3.5 Editorial and Consequential Amendments

The Proposed Amendments would make several editorial or consequential amendments including:



- amending Part 6 of Policy 6.4 to apply the provisions dealing with foreign currency translation to the requirements in subclause (ii) of clause (g) of subsection (1) of the Order Exposure Rule to determine if certain orders executed on a foreign organized regulated market received a “better price”;
- correcting a drafting error in Rule 5.3 to provide reference to “a foreign” organized regulated market; and
- amending clause (h) of Rule 6.4 to clarify that only the category “similar transaction” is qualified by the requirement involving a distribution of previously unissued securities by an issuer when dealing with prospectuses and other exempt distributions.

4. Summary of the Impact of the Proposed Amendments

The following is a summary of the most significant impacts of the adoption of the Proposed Amendments. Participants would be:

- limited in their ability to execute small client orders on a foreign organized regulated market unless the order had been entered on a market that displays order information (and the order is either displayed or executed on entry) or executed at a better price;
- relieved of the obligation to obtain an exemption from the requirement to execute the trade on a marketplace in circumstances when the transaction must be completed in a private or non-public transaction;
- able to report an “off-marketplace” trade conducted as principal with a non-Canadian account or as agent between non-Canadian accounts to IIROC and the ability to report such trades to a marketplace would be removed; and
- required to report an “off-marketplace” trade made pursuant to a regulatory exemption to IIROC and the ability to report such trades to a marketplace would be removed.

5. Technological Implications and Implementation Plan

There are no technological implications of the Proposed Amendments on Participants, marketplaces or service providers. However,



Participants would be expected to revise their policies and procedures to ensure that:

- small client orders that are routed to a foreign organized regulated market would be entered on a market that displays orders (and either exposed for display or executed on entry) or executed at a better price; and
- certain "off-marketplace" trades are reported to IIROC.

IIROC would expect that, if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would become effective on the date IIROC publishes notice of approval of the amendments. Depending on the response to questions related to providing transparency for certain of the "off-marketplace" trades, the implementation date for filing reports with IIROC may be deferred to permit the development of a system for reporting of trades to IIROC and IIROC providing public disclosure of relevant trade information.

6. Questions

While comment is requested on all aspects of the Proposed Amendments, comment is specifically requested on the following questions:

1. The anti-avoidance rule introduced to UMIR on the introduction of the Order Protection Rule only applies to an order from a Canadian account denominated in Canadian funds. Should the anti-avoidance rule proposed in the Order Exposure Rule be similarly limited to provide greater flexibility to a Participant handling the order from a non-Canadian account or a Canadian account denominated in a foreign currency?
2. Are there alternative approaches which would ensure that the policy objectives of the Order Exposure Rule and the Dark Liquidity Amendments are achieved when an order is entered on a foreign organized regulated market?
3. To what extent should "off-marketplace" trades that have been reported to IIROC be publicly disclosed? If there is public transparency of certain "off-marketplace" trades:
 - How frequently should the disclosure be updated?
 - Through what channels or mechanisms should the disclosure be made?



- Should there be disclosure of each individual trade (being that information that would have been publicly disclosed if the trade had been executed on a marketplace) or should the information be aggregated for each security over the disclosure period?
4. Are there any other types of "off-marketplace" trades which should be reported to IIROC (e.g. trades in listed securities pursuant to the exercise of an over-the-counter derivative or forward contract)? What level of public transparency would be appropriate for these additional "off-marketplace" trades?



Appendix A - Provisions Respecting the Execution and Reporting of Certain Off-Marketplace Trades

The Universal Market Integrity Rules are hereby amended as follows:

1. Subsection (1) of Rule 5.3 is amended by replacing the word "an" with the phrase "a foreign".
2. Clause (g) of subsection (1) of Rule 6.3 is deleted and the following substituted:
 - (g) the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace provided, if the order was executed on a foreign organized regulated market, the order was:
 - (i) entered on a market which publicly displays and provides timely information on orders and the order executed on entry or was displayed, or
 - (ii) executed at a better price;
3. Rule 6.4 is amended by:
 - (a) deleting clause (e) and substituting the following:
 - (e) **Outside Canada** - executed as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided the trade is reported to a Market Regulator, a foreign organized regulated market or a self-regulatory organization recognized by the securities regulatory authority of the jurisdiction in which the trade was executed;
 - (b) deleting clause (h) and substituting the following:
 - (h) **Prospectus and Exempt Distributions** - pursuant to:
 - (i) a prospectus,
 - (ii) a take-over bid or issuer bid,
 - (iii) an amalgamation or arrangement, or
 - (iv) a similar transaction involving a distribution of previously unissued securities by an issuer; or



- (c) deleting in clause (i) the phrase "reported to a marketplace" and substituting "reported to a Market Regulator".

