

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 RS Market Integrity Notice - Request for Comments – Provisions Respecting Competitive Marketplaces

RS MARKET INTEGRITY NOTICE

REQUEST FOR COMMENTS

PROVISIONS RESPECTING COMPETITIVE MARKETPLACES

Summary

This Market Integrity Notice provides notice that, on September 29, 2006, the Board of Directors of Market Regulation Services Inc. approved for publication proposed amendments to the Universal Market Integrity Rules to accommodate the introduction of multiple marketplaces trading the same securities. The proposed amendments incorporate revisions to various amendment proposals originally published in:

- Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005);
- Market Integrity Notice 2005-018 – *Request for Comments – Definition of “Applicable Market Display”* (June 10, 2005); and
- Market Integrity Notice 2005-019 – *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* (June 10, 2005).

The proposed amendments would also incorporate directly into the rules certain aspects of the guidance provided in Market Integrity Notice 2006-017 – *Guidance – Trading Securities on Multiple Marketplace* (September 1, 2006).

Questions / Further Information

For further information or questions concerning this notice contact:

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PROVISIONS RESPECTING COMPETITIVE MARKETPLACES

Summary

This Market Integrity Notice provides notice that, on September 29, 2006, the Board of Directors ("Board") of Market Regulation Services Inc. ("RS") approved for publication proposed amendments ("Proposed Amendments") to the Universal Market Integrity Rules ("UMIR") to accommodate the introduction of multiple marketplaces trading the same securities. The Proposed Amendments incorporate revisions to various amendment proposals originally published in:

- Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting "Off-Marketplace" Trades* (April 29, 2005);
- Market Integrity Notice 2005-018 – *Request for Comments – Definition of "Applicable Market Display"* (June 10, 2005); and
- Market Integrity Notice 2005-019 – *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* (June 10, 2005).

The Proposed Amendments would also incorporate directly into UMIR certain aspects of the guidance provided by RS in Market Integrity Notice 2006-017 – *Guidance – Trading Securities on Multiple Marketplace* (September 1, 2006).

Rule-Making Process

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

As a regulation services provider, RS administers and enforces trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV") and Canadian Trading and Quotation System ("CNQ"), each as a recognized exchange ("Exchange"); and for Bloomberg Tradebook Canada Company ("Bloomberg"), Liquidnet Canada Inc. ("Liquidnet"), Perimeter Markets Inc. ("BlockBook") and Shorcan ATS Limited ("Shorcan"), each as an alternative trading system ("ATS").

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

The amendments to UMIR will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment and ratification of the changes by the Board. The text of the Proposed Amendments is set out in Appendix "A". Comments on the Proposed Amendments should be in writing and delivered by **November 6, 2006** to:

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

Cindy Petlock
Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
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20 Queen Street West
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Commentators should be aware that a copy of their comment letter will be publicly available on the RS website (www.rs.ca under the heading "Market Policy"). A summary of the comments contained in each submission will also be included in a future Market Integrity Notice dealing with the revision or the approval of the Proposed Amendments.

Background to the Proposed Amendments

UMIR was drafted to accommodate the market structure envisaged by the requirements of Marketplace Operation Instrument and Trading Rules that became effective December 1, 2001. Effective January 4, 2004, a number of changes were made to Marketplace Operation Instrument and the Trading Rules. In particular:

- the deletion of requirement for a data consolidator and the substitution of the concept of an information processor or an "information vendor that meets the standards set by a regulation services provider";
- the deletion of the concept of the "principal market" for trading of a security; and
- the deletion of the requirement for marketplaces to maintain an electronic connection to every other marketplace trading the same securities.

UMIR was also drafted in contemplation of the order types and trading facilities which existed on the TSX and TSX V as of April 1, 2002. There is a need to ensure that the concepts used in UMIR are flexible enough to apply to order types and trading facilities that have been developed, or are proposed, by other competitive marketplaces. On June 10, 2005, RS published Market Integrity Notice 2006-019 – *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* that set out a series of proposed amendments to UMIR facilitate the introduction of multiple marketplaces trading the same securities (the "Original Multiple Marketplace Proposal"). The Proposed Amendments incorporate revisions to the Original Multiple Marketplace Proposal based on comments received in response to the Request for Comments and from the Recognizing Regulators.

The current definition of "consolidated market display" contemplates that there may be multiple data feeds that satisfy the definition. A Participant or Access Person, when complying with the provisions of UMIR, currently is entitled to rely on information respecting orders and trades on marketplaces to which the Participant or Access Person has access that is derived from a source which complies with the requirement of incorporating data from the "principal market" for a particular security. Under the existing provisions, there is no requirement that a Participant or Access Person subscribe for data feeds from sources that would provide information on orders or trades from more than one or all marketplaces.

On July 14, 2006, the Canadian Securities Administrators ("CSA") published a Notice of Proposed Amendments to National Instrument 21-101 – *Marketplace Operation* and Companion Policy 21-101CP and National Instrument 23-101 – *Trading Rules* and Companion Policy 23-101CP (the "CSA Notice"). In the CSA Notice, the CSA clarified their requirements with regard to information on orders and trades that each Participant is to take into account when fulfilling best execution obligations. In particular, the CSA confirmed their view "that availability of pre-trade and post-trade information is essential to facilitate best execution and market integrity, especially with multiple marketplaces trading the same securities". Although the CSA review of "trade-through" and "best execution" obligations generally is ongoing, the CSA proposed to clarify their requirements by amending Companion Policy 23-101CP to add the following section:

In order to meet best execution obligations, we [the CSA] expect that a dealer will take into account order information from all marketplaces where a particular security is traded (not just marketplaces where a dealer is a participant) and take steps to access orders, as appropriate. This may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace, where appropriate.

RS is proposing to amend UMIR to conform to the requirements of the CSA as set out in the CSA Notice regarding the obligation of a Participant to consider, if appropriate, information from all marketplaces trading a particular security. However, not all marketplaces provide transparency for orders entered on that marketplace and the provisions for post-trade transparency vary between marketplaces. In addition, not all marketplaces may be accessed by either Participants or Access Persons and not all marketplaces provide fully-automated order matching and trade execution. These differences in data dissemination, marketplace access and market structure impact on the steps which a Participant or Access Person must take in order to comply with various provisions of UMIR including:

- Rule 3.1 – Restrictions on Short Sales;
- Rule 5.1 – Best Execution of Client Orders;
- Rule 5.2 – Best Price Obligation;
- Rule 5.3 – Client Priority;
- Rule 7.7 – Restrictions on Trading During Certain Securities Transactions; and
- Rule 8.1 – Client-Principal Trading.

RS issued Market Integrity Notice 2006-017 - Guidance – *Trading Securities on Multiple Marketplaces* (September 1, 2006) to provide additional guidance on the application and interpretation of these rules in the current multiple marketplace environment. RS is proposing to incorporate into the Rules and Policies certain aspects of the guidance provided in that Market Integrity Notice.

On June 10, 2005, RS published Market Integrity Notice 2005-018 – *Request for Comments – Definition of “Applicable Market Display”* that set out a proposal to replace the concept of a “consolidated market display” with an “applicable market display” (the “Original Market Display Proposal”). The Proposed Amendments incorporate revisions to the Original Market Display based on comments received in response to the Request for Comments and from the Recognizing Regulators and based on the requirements of the CSA as set out in the CSA Notice.

In the CSA Notice, the CSA indicated that further amendments to the Marketplace Operation Instrument and CSA Trading Rules may be proposed on the completion of the study following Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations* published by the CSA on July 22, 2005. The provisions of UMIR and their interpretation and application will be modified to conform to the positions adopted by the CSA. Upon the publication of any proposed amendments to the Marketplace Operation Instrument and CSA Trading Rules respecting trade-through obligations, RS will issue additional Market Integrity Notices to request comments on proposed consequential amendments to UMIR and to provide further guidance on trading practices that may be required as a direct consequence of the final position adopted by the CSA with respect to trade-through obligations.

The Recognizing Regulators continue their review of proposed amendments to UMIR published in Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005). With the exception of the proposed amendments to Rule and Policy 6.1 – Entry of Orders to a Marketplace that are incorporated into the Proposed Amendments, RS expects that the balance of the amendments will be dealt with by the Recognizing Regulators in conjunction with the CSA proposals on trade-through obligations.

Summary of the Proposed Amendments

The following is a summary of the most significant aspects of the Proposed Amendments:

Definition of “Consolidated Market Display”

The proposed definition of “consolidated market display” differs from the current definition of the term by:

- eliminating the requirement that the consolidated feed produced by an information processor or the information on orders and trades produced by an information vendor contain information on orders or trades for a particular security from the “principal market” for that security; and
- providing that, if there is not an information processor, information provided by one or more information vendors may be relied upon as a “consolidated market display” only if the information vendors meet the standards established in accordance with the Marketplace Operation Instrument.

The Original Market Display Proposal would have permitted a Participant or Access Person to take into account order and trade information from those marketplaces to which the Participant or Access Person has access. The CSA Notice confirmed the CSA requirements that a “dealer will take into account order information from all marketplaces where a particular security is traded (not just marketplaces where a dealer is a participant)”. For this reason, the Proposed Amendments will conform the definition of “consolidated market display” to the requirements of the CSA as set out in the CSA Notice.

Definition of “Closing Price Order”

The Marketplace Operation Instrument requires that each marketplace establish operating hours for their marketplace. The Marketplace Operation Instrument does not require that each marketplace adopt the “standard” operating hours of the current exchanges in Canada. In order to facilitate trading at the closing price, trades may be permitted in special facilities at the “closing” price.

The ability to execute trades at the last sale price of a trading session accommodates index rebalancing at the closing price. In Market Integrity Notice 2006-013 – *Guidance – Designation of Indices and Exchange-Traded Funds* (May 26, 2006), RS provided notice of the indices which have been designated for the purposes of UMIR. Each of the designated indices is calculated using trading prices on the exchange which has listed the securities which are components of the index. Redemptions and issuances of units of Exchange-Traded Funds are based on the closing levels of the underlying index. For example, the value of the S&P/TSX 60 Index is calculated based on the prices of the constituent securities on the TSX and does not take into account the prices of trades on other marketplaces even when those other marketplaces may be open earlier or later than the regular trading session on the TSX. Various Exchange-traded Funds, mutual funds and other financial instruments which are designed to track certain indices therefore need to execute trades in the index-constituent securities at the closing prices used to calculate the underlying index.

On the TSX, the closing price of all securities which are a constituent of an index (and securities which are being added to an index) is determined in the Market-on-Close facility through the entry of a Market-on-Close Order. In addition, once the closing price has been determined on the TSX through the Market-on-Close facility, trading at the closing price is undertaken during the Special Trading Session on the TSX from 4:15 to 5:00 p.m. Based on trading during the first eight months of 2006, trading in the Special Trading Session accounted for approximately 2.8% of volume and 4.9% of value but only 0.5% of transactions on the TSX.

In order to accommodate such trading, the Proposed Amendments include a provision for a “Closing Price Order” which would be defined as an order that is subject to the conditions that it trade at the closing price of the security in a trade on the marketplace on that trading day and that the trade is executed subsequent to the establishment of the closing price. Given that prices disclosed in the consolidated market display may continue to vary during the period of time following the entry on a particular marketplace of the “Closing Price Order” and up to and including the execution of the order, it would also be necessary to provide exemptions for this type of order from:

- Rule 3.1 – Restrictions on Short Sales;
- Rule 5.2 - Best Price Obligation;
- Rule 5.3 – Client Priority;
- Rule 6.3 – Exposure of Client Orders; and
- Rule 8.1 - Client-Principal Trading.

UMIR presently provides an exemption from these particular rules for trades which execute as a “Market-on Close Order”. While the provisions for a “Closing Price Order” would accommodate trading in the Special Trading Session of the TSX, the definition of “Closing Price Order” is generic and any marketplace, including an ATS, would be able to establish a session or facility to accommodate trades at the closing prices on that marketplace.

Definition of “Intentional Cross” and “Internal Cross”

While not included in the Original Multiple Marketplace Proposal, RS is suggesting a change in the definition of “intentional cross” to recognize that a subscriber to an ATS may be capable of entering an intentional cross. Similarly, RS is suggesting a change in the definition of “internal cross” to recognize that a subscriber to an ATS that is a portfolio manager may be capable of entering an internal cross. As presently drafted, the definitions of “intentional cross” and “internal cross” are limited in application to a Participant handling a client order. Internal crosses are often excluded from the calculation of volume-weighted average prices or obligations for “in line with volume” orders. The proposed changes will therefore help to insure that trades executed on ATSs that are in fact an “intentional cross” or an “internal cross” do not distort trading decisions.

Definition of "Market-on-Close Order"

The Proposed Amendments would clarify the difference between a "Market-on Close Order" and a "Closing Price Order" by amending the definition of a "Market-on-Close Order" to require that the order be entered for the purpose of not just executing at the closing price but also participating in the calculation of that closing price.

Definition of "Opening Order"

Presently, an order that is entered on a marketplace to execute at the opening price of the security on that marketplace continues to qualify as an Opening Order even if the order does not participate in the initial trades for the security on that marketplace. An Opening Order is exempt from various UMIR requirements, including the "best price" obligation under Rule 5.2 and the client-principal trading requirements under Rule 8.1, since the price at which the opening will occur is not known at the time of the entry of the order. If the order does not trade at the opening, there is a question whether the order should continue to qualify for these exemptions. The Proposed Amendments provide that an order would cease to qualify as an "Opening Order" if the order does not participate in the initial trades in the security on that marketplace.

Definition of "Special Terms Order"

Presently, UMIR defines a "Special Terms Order" as an order to purchase or sell:

- less than a standard trading unit;
- that is subject to a condition other than price or date of settlement; or
- that on execution would settle other than the third business day following execution (or other date stipulated for settlement by a direction of an Exchange or QTRS).

In addition, UMIR defines a number of "specialty" orders such as a Basis Order, Call Market Order, Market-on-Close Order, Opening Order and Volume-Weighted Average Price Order. As outlined above, the amendments propose to add a "Closing Price Order". Each of these order types could be considered to be a "Special Terms Order". However, a "Special Terms Order" is not exempt from Rule 8.1 dealing with Client-Principal Trading (which requires a "better price" when a Participant executes the trade as principal against the client order that is a Special Terms Order) and is exempt from the "best price obligation" under Rule 5.2 only if the Marketplace Rules provide that the order can trade at a price other than the "best price". In order to clarify the requirements applying to order types on future marketplaces, the amendments propose to vary the definition of "Special Terms Order" to specifically exclude the "specialty" order types.

In drafting UMIR, it was anticipated that the "conditions" that would be added to a Special Terms Order would be ones that were added by the client or person entering the order. It was not anticipated that "conditions" imposed by a marketplace on the entry of an order (such as the order being of a minimum size) would qualify an order to be treated as a "Special Terms Order". The amendments propose to clarify that conditions imposed by the marketplace on order entry or order execution will not make the order a "Special Terms Order" for the purposes of UMIR.

Definition of "Best Ask Price", "Best Bid Price" and "Last Sale Price"

The definition of "best ask price" and "best bid price" currently exclude any price that may be displayed for a Special Terms Order. While existing marketplaces do not display order information for "specialty" orders, new marketplaces could in fact decide to do so with respect to such orders entered on their marketplace. Because of the "specialty" nature of such orders, the price for such orders to the extent that the price may be publicly available should not be part of the price discovery mechanism. The amendments provide that the determination of the "best ask price" and "best bid price" exclude the price of any order that is:

- a Basis Order;
- a Call Market Order;
- a Closing Price Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; and
- a Volume-Weighted Average Price Order.