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

1. Part 6 of Policy 6.4 is amended by inserting the phrase "and, if applicable, whether the requirement in subclause (ii) of clause (g) of subsection (1) of Rule 6.3 to execute at a better price has been met" at the end of the first sentence.

5. Policy 6.4 is amended by adding the following Parts:

Part 7 - Provisions for Specific Regulatory Exemptions

For the purposes of clause (b) of Rule 6.4, the Market Regulator requires a Participant acting as principal or agent to trade or participate in a trade of a listed security or a quoted security by means other than the entry of an order on a marketplace if:

- (a) the seller of the security is making an exempt distribution from control pursuant to section 2.8 of National Instrument 45-102 - *Resale of Securities* and the Form 45-102F1 filed in connection with the distribution disclosed that the securities would be sold in a private transaction;
- (b) the purchaser of the security is making an exempt take-over bid in a private transaction or a bid not generally made to the public in accordance with the provisions of Multilateral Instrument 62-104 - *Take-Over Bids and Issuer Bids* or Part XX of the *Securities Act* (Ontario);
- (c) the purchaser of the security is the issuer making the purchase from a shareholder in a control position under a normal course issuer bid in accordance ss. 101.2(1) of the *Securities Act* (Ontario) or comparable securities legislation in other jurisdictions and with the rules of the Exchange on which the securities of the issuer are listed;
- (d) the securities to be sold are subject to resale restrictions in accordance with applicable securities legislation or the requirements of the Exchange on



which the securities are listed and the distribution is made pursuant to section 2.3 or 2.4 of National Instrument 45-102 - *Resale of Securities* and in accordance with any applicable requirement of the Exchange on which the securities are listed; or

- (e) the purchaser or seller of the security is required by applicable securities legislation to complete the purchase or sale in a private or non-public transaction that precludes the entry of an order on a marketplace.

Part 8 - Reporting of "Off-Marketplace" Trades to the Market Regulator

Unless otherwise permitted by the Market Regulator, a trade that has been executed by means other than the entry of an order on a marketplace in accordance with:

- Part 7 of Policy 6.4;
- clause (e) of Rule 6.4, but not including a trade that has been reported to a foreign organized regulated market or a self-regulatory organization in accordance with the reporting requirements of the marketplace or foreign organized regulated market; or
- clause (i) of Rule 6.4

shall be reported to the Market Regulator within twenty-four hours following the execution of the trade in such form as may be required by the Market Regulator. The report shall contain:

- such information as would have been publicly disclosed in a consolidated market display if the trade had been executed on a marketplace;
- if applicable, the identification of the provision of applicable securities legislation that required or permitted the transaction to be completed in a private or non-public transaction; and
- such other information as the Market Regulator may require to confirm that the transaction could be



completed by means other than the entry of an order on a marketplace.



Appendix B - Text of the Rules to Reflect Proposed Amendments Respecting the Execution and Reporting of Certain "Off-Marketplace" Trades

Text of Provisions Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
<p>5.3 Client Priority</p> <p>(1) A Participant shall not enter on a marketplace or a foreign organized regulated market a principal order or a non-client order of the Participant that, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order for the same security that is:</p> <p>...</p>	<p>5.3 Client Priority</p> <p>(1) A Participant shall not enter on a marketplace or or <u>a foreign</u> organized regulated market a principal order or a non-client order of the Participant that, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order for the same security that is:</p> <p>...</p>
<p>6.3 Exposure of Client Orders</p> <p>(1) A Participant shall immediately enter for display on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:</p> <p>...</p> <p>(g) the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace provided, if the order was executed on a foreign organized regulated market, the order was:</p> <p>(i) entered on a market which publicly displays and provides timely information on orders and the order executed on entry or was displayed, or</p> <p>(ii) executed at a better price;</p> <p>...</p>	<p>6.3 Exposure of Client Orders</p> <p>(1) A Participant shall immediately enter for display on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:</p> <p>...</p> <p>(g) the order is part of a trade to be made in accordance with Rule 6.4 by means other than entry on a marketplace <u>provided, if the order was executed on a foreign organized regulated market, the order was:</u></p> <p><u>(i) entered on a market which publicly displays and provides timely information on orders and the order executed on entry or was displayed, or</u></p> <p><u>(ii) executed at a better price;</u></p> <p>...</p>
<p>6.4 Trades to be on a Marketplace</p> <p>A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:</p> <p>....</p> <p>(e) Outside Canada - executed as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided the trade is reported to a Market Regulator, a foreign organized regulated market or a self-regulatory organization recognized by the securities regulatory authority of the jurisdiction in which the</p>	<p>6.4 Trades to be on a Marketplace</p> <p>A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:</p> <p>....</p> <p>(e) Outside Canada - executed as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts provided the trade is reported to a marketplace or <u>Market Regulator</u>, a foreign organized regulated market <u>or a self-regulatory organization recognized by the securities regulatory authority of the</u></p>