While the price at which an Opening Order or a Market-on-Close Order executes may be considered to have properly established the market price of a security at that point in time, other types of “specialty” orders reflect terms and conditions that should be excluded from the determination of “last sale price” (which is used principally to determine the price at which a short sale may be made under Rule 3.1 and the price at which market stabilization and market balancing may be undertaken under Rule 7.7). As the definition is presently proposed, the execution of a Special Terms Order would be able to establish the last sale price.

Abuse of a Market Maker

Presently, one of the examples given in Policy 2.1 of unacceptable activity that would constitute a violation of Rule 2.1 on just and equitable principles is order splitting to take advantage of the market maker obligations in respect of odd lot trades on the TSX and TSX V. Given that another Exchange, including CNQ, or a recognized quotation and trade reporting system (“QTRS”) may have market making systems and provide for different obligations on the market makers, the amendments would make the language of the Policy more generic. The amendment would indicate that entering orders to take advantage of or abuse market makers would be an example of an activity that would be considered contrary to the requirements to conduct business openly and fairly and in accordance with just and equitable principles of trade.

Best Execution Obligation

The obligation to monitor information on orders entered on and trades executed on marketplaces trading the same security falls to the Participant handling the client order. Neither UMIR nor the CSA Trading Rules requires a Participant necessarily to maintain trading access to every Canadian marketplace on which a security may trade. However, with the publication of the CSA Notice, the CSA has confirmed their requirement that each Participant will take into account order and trade information from all marketplaces that trade the same securities when discharging their best execution obligations. As set out in the CSA Notice, the CSA expects that a Participant will make arrangements with another dealer who is a participant of a particular marketplace or will route an order to a particular marketplace, where appropriate. In the view of RS, a Participant would be expected to make such arrangements if the particular marketplace had demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for a specific security relative to the size of the client order.

RS is also of the view that a Participant in discharging its best execution obligation should consider possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:

- the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client; and
- the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.

As originally set out in Market Integrity Notice 2005-015 – *Guidance – Complying with “Best Price” Obligations*, RS is of the opinion that a Participant may have an obligation to consider execution opportunities in special trading facilities of a marketplace if the price at which such trades will execute in such special facilities is a better price than available on another marketplace. For example, both BlockBook and Shorcan offer facilities to “discover” additional volume at the price of the last trade on their market. In the case of BlockBook this facility is known as the “Follow-on Auction” and on Shorcan the facility is known as the “Trade Expansion Protocol”. Reference should be made to “Provision for Last Sale Price Orders” under the heading “Specific Matters on Which Comment is Requested” for a summary description of these facilities.

RS set out this guidance on the interpretation of the “best execution” obligation in Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplaces* (September 1, 2006). The Proposed Amendments would incorporate certain of this guidance into Part 2 of Policy 5.1. In addition, the proposed addition to the Policy would indicate that RS would consider two additional factors when determining whether a Participant has diligently pursued the best execution of a client order, namely:

- any specific client instructions regarding the timeliness of the execution of the order; and
- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada).

The existence of specific client instructions on timeliness of execution is presently listed in Policy 5.2 as one of the factors to be taken into account in determining whether a Participant has fulfilled its “best price obligation”. In the view of RS, this factor is more appropriate for best execution since a client can not consent to the Participant trading at an inferior price on another marketplace. The addition of the factor to consider organized regulated markets outside of Canada as part of best execution of a client order parallels a provision on best execution contained in the Companion Policy to the CSA Trading Rules. (Even if a foreign market is considered in order to provide a client with “best execution” in accordance with Rule 5.1, the Participant would

nonetheless have an obligation to better-priced orders on Canadian marketplaces under the “best price” obligation under Rule 5.2.)

Best Price Obligation

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. Currently, this obligation is qualified by a number of factors set out in Part 1 of Policy 5.2 including:

- the information available to the Participant from the information processor or information vendor;
- whether the Participant is a member, user or subscriber of the marketplace with the best price;
- any specific client instructions regarding the timeliness of the execution of the order; and
- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada).

In accordance with the requirements of the CSA as set out in the CSA Notice, a Participant must take into account order information from all marketplaces trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber). In order to undertake “reasonable efforts” to effect a trade at the best price, a Participant must take appropriate steps to access orders on any marketplace. In order to conform to the requirements of the CSA as set out in the CSA Notice, the Proposed Amendments would delete as considerations the information available to the Participant and whether the Participant is a member, user or subscriber of the marketplace with the best price. In addition, as set out above under the heading “Best Execution Obligation”, the Proposed Amendments would delete as considerations for determining compliance with the “best price obligation” any specific client instructions regarding the timeliness of the execution of the order and whether markets outside of Canada have been considered and move these two factors to be taken into account in determining compliance with the “best execution” obligation.

In the view of RS, the “best ask price” and “best bid price” can only be determined by reference to orders on marketplaces that provide pre-trade transparency and only with respect to that portion of any order that is “visible” in the consolidated market display. In order for a Participant to demonstrate that it had made “reasonable efforts” to execute a client order at the best price, RS expects the Participant will deal with “better-priced” orders on another marketplace if that marketplace:

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

RS set out this guidance on the interpretation of the “best price” obligation in Market Integrity Notice 2006-017 - Guidance – *Trading Securities on Multiple Marketplaces* (September 1, 2006). The Proposed Amendments would incorporate certain of this guidance into Part 1 of Policy 5.2.

Client Priority

Effective May 26, 2006, Rule 5.3 of UMIR was amended to provide that a Participant must give priority to a client order over all principal orders and non-client orders that are entered on a marketplace after the receipt of the client order:

- for the same security;
- at the same or better price;
- on the same side of the market; and
- on the same conditions and settlement terms.

The amendments to Rule 5.3 provided a number of exceptions including the ability of a Participant to rely on the allocations made by the trading system of a marketplace in certain circumstances. The amendments to Rule 5.3 recognized that if there are multiple marketplaces trading the same securities and each marketplace has distinct allocation algorithms, the interests of a client could be affected intentionally or unintentionally based on the marketplace on which either the client order or the principal

order or non-client order is entered. The amendments that became effective on May 26, 2006 provided a Participant will only be able to rely on the trading system exemption if:

- the security which is the subject of the orders trades on a single marketplace;
- the principal order or non-client is a Call Market Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order; or
- each of the client order and the principal order or non-client order was entered on the same marketplace.

In each case, the Participant is able to rely on the trading system allocation only if the client order was entered on a marketplace upon receipt and was not varied subsequent to entry on the marketplace except on the specific instructions of the client.

The Proposed Amendments would further expand the circumstances in which the Participant could rely on the allocations of the trading systems of the marketplaces. Under the Proposed Amendments, the Participant would not have to provide priority to a client order received prior to the entry of a principal order or non-client order entered on a marketplace if the client has instructed the marketplace on which the client order is to be entered. Clients may provide specific or standing instructions that orders which are not immediately tradable are to be entered on a particular marketplace. (If a client order would be immediately tradable as against orders displayed in a consolidated market display, the "best price" obligation under Rule 5.2 would require Participant send orders to the other marketplace sufficient to satisfy the better-priced orders prior to or concurrent with the execution of the client order.) With the client selecting the marketplace on which its order is entered, the Participant has not prejudiced the interests of the client by entering a principal order or non-client order on another marketplace. "Best price" and trade through obligations will preclude the possibility that the principal order or non-client order will trade at an "inferior price" ahead of the client order though the principal or non-client order may be executed at the same price as the client order.

Trading Increments

In Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting "Off-Marketplace" Trades* (April 29, 2005) Under the Revised Proposal, Rule 6.1 will set out the minimum trading increment as one cent for orders with a price of \$0.50 or more and one-half cent for orders less than \$0.50. The standardization of minimum trading increments will permit the direct comparison of whether an order on a particular marketplace is a "better-priced" order and allow a Participant to determine whether a period of time to move the market is required in order to execute an intentional cross or prearranged trade. The Revised Proposal provides for trades resulting from Basis Orders, Call Market Orders or Volume-Weighted Average Price Orders to be reported to the information processor or an information vendor at the closest trading increment (while permitting the trade to be confirmed to the parties to the trade at whatever fraction of a trading increment is permitted by the marketplace on which the traded is executed).

Requirement to Expose Client Orders on a Transparent Marketplace

Rule 6.3 requires, subject to certain enumerated exceptions, that client orders to purchase or sell 50 standard trading units or less of a security be immediately entered on a marketplace. The purpose of the rule was to ensure that client orders were exposed to the market. The exposure of the order contributed to the operating of the price discovery mechanism that would help to establish the "best bid price" and "best ask price" used in various UMIR provisions including the best price obligation.

The amendments to the Marketplace Operation Instrument confirm that a marketplace need not distribute order information to an information vendor if the marketplace does not make details of orders available to persons other than those retained to assist in the operation of the marketplace. The policy objectives behind Rule 6.3 are not met if the client order is entered on a marketplace that does not provide information on the order to an information vendor for inclusion in a consolidated market display. The proposed amendments to Rule 6.3 would require the entry of the client order on a marketplace that discloses order information in a consolidated market display.

In the view of RS, client orders which are routed to a non-transparent marketplace to determine if liquidity is available on that marketplace at prices that are the same or better than displayed in a consolidated market display would comply with the proposed rule if any unexecuted portion of the client order was then immediately entered on a marketplace that did provide order transparency. As set out in Market Integrity Notice 2006-017 – *Guidance – Securities Trading in Multiple Marketplaces* (September 1, 2006), a Participant may have a "best execution" obligation under Rule 5.1 to consider non-transparent marketplaces in certain circumstances when handling a client order.

Summary of the Revisions from the Original Proposals

Based on comments received in response to the Request for Comments on the Original Multiple Marketplace Proposal and Original Market Display Proposal and based on comments received from the Recognizing Regulators, RS has revised the Proposed Amendments. The changes to the Original Market Display Proposal are highlighted in Appendix "B" while the

changes to the Original Multiple Marketplace Proposal are highlighted in Appendix "C". In summary, the Original Proposals have been revised by:

- replacing the concept of "applicable market display" (which would permit a Participant or Access Person to consider information only from those marketplaces to which they had access) with "consolidated market display" (which will include order and trade information from all marketplaces trading a particular security which is provided to an information processor or information vendor in accordance with the transparency provisions of the Marketplace Operation Instrument);
- setting out in a policy the factors to be considered when determining whether a Participant has diligently pursued best execution of a client order;
- varying the factors set out in the policy to be considered when determining whether a Participant has made "reasonable efforts" to obtain "best price" to take account of the requirements of the CSA as set out in the CSA Notice and the guidance provided by RS in Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplaces* (September 1, 2006);
- replacing the proposed "Last Sale Price Order" with a more restrictive "Closing Price Order" that will trade only at the closing price of a security on a marketplace;
- expanding the exceptions to the client priority rule to permit a Participant to rely on the allocation made by the trading system of a marketplace when the client has specifically instructed that the client order be entered on a particular marketplace;
- amending the definition of "Market-on-Close Order" to provide that such an order is to be used for the purpose of calculating the closing price (thereby differentiating a Market-on-Close Order from a "Closing Price Order"); and
- amending the definitions of "intentional cross" and "internal cross" to provide that such trades may be completed by an Access Person as well as a Participant.

Summary of the Impact of the Proposed Amendments

The principal impacts of the Proposed Amendments would be to:

- clarify the application of various concepts in UMIR to facilities that may be offered by ATSS and other marketplaces;
- require a minimum one cent trading increment for orders entered at \$0.50 or more;
- permit certain "specialty trades" (such as trades resulting from a Call Market Order or a Volume-Weighted Average Price Order) to execute at non-standard trading increments provided the trade price is reported to an information vendor is rounded to the nearest trading increment;
- require the exposure of client orders for 50 standard trading units or less on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument;
- remove access to a marketplace and availability of information as considerations to be taken into account in determining whether a Participant has satisfied its "best price" obligation;
- expand the exceptions to the client priority rule to permit a Participant to rely on the allocation made by the trading system of a marketplace when the client has specifically instructed that the client order be entered on a particular marketplace; and
- clarify the factors to be taken into account in determining whether a Participant has satisfied its "best execution" obligation.

Specific Matters on Which Comment is Requested

Comment is requested on all aspects of the Proposed Amendments. However, comment is specifically requested on the following matters:

Provision for a "Single Price Session Order"

The Original Multiple Marketplace Proposal included provision for a "Last Sale Price Order" that would have included not only the "Closing Price Order" as set out in the Proposed Amendments but would also have included orders to trade during the trading day at the price of the "last sale" on a particular marketplace.

While traditional auction markets are structured to discover the best price for the purchase or sale of securities, two of the ATs have been specifically designed to "discover volume" available for a particular at a single price established by the "last sale" on that marketplace of that security.

- BlockBook offers a "continuous auction" that matches the buy and sell limit orders of subscribers based on price and time priority subject to limits on price, time in force, minimum fill and lot size constraints. The limits on price may include a "peg" to the best bid price, best ask price or mid-point with or without offsets. If a match occurs in the "continuous auction", and a "stability period" passes with no further trades in that security, then a fixed price "follow-on auction" for the security begins at the price of the match. During the 120 second "follow-on auction", the "continuous auction" in the security is suspended and all BlockBook subscribers may enter orders for that security at the match price with a minimum order size of 100 shares. Orders entered during the "follow-on auction" are matched either on a priority basis (for those subscribers who set the matching price) or on a pro-rata basis (for all other subscribers).
- Shorcan accepts indications of interest from subscribers by telephone. Each indication of interest at the best price on Shorcan is considered to be an order and all orders are entered by Shorcan into the "book" in time priority. There may be multiple orders at the best price. If a price match occurs between one or more passive order(s) in the "book" and an incoming order not previously disclosed in the book, a "trade expansion protocol" begins at the price of the match. During the 60 seconds following the match, any Shorcan subscriber may enter orders for that security at the match price. If the incoming order matched the entire volume of the "passive" order(s), the subscriber who submitted the incoming order and the subscriber with a passive order who was first in time priority may trade further at that price with one another. Once their further orders have matched to the extent possible, all orders entered during the "trade expansion protocol" are matched in time priority. If the incoming order matched only part of the volume of the "passive" order(s), the subscriber who submitted the incoming order and the subscriber with a passive order that was not completely filled by the match may trade further with each other. The subscriber with the incoming order may then trade with the subscribers with unfilled passive orders in time priority. Once their further orders have matched, other orders entered during the "trade expansion protocol" are matched in time priority.

Under Rule 5.2, a Participant that executes a trade on BlockBook or Shorcan while a "better-priced" order is on another marketplace, has an obligation, concurrent with or immediately following the execution on BlockBook or Shorcan, to send to that other marketplace orders of sufficient volume to execute as against any better-priced orders. (Presently, the obligation to fill "better-priced" orders on other marketplaces under Rule 5.2 does not apply to Access Persons.) This obligation presently applies in respect of any trade that occurs during the "follow-on auction" on BlockBook or during the "trade expansion protocol" on Shorcan.

Comment is specifically requested on the following questions:

1. *Should the execution of a Single Price Session Order be exempt from the "best price" obligations under Rule 5.2?*
2. *Should any exemption from the "best price" obligations for a Single Price Session Order be limited:*
 - (a) *to the persons who were parties to the original "last sale" trade that gave rise to the procedures to discover additional volume at the price of that trade?*
 - (b) *to trades completed within a prescribed time period after the original match and, if so, what should that time period be?*
3. *If a Single Price Session Order is not exempt from the "best price" obligations, should the obligation to better-priced order on other marketplaces be limited to the volume of the Single Price Session Order that executes?*

Appendices

- Appendix "A" sets out the text of the Proposed Amendments to the Rules and Policies to accommodate the introduction of competitive marketplaces;

- Appendix “B” sets out a summary of two comment letters received in response to the Request for Comments on the Original Market Display Proposal set out in Market Integrity Notice 2005-018 *Request for Comments – Definition of “Applicable Market Display”* (June 10, 2005); and
- Appendix “C” sets out a summary of four comment letters received in response to the Request for Comments on the Original Multiple Marketplace Proposal set out in Market Integrity Notice 2005-019 *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* (June 10, 2005).