Text of Provisions Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
<p>trade was executed;</p> <p>...</p> <p>(h) Prospectus and Exempt Distributions - pursuant to:</p> <p>(i) a prospectus,</p> <p>(ii) a take-over bid or issuer bid,</p> <p>(iii) an amalgamation or arrangement, or</p> <p>(iv) a similar transaction involving a distribution of previously unissued securities by an issuer; or</p> <p>(i) Non-Regulatory Halt, Delay or Suspension - in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a Market Regulator.</p>	<p><u>jurisdiction in which the trade was executed in accordance with the reporting requirements of the marketplace or foreign organized regulated market;</u></p> <p>...</p> <p>(h) Prospectus and Exempt Distributions - pursuant to:</p> <p><u>(i)</u> a prospectus,</p> <p><u>(ii)</u> a take-over bid <u>or</u> issuer bid,</p> <p><u>(iii)</u> an amalgamation <u>or</u> arrangement, or</p> <p><u>(iv)</u> a similar transaction <u>including any</u> involving a distribution of previously unissued securities by an issuer; or</p> <p>(i) Non-Regulatory Halt, Delay or Suspension - in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a <u>marketplace</u> <u>Market Regulator</u>.</p>
<p>Policy 6.4 - Trades to be on a Marketplace</p> <p>Part 6 - Foreign Currency Translation</p> <p>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 and, if applicable, whether the requirement in subclause (ii) of clause (g) of subsection (1) of Rule 6.3 to execute at a better price 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>Policy 6.4 - Trades to be on a Marketplace</p> <p>Part 6 - Foreign Currency Translation</p> <p>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 <u>and, if applicable, whether the requirement in subclause (ii) of clause (g) of subsection (1) of Rule 6.3 to execute at a better price has been met</u>. 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>Policy 6.4 Trades to be on a Marketplace</p> <p>Part 7 - Provisions for Specific Regulatory Exemptions</p> <p>For the purposes of clause (b) of Rule 6.4, the</p>	<p>Policy 6.4 Trades to be on a Marketplace</p> <p><u>Part 7 - Provisions for Specific Regulatory Exemptions</u></p> <p><u>For the purposes of clause (b) of Rule 6.4, the</u></p>



Text of Provisions Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
<p>Market Regulator requires a Participant acting as principal or agent to trade or participate in a trade of a listed security or a quoted security by means other than the entry of an order on a marketplace if:</p> <p>(a) the seller of the security is making an exempt distribution from control pursuant to section 2.8 of National Instrument 45-102 - <i>Resale of Securities</i> and the Form 45-102F1 filed in connection with the distribution disclosed that the securities would be sold in a private transaction;</p> <p>(b) the purchaser of the security is making an exempt take-over bid in a private transaction or a bid not generally made to the public in accordance with the provisions of Multilateral Instrument 62-104 - <i>Take-Over Bids and Issuer Bids</i> or Part XX of the <i>Securities Act</i> (Ontario);</p> <p>(c) the purchaser of the security is the issuer making the purchase from a shareholder in a control position under a normal course issuer bid in accordance with ss. 101.2(1) of the <i>Securities Act</i> (Ontario) or comparable securities legislation in other jurisdictions and with the rules of the Exchange on which the securities of the issuer are listed;</p> <p>(d) the securities to be sold are subject to resale restrictions in accordance with applicable securities legislation or the requirements of the Exchange on which the securities are listed and the distribution is made pursuant to section 2.3 or 2.4 of National Instrument 45-102 - <i>Resale of Securities</i> and in accordance with any applicable requirement of the Exchange on which the securities are listed; or</p> <p>(e) the purchaser or seller of the security is required by applicable securities legislation to complete the purchase or sale in a private or non-public transaction that precludes the entry of an order on a marketplace.</p>	<p><u>Market Regulator requires a Participant acting as principal or agent to trade or participate in a trade of a listed security or a quoted security by means other than the entry of an order on a marketplace if:</u></p> <p><u>(a) the seller of the security is making an exempt distribution from control pursuant to section 2.8 of National Instrument 45-102 - <i>Resale of Securities</i> and the Form 45-102F1 filed in connection with the distribution disclosed that the securities would be sold in a private transaction;</u></p> <p><u>(b) the purchaser of the security is making an exempt take-over bid in a private transaction or a bid not generally made to the public in accordance with the provisions of Multilateral Instrument 62-104 - <i>Take-Over Bids and Issuer Bids</i> or Part XX of the <i>Securities Act</i> (Ontario);</u></p> <p><u>(c) the purchaser of the security is the issuer making the purchase from a shareholder in a control position under a normal course issuer bid in accordance with ss. 101.2(1) of the <i>Securities Act</i> (Ontario) or comparable securities legislation in other jurisdictions and with the rules of the Exchange on which the securities of the issuer are listed;</u></p> <p><u>(d) the securities to be sold are subject to resale restrictions in accordance with applicable securities legislation or the requirements of the Exchange on which the securities are listed and the distribution is made pursuant to section 2.3 or 2.4 of National Instrument 45-102 - <i>Resale of Securities</i> and in accordance with any applicable requirement of the Exchange on which the securities are listed; or</u></p> <p><u>(e) the purchaser or seller of the security is required by applicable securities legislation to complete the purchase or sale in a private or non-public transaction that precludes the entry of an order on a marketplace..</u></p>
<p>Policy 6.4 Trades to be on a Marketplace</p> <p>Part 8 - Reporting of "Off-Marketplace" Trades to the Market Regulator</p> <p>Unless otherwise permitted by the Market Regulator, a trade that has been executed by means other than the entry of an order on a marketplace in accordance with:</p> <ul style="list-style-type: none"> • Part 7 of Policy 6.4; • clause (e) of Rule 6.4, but not including a trade that has been reported to a foreign organized regulated market or a self-regulatory organization in accordance with the reporting requirements of the marketplace 	<p>Policy 6.4 Trades to be on a Marketplace</p> <p><u>Part 8 - Reporting of "Off-Marketplace" Trades to the Market Regulator</u></p> <p><u>Unless otherwise permitted by the Market Regulator, a trade that has been executed by means other than the entry of an order on a marketplace in accordance with:</u></p> <ul style="list-style-type: none"> • <u>Part 7 of Policy 6.4;</u> • <u>clause (e) of Rule 6.4, but not including a trade that has been reported to a foreign organized regulated market or a self-regulatory organization in accordance with the reporting requirements of the marketplace</u>



Text of Provisions Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
<p>or foreign organized regulated market; or</p> <ul style="list-style-type: none"> • clause (i) of Rule 6.4 <p>shall be reported to the Market Regulator within twenty-four hours following the execution of the trade in such form as may be required by the Market Regulator. The report shall contain:</p> <ul style="list-style-type: none"> • such information as would have been publicly disclosed in a consolidated market display if the trade had been executed on a marketplace; • if applicable, the identification of the provision of applicable securities legislation that required or permitted the transaction to be completed in a private or non-public transaction; and • such other information as the Market Regulator may require to confirm that the transaction could be completed by means other than the entry of an order on a marketplace. 	<p><u>or foreign organized regulated market; or</u></p> <ul style="list-style-type: none"> • <u>clause (i) of Rule 6.4</u> <p><u>shall be reported to the Market Regulator within twenty-four hours following the execution of the trade in such form as may be required by the Market Regulator. The report shall contain:</u></p> <ul style="list-style-type: none"> • <u>such information as would have been publicly disclosed in a consolidated market display if the trade had been executed on a marketplace;</u> • <u>if applicable, the identification of the provision of applicable securities legislation that required or permitted the transaction to be completed in a private or non-public transaction; and</u> • <u>such other information as the Market Regulator may require to confirm that the transaction could be completed by means other than the entry of an order on a marketplace.</u>