Both Appendix “B” and “C” set out the response of RS to the comments received and provide additional commentary on the revisions the Proposed Amendments made to the Original Market Display Proposal and the Original Marketplace Proposal respectively. Appendix “B” and “C” also contains the text of the relevant provisions of the Rules and Policies as they would read on the adoption of the Proposed Amendments. The text has been marked to indicate changes from the Original Market Display Proposal and the Original Multiple Marketplace Proposal.

Questions / Further Information

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Appendix "A"

Provisions Respecting Competitive Marketplaces

The Universal Market Integrity Rules are amended as follows:

1. Rule 1.1 is amended by:
 - (a) deleting in the definition of "best ask price" the phrase "Special Terms Order" and substituting "Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order".
 - (b) deleting in the definition of "best bid price" the phrase "Special Terms Order" and substituting "Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order".
 - (c) adding the following definition of "Closing Price Order":

"Closing Price Order" means an order for the purchase or sale of a listed security or a quoted security entered on a marketplace and subject to the conditions that the order trade at the closing price of that security on that marketplace for that trading day and that the trade is executed subsequent to the establishment of the closing price.
 - (d) replacing the definition of "consolidated market display" with the following:

"consolidated market display" means, in respect of a particular security, information on orders or trades from each marketplace on which such particular security trades that has been:

 - (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or
 - (b) if there is no information processor, produced by an information vendor that meets the standards set in accordance with Part 7 of the Marketplace Operation Instrument.
 - (e) inserting in the definition of "intentional cross" the phrase "or Access Person" after the first occurrence of the word "Participant".
 - (f) replacing the definition of "internal cross" with the following:

"internal cross" means an intentional cross between two accounts which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the holders of the accounts and includes a trade in respect of which the Participant or Access Person is acting as a portfolio manager in authorizing the trade between the two accounts.
 - (g) inserting in the definition of "last sale price" the phrase ", Closing Price Order" after "Call Market Order".
 - (h) inserting in the definition of "Market-on-Close Order" the phrase "calculating and" prior to "executing".
 - (i) inserting at the end of the definition of "Opening Order" the phrase "provided an order shall cease to be an Opening Order if the order does not trade at the opening of trading of that security on that marketplace on that trading day".
 - (j) replacing the definition of "Special Terms Order" with the following:

"Special Terms Order" means an order for the purchase or sale of a security:

 - (a) for less than a standard trading unit;
 - (b) the execution of which is subject to a condition other than as:

- (i) to price,
 - (ii) to the date of settlement, or
 - (iii) imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or
- (c) that on execution would be settled on a date other than:
- (i) the third business day following the date of the trade, or
 - (ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS,

but does not include an order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.

2. Clause (f) of subsection (2) of Rule 3.1 is amended by:
- (a) deleting the word “or” at the end of subclause (iii);
 - (b) inserting the phrase “, or” after the word “Order” in subclause (iv); and
 - (c) adding the following as subclause (v):
 - (v) a Closing Price Order.
3. Clause (c) of subsection (2) of Rule 5.2 is amended by:
- (a) deleting the word “or” at the end of subclause (iv);
 - (b) inserting the phrase “, or” after the word “Order” in subclause (v); and
 - (c) adding the following as subclause (vi):
 - (vi) a Closing Price Order.
4. Subclause (i) of clause (e) of subsection (2) of Rule 5.3 is amended by:
- (a) inserting in Paragraph (B) the phrase “, a Closing Price Order” after “Call Market Order”;
 - (b) deleting the word “or” at the end of Paragraph (B);
 - (c) inserting the phrase “, or” after the word “marketplace” in Paragraph (C); and
 - (d) adding the following as Paragraph (D):
 - (D) the client has instructed the Participant to enter the client order on a particular marketplace.
5. Subsection (1) of Rule 6.1 is amended by adding at the end of the subsection the phrase “in respect of an order with a price of less than \$0.50”.
6. Clause (b) of subsection (1) of Rule 6.2 is amended by adding the following as subclause (v.2):
- (v.2) a Closing Price Order.
7. Subsection (1) of Rule 6.3 is amended by inserting the phrase “that displays orders in accordance with Part 7 of the Marketplace Operation Instrument” after the first occurrence of the word “marketplace”.
8. Clause (h) of subsection (1) of Rule 6.3 is amended by:
- (a) deleting the word “or” at the end of subclause (v);

- (b) inserting the phrase “, or” after the word “Order” in subclause (vi); and
 - (c) adding the following as subclause (vii):
 - (vii) a Closing Price Order.
9. Subsection (2) of Rule 8.1 is amended by:
- (a) deleting the word “or” at the end of clause (d);
 - (b) inserting the phrase “; or” after the word “Order” in clause (e); and
 - (c) adding the following as clause (f):
 - (f) a Closing Price Order.

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

1. Clause (d) at the end of Part 1 of Policy 2.1 is deleted and the following substituted:
- (d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:
 - (i) execute with one or more of the orders, or
 - (ii) purchase at a higher price or sell at a lower price with one or more of the ordersin accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.

2. Policy 5.1 is amended by adding the following as Part 2:

Part 2 – Factors to be Considered

In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:

- any specific client instructions regarding the timeliness of the execution of the order;
- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada);
- whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order; and
- whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:
 - the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and
 - the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.

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

Part 1 – Qualification of Obligation

The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that a client order receives the best price. In determining whether a Participant has made “reasonable efforts”, the Market Regulator will consider:

- the transactions costs and other costs (including access fees and settlement charges) that would be associated with executing the trade on a marketplace; and
- whether a “better-priced” order is on another marketplace that:
 - disseminates order data in real-time and electronically through one or more information vendors,
 - permits dealers to have access to trading in the capacity as agent,
 - provides fully-automated electronic order entry, and
 - provides fully-automated order matching and trade execution.

4. Part 2 of Policy 5.3 is amended by:

- (a) inserting in the second sub-bullet of the fourth bullet the phrase “, a Closing Price Order” after “a Call Market Order”;
- (b) deleting the word “or” at the end of second sub-bullet;
- (c) inserting the phrase “, or” after the word “marketplace” in the third sub-bullet;
- (d) adding the following as the fourth sub-bullet:
 - the client has instructed the Participant to enter the client order on a particular marketplace;
- (e) inserting at the end of the paragraph following the sixth bullet the following:

In the case of a Closing Price Order, the order is subject to the condition that it trade only at the closing price of the security on that particular marketplace notwithstanding that the order might otherwise have been capable of executing at a better price on another marketplace. A Closing Price Order will likely be entered by a person with an interest in a security that is tied to the closing price (e.g. part of a portfolio that tracks an index). Given the condition attached to a Closing Price Order, the use of such an order for a principal account or non-client account will not be considered an attempt to bypass client orders.

5. Policy 6.1 is deleted and the following substituted as Part 1:

Part 1 – Exceptions for Certain Types of Orders

Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Basis Order, Call Market Order or a Volume-Weighted Average Price Order may execute at such price increment as established by the marketplace for the execution of such orders provided that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment.

Appendix “B”

Comments Received on Proposed Amendments

Respecting Definition of “Applicable Market Display”

On June 10, 2005, RS issued Market Integrity Notice 2005-018 requesting comments on the Original Market Display Proposal. In response to that Market Integrity Notice, RS received comments from the following persons:

Canadian Trading and Quotation System Inc. (“CNQ”)
Shorcan Brokers Limited (“Shorcan”)

The following table presents a summary of the comments received together with the response of RS to those comments. Column 1 of the table indicates the revisions to the Original Market Display Proposal that are proposed by RS in response to these comments and the comments of the Recognizing Regulators.

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Market Display Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>1. Rule 1.1 amended by deleting the definition of “consolidated market display” and inserting the following definition of “applicable market display”:</p> <p>“consolidated applicable market display” means, in respect of a particular security, information on orders or trades from each marketplace <u>on which such particular security trades to which a particular Participant or Access Person has access</u> that has been:</p> <p>(a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or</p> <p>(b) if there is no information processor, produced by an information vendor that meets the standards set by <u>a Market Regulator</u> in accordance with Part 7 of the Marketplace Operation Instrument.</p>	<p>CNQ – Concerned that by permitting Participants to rely only on information from those marketplaces to which they have access will have a negative impact on best execution and trade-through. Believes that market data is readily available at a reasonable cost and that any marketplace may be accessed by any dealer through a jitney. In the view of CNQ, the amendment as originally proposed would hinder the development of competitive alternative marketplaces. If a dealer cannot have access to a marketplace (as opposed to choosing not to obtain access), the dealer should be permitted to disregard that marketplace. Acknowledges that there may be marketplaces with excessive charges for data or excessive trading fees, but this should be dealt with on a case-by-case basis. Also need</p>	<p>In a notice accompanying proposed amendments to the ATS Rules published by the CSA on July 14, 2006, the CSA confirmed that the CSA expects each Participant, when trading a particular security, will take into account order and trade information from all marketplaces trading that particular security. RS is therefore proposing to vary the amendment proposal to be consistent with the requirements of the CSA. The effect of the change is to retain the current terminology for a “consolidated market display”.</p> <p>As noted above, RS is proposing revisions to the amendment to conform to the requirements of the CSA regarding the information to be considered by a Participant or Access Person.</p> <p>The issue of access to data and its costs are beyond the purview of UMIR and must be addressed by the CSA in the context of the approval of each marketplace.</p> <p>The UMIR provisions, and in particular the “best price” obligation, are based upon “reasonable efforts”. As such, Participants and Access Persons would have latitude to deal with information from “slow marketplaces” and “fast markets”. Similarly, “reasonable efforts” would exclude marketplaces to which a Participant or Access Person would not be entitled to obtain access.</p>

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Market Display Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
	<p>exceptions for marketplaces that are slow to update market information and “fast market” situations where the order book changes as an order is being entered.</p>	
<p>2. The Rules are amended by striking out “a consolidated market display” wherever it appears and by substituting “the applicable market display” in every case.</p>		
<p>The Policies under the Universal Market Integrity Rules are amended as follows:</p> <p>1. The Policies are amended by striking out “a consolidated market display” wherever it appears and by substituting “the applicable market display” in every case.</p>		
<p><u>POLICY 5.1 – BEST EXECUTION OF CLIENT ORDERS</u></p> <p><u>Part 2 – Factors to be Considered</u></p> <p><u>In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:</u></p> <ul style="list-style-type: none"> • <u>any specific client instructions regarding the timeliness of the execution of the order;</u> • <u>whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada);</u> • <u>whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order; and</u> • <u>whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:</u> <ul style="list-style-type: none"> ○ <u>the displayed volume in the consolidated market display is not</u> 		<p>RS is proposing to specifically include a number of the factors enumerated in the guidance provided in Market Integrity Notice 2006-017 - <i>Guidance – Trading Securities on Multiple Marketplaces</i> (September 1, 2006). RS is also proposing to include factors previously included in Part 1 of Policy 5.2 (related to consideration of foreign markets and client instructions on timeliness of execution) that are more relevant to the performance of the best execution obligation than the best price obligation.</p>

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Market Display Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p><u>adequate to fully execute the client order on advantageous terms for the client, and</u></p> <ul style="list-style-type: none"> o <u>the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.</u> 		
<p><u>POLICY 5.2 – BEST PRICE OBLIGATION</u></p> <p><u>Part 1 – Qualification of Obligation</u></p> <p>The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that a client order receives the best price. In determining whether a Participant has made “reasonable efforts”, the Market Regulator will consider:</p> <ul style="list-style-type: none"> • the information available to the Participant from the information processor or information vendor; • the transactions costs and other costs (<u>including access fees and settlement charges</u>) that would be associated with executing the trade on a marketplace; <u>and</u> • <u>whether a “better-priced” order is on another marketplace that:</u> <ul style="list-style-type: none"> o <u>disseminates order data in real-time and electronically through one or more information vendors,</u> o <u>permits dealers to have access to trading in the capacity as agent,</u> o <u>provides fully-automated electronic order entry, and</u> o <u>provides fully-automated order matching and trade execution.</u> • whether the Participant is a member, user or subscriber of the marketplace with the best price; • whether market outside of Canada have been considered (particularly if the principal market for the security is outside of Canada); and 		<p>If a Participant is obligated to take into account order and trade information from all transparent marketplaces, the qualification of the “best price obligation” by the availability of information, access to marketplaces and consideration of foreign markets is no longer appropriate. RS is therefore proposing to delete these qualifications from Part 1 of Policy 5.2. RS is also proposing to specifically include a number of the factors enumerated in the guidance provided in Market Integrity Notice 2006-017 - <i>Guidance – Trading Securities on Multiple Marketplaces</i> (September 1, 2006).</p>

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Market Display Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<ul style="list-style-type: none">• any specific client instructions regarding the timeliness of the execution of the order.		

Appendix "C"

**Comments Received on Proposed Amendments
to Accommodate the Introduction of Multiple Marketplaces**

On June 10, 2005, RS issued Market Integrity Notice 2005-019 requesting comments the Original Multiple Marketplace Proposal. In response to that Market Integrity Notice, RS received comments from the following persons:

Scotia Capital Inc. ("Scotia")
Shorcan Brokers Limited ("Shorcan")
TD Securities Inc. ("TD")
TSX Markets ("TSX")

The following table presents a summary of the comments received together with the response of RS to those comments. Column 1 of the table indicates the revisions to the Original Multiple Marketplace Proposal that are proposed by RS in response to these comments and the comments of the Recognizing Regulators. Shaded rows represent proposed additional amendments to other provisions of UMIR not covered in the Original Multiple Marketplace Proposal and include:

- changes in Rule 1.1 to the definition of "intentional cross", "internal cross" and "Market-on-Close Order";
- consequential amendments to Rule 5.3 and Policy 5.3 to recognize a "Closing Price Order";
- amendments to Rule 5.3 and Policy 5.3 to expand the circumstances in which a Participant may rely on an allocation from a marketplace trading system; and
- amendments to Rule 6.1 and Policy 6.1 to address the issue of reporting of trades in standard increments addressed initially in Market Integrity Notice 2005-012 – *Request for Comments - Provisions Respecting "Off-Marketplace" Trades* (April 29, 2005).

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Multiple Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
1.1 Definitions "best ask price" means the lowest price of an order on any marketplace as displayed in a consolidated an applicable market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, ClosingLast Sale Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.		RS is suggesting a wording change to reflect that the proposal for an "applicable market display" to replace "consolidated market display" as set out in the Original Market Display Proposal will not be pursued in the form initially proposed. A consequential change is also suggested to reflect the renaming of the proposed "Last Sale Price Order" as a "Closing Price Order".
"best bid price" means the highest price of an order on any marketplace as displayed in a consolidated an applicable market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, ClosingLast Sale Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.		RS is suggesting a wording change to reflect that the proposal for an "applicable market display" to replace "consolidated market display" as set out in the Original Market Display Proposal will not be pursued in the form initially proposed. A consequential change is also suggested to reflect the renaming of the proposed "Last Sale Price Order" as a "Closing Price Order".
"ClosingLast Sale Price Order" means an order for the purchase or sale of a listed security or a quoted security	TSX – Suggests use of a different defined term to avoid confusion with the use of the term "last sale" under TSX	The Original Multiple Marketplace Proposal has been modified to define the type of order as trading only at the

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Multiple Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>entered on a marketplace and subject to the conditions that the order trade at the <u>closing</u>last sale price of that security on that marketplace <u>for that trading day</u> and <u>that the trade is executed subsequent to the establishment of the closing price.</u></p>	<p>rules.</p>	<p>“closing” price rather than during the trading day at the “last sale” price. To reflect the change in ambit, RS would propose that the defined term be changed to “Closing Price Order” from “Last Sale Price Order”.</p> <p>As part of this Market Integrity Notice, RS requests comments on whether trades during the day on a marketplace at the last sale price on that marketplace should be exempted from a number of UMIR provisions including “best price” obligation. Consideration of such a provision may be undertaken as part of proposals related to trade-through obligations that may be advanced following the publication by the CSA of the results of Concept Paper 23-403 – <i>Developments in Market Structure and Trade-Through Obligations</i> published by the CSA on July 22, 2005.</p>
<p>“intentional cross” means a trade resulting from the entry by a Participant or Access Person of both the order to purchase and the order to sell a security, but does not include a trade in which the Participant has entered one of the orders as a jitney order.</p>		<p>While not included in the Original Multiple Marketplace Proposal, RS is suggesting a change in the definition of “intentional cross” to recognize that a subscriber to an alternative trading system may be capable of entering an intentional cross.</p>
<p>“internal cross” means an intentional cross between two client accounts of a Participant which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the <u>holders of the accounts</u> clients and includes a trade <u>in respect of which</u> where the Participant or Access Person is acting as a portfolio manager in authorizing the trade between the two client accounts.</p>		<p>While not included in the Original Multiple Marketplace Proposal, RS is suggesting a change in the definition of “internal cross” to recognize that a subscriber to an alternative trading system that is a portfolio manager may be capable of entering an internal cross. Internal crosses are often excluded from the calculation of volume-weighted average prices or obligations for “in line with volume” orders.</p>
<p>“last sale price” means the price of the last sale of at least one standard trading unit of a particular security displayed in a <u>consolidated</u>an applicable market display but does not include the price of a sale resulting from an order that is a Basis Order, Call Market Order, <u>Closing</u>Last Sale Price Order or Volume-Weighted Average Price Order.</p>		<p>RS is suggesting a wording change to reflect that the proposal for an “applicable market display” to replace “consolidated market display” as set out in Original Market Display Proposal will not be pursued in the form initially proposed. A consequential change is also suggested to reflect the renaming of the proposed “Last Sale Price Order” as a “Closing Price Order”.</p>

Text of Provisions Following Adoption of Proposed Amendments (Changes from the Original Multiple Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>“Market-on-Close Order” means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of <u>calculating and</u> executing at the closing price of the security on that marketplace on that trading day.</p>		<p>In order to clearly differentiate the differences between a “Market-on-Close Order” and a “Closing Price Order”, RS would propose to expand the definition of a Market-on-Close Order to include reference to participating in the “calculating” the closing price. This addition will parallel the “calculation” component in the definition of an “Opening Order”.</p>
<p>“Opening Order” means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of calculating and executing at the opening price of the security on that marketplace on that trading day provided an order shall cease to be an Opening Order if the order does not trade at the opening of trading of that security on that marketplace on that trading day.</p>		
<p>“Special Terms Order” means an order for the purchase or sale of a security:</p> <ul style="list-style-type: none"> (a) for less than a standard trading unit; (b) the execution of which is subject to a condition other than as: <ul style="list-style-type: none"> (i) to price, (ii) to the date of settlement, or (iii) imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or (c) that on execution would be settled on a date other than: <ul style="list-style-type: none"> (i) the third business day following the date of the trade, or (ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS, <p>but does not include an order that is a Basis Order, Call Market Order, ClosingLast Sale Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.</p>		<p>A consequential change is suggested to reflect the renaming of the proposed “Last Sale Price Order” as a “Closing Price Order”.</p>
<p>3.1 Restriction on Short Selling</p> <ul style="list-style-type: none"> (2) A short sale of a security may be made on a marketplace at a price below the last sale price if 		<p>A consequential change is suggested to reflect the renaming of the proposed “Last Sale Price Order” as a “Closing Price Order”.</p>

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<p>the sale is: ... (f) the result of: (i) a Call Market Order, (ii) a Market-on-Close Order,or (iii) a Volume-Weighted Average Price Order, (iv) a Basis Order, or (v) a <u>Closing</u>Last Sale Price Order.</p>		
<p>5.2 Best Price Obligation (2) Subsection (1) does not apply to the execution of an order which is: ... (c) directed or consented to by the client to be entered on a marketplace as: (i) a Call Market Order, (ii) a Volume-Weighted Average Price Order, (iii) a Market-on-Close Order, (iv) an Opening Order, (v) a Basis Order, or (vi) a <u>Closing</u>Last Sale Price Order.</p>		<p>A consequential change is suggested to reflect the renaming of the proposed “Last Sale Price Order” as a “Closing Price Order”.</p>
<p>5.3 Client Priority (2) Despite subsection (1) but subject to Rule 4.1, a Participant is not required to give priority to a client order if: ... (e) the principal order or non-client order is executed pursuant to an allocation by the trading system of a marketplace and: (i) either: (A) the security which is the subject of the order trades on no marketplace other than that marketplace, (B) the principal order</p>		<p>Effective May 26, 2006, Rule 5.3 was amended to provide certain exceptions when a principal order or non-client order would have to provide priority to a client order. A Closing Price Order is a special type of order that is subject to the condition that the order trade at the closing price of the security on that marketplace on the particular trading day. As such, any principal order or non-client order entered as a Closing Price Order is not on the same terms and conditions as a client order that is not subject to the condition of trading at the closing price.</p> <p>RS is also proposing to expand the exceptions to the client priority rule to permit a Participant to rely on the allocation made by the trading system of a marketplace when the client has</p>

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<p>or non-client order is a Call Market Order, a <u>Closing Price Order</u>, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order, or</p> <p>(C) each of the client order and the principal order or non-client order was entered on the same marketplace, <u>or</u></p> <p>(D) <u>the client has instructed the Participant to enter the client order on a particular marketplace,</u></p> <p>(ii) the client order was entered by the Participant on that marketplace immediately upon receipt by the Participant, and</p> <p>(iii) if the client order was varied or changed by the Participant at any time after entry, the variation or change was on the specific instructions of the client;</p> <p>...</p>		<p>specifically instructed that the client order be entered on a particular marketplace.</p>
<p>6.1 Entry of Orders to a Marketplace</p> <p>(1) No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of cent other than an increment of one-half of one cent <u>in respect of an order with a price of less than \$0.50.</u></p>		<p>RS would propose to adopt the amendment as proposed in Market Integrity Notice 2005-012 – <i>Request for Comments – Provisions Respecting “Off-Marketplace” Trades</i> (April 29, 2005) to provide that all orders entered on a marketplace for a security traded at \$0.50 or more can not include a fraction or part of a cent and orders to trade at less than \$0.50 may be entered in half-cent increments.</p>

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<p>6.2 Designations and Identifiers</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> <ul style="list-style-type: none"> (i) a Call Market Order, (ii) an Opening Order, (iii) a Market-on-Close Order, (iv) a Special Terms Order, (v) a Volume-Weighted Average Price Order, (v.1) a Basis Order, (v.2) a <u>Closing</u>Last-Sale Price Order, (vi) part of a Program Trade, (vii) part of an intentional cross or internal cross, (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1, (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1, (x) a non-client order, (xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which 		<p>A consequential change is suggested to reflect the renaming of the proposed "Last Sale Price Order" as a "Closing Price Order".</p>

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<p>is the subject of the order,</p> <p>(xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or</p> <p>(xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.</p>		
<p>6.3 Exposure of Client Orders</p> <p>(1) A Participant shall immediately enter 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>(h) the client has directed or consented to the order being entered on a marketplace as:</p> <p>(i) a Call Market Order,</p> <p>(ii) an Opening Order,</p> <p>(iii) a Special Terms Order,</p> <p>(iv) a Volume-Weighted Average Price Order,</p> <p>(v) a Market-on-Close Order,</p> <p>(vi) a Basis Order, or</p> <p>(vii) a <u>Closing</u>Last Sale Price Order.</p>		<p>A consequential change is suggested to reflect the renaming of the proposed "Last Sale Price Order" as a "Closing Price Order".</p>
<p>8.1 Client-Principal Trading</p> <p>(2) Subsection (1) does not apply if the client has directed or consented that the client order be:</p> <p>(a) a Call Market Order;</p> <p>(b) an Opening Order;</p>		<p>A consequential change is suggested to reflect the renaming of the proposed "Last Sale Price Order" as a "Closing Price Order".</p>

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<ul style="list-style-type: none"> (c) a Market-on-Close Order; (d) a Volume-Weighted Average Price Order, (e) a Basis Order, or (f) a Closing Last-Sale Price Order. 		
<p>Policy 2.1 – Just and Equitable Principles</p> <p>Part 1 – Examples of Unacceptable Activity</p> <p>Without limiting the generality of the Rule, the following are example of activities that would be considered to be in violation of the obligation to conduct business openly and fairly or in accordance with just and equitable principles of trade:</p> <p>...</p> <p>(d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:</p> <ul style="list-style-type: none"> (i) execute with one or more of the orders, or (ii) purchase at a higher price or sell at a lower price with one or more of the orders <p>in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.</p>		
<p>Policy 5.3 – Client Priority</p> <p>Part 2 – Prohibition on Intentional Trading Ahead</p> <p>Rule 5.3 provides that a Participant must give priority of the execution to client orders over all principal orders and non-client orders of the Participant that are entered on a marketplace or an organized regulated market after the receipt of the client order for the same security at the same price on the same side of the market on the same</p>		<p>Effective May 26, 2006, Rule 5.3 was amended to provide certain exceptions when a principal order or non-client order would have to provide priority to a client order. An amendment to Rule 5.3 is proposed to provide that a Closing Price Order is a special type of order that is subject to the condition that the order trade at the closing price of the security on that marketplace on the particular trading day. As such, any principal order or non-client order</p>

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<p>conditions and settlement terms. The requirement is subject to certain exceptions necessary to ensure overall efficiency of order handling.</p> <p>In particular, exceptions to the client priority rule are provided if the principal order or non-client order that is entered after the receipt of the client order is:</p> <ul style="list-style-type: none"> • automatically generated by the trading system of an Exchange or QTRS in accordance with the Market Maker Obligations of that marketplace; • a Basis Order; or • required or permitted to be executed by a Market Integrity Official in priority to the client order. <p>A principal order which is automatically generated by the trading system of an Exchange or QTRS in accordance with that marketplace's rules on market-making activities is not an intentional attempt by a Participant to trade ahead of or along with a client order. An exemption from the client priority rule is therefore provided in order to ensure overall market liquidity in accordance with established Market Making Obligations.</p> <p>A Basis Order is undertaken at a price that is determined by prices achieved in related trades made in the derivatives markets. As such, the execution of a Basis Order is not an intentional attempt by a Participant to trade ahead of or along with a client order.</p> <p>An exception to the client priority rule is also provided where the trading system of a marketplace allocates the fill to a principal order or non-client order. In order to be able to rely on this exception the following three conditions must be met:</p> <ul style="list-style-type: none"> • either: <ul style="list-style-type: none"> ○ the security does not trade on any marketplace other than the one on which the client order and the principal order or non-client order is entered, ○ the principal order or non-client 		<p>entered as a Closing Price Order is not on the same terms and conditions as a client order that is not subject to the condition of trading at the closing price.</p> <p>RS is also proposing to expand the exceptions in Rule 5.3 to the client priority rule to permit a Participant to rely on the allocation made by the trading system of a marketplace when the client has specifically instructed that the client order be entered on a particular marketplace.</p> <p>The changes to Part 2 of Policy 5.3 are consequential on the adoption of the proposed amendments to Rule 5.3.</p>

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<p>order is a Call Market Order, a <u>Closing Price Order</u>, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order, or</p> <ul style="list-style-type: none"> o each of the client order and the principal order or non-client order was entered on the same marketplace, <u>or</u> o <u>the client has instructed the Participant to enter the client order on a particular marketplace,</u> <ul style="list-style-type: none"> • the client order was entered immediately upon receipt by the Participant; and • after entry, the client order is not varied or changed except on the specific instructions of the client. <p>The exception that is provided for a principal or non-client order which is a Call Market Order, Opening Order, Market-on Close Order or a Volume-Weighted Average Price Order recognizes that the price at which such an order may execute will not generally be known at the time the principal or non-client order is entered on a marketplace. Provided the client order has been entered on receipt and not varied without the consent of the client, any allocation by the trading system of the marketplace for these particular types of orders is not an attempt to bypass client orders. <u>In the case of a Closing Price Order, the order is subject to the condition that it trade only at the closing price of the security on that particular marketplace notwithstanding that the order might otherwise have been capable of executing at a better price on another marketplace. A Closing Price Order will likely be entered by a person with an interest in a security that is tied to the closing price (e.g. part of a portfolio that tracks an index). Given the condition attached to a Closing Price Order, the use of such an order for a principal account or non-client account will not be considered an attempt to bypass client</u></p>		

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<p><u>orders.</u></p> <p>A Participant can never intentionally trade ahead of a client market or tradeable limit order received prior to the entry of the principal order or non-client order without the specific consent of the client. Examples of "intentional trades" include, but are not limited to:</p> <ul style="list-style-type: none"> • withholding a client order from entry on a marketplace (or removing an order already entered on a marketplace) to permit the entry of a competing principal or non-client order ahead of the client order; • entering a client order in a relatively illiquid market and entering a principal or non-client order in a more liquid marketplace where the principal or non-client order is likely to obtain faster execution; • adding terms or conditions to a client order (other than on the instructions of the client) so that the client order ranks behind principal or non-client orders at that price; • putting terms or conditions on a principal or non-client order for the purpose of differentiating the principal or non-client order from a client order that would otherwise have priority at that price; and • entering a principal order or non-client order as an "anonymous order" (without the identifier of the Participant) which results in an execution in priority to a previously entered client order where the identifier of the Participant has been disclosed on the entry of the client order. 		
<p>Policy 6.1 – Entry of Orders to a Marketplace</p> <p>Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a <u>Basis Order</u>, Call Market Order or a Volume-Weighted Average Price Order may execute <u>at</u></p>	<p>TriAct – (In response to Market Integrity Notice 2005-012 – Request for Comments – Provisions Respecting "Off-Marketplace Trades (April 29, 2005)). Systems limitations on the accuracy of public trade price displays should not govern the rules respecting trade price increments for certain "specialty trades" given that such trades are not used to establish the "last sale price" benchmark.</p>	<p>RS would propose to modify the amendment as proposed in Market Integrity Notice 2005-012 – <i>Request for Comments – Provisions Respecting "Off-Marketplace Trades (April 29, 2005)</i> to permit certain trade executions at whatever level of price accuracy may be provided by the marketplace provided that the execution price of the trade is reported to the information processor or a data vendor at the nearest trading</p>

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<p>such price increment as established by the marketplace for the execution of such orders provided that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading and be reported in an increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment of one-half of one cent in accordance with the method of calculation of the trade price established by the marketplace on which the order has traded.</p> <p><i>[Changes are marked to the proposal in Market Integrity Notice 2005-012 Request for Comments – Provisions Respecting “Off-Marketplace Trades”]</i></p>		<p>increment (being either one cent for a security traded at \$0.50 or more or one-half cent for a security traded at less than \$0.50).</p>
<p>General Comments</p>	<p>Scotia – The commentator notes that introduction of multiple marketplaces will require greater manual intervention by Participant in the order flow process thereby diminishing the efficiency of markets. Order routing and allocation responsibilities should not be downloaded from marketplaces onto individual Participants.</p>	<p>UMIR provides for the obligations of participants in Canadian marketplaces. The requirements imposed on marketplaces are established under the Marketplace Operation Instrument. The proposed amendments to UMIR are a response to the introduction of multiple competitive marketplaces under the current provisions of the Marketplace Operation Instrument.</p>
	<p>Shorecan – The commentator suggests that UMIR needs to be flexible enough to enable traders to achieve “best execution” not just “best price”. The suggested amendments do not acknowledge the need to make future changes that may be necessary to accommodate special features of emerging marketplaces.</p>	<p>Under UMIR, “best execution” is an obligation owed by a Participant to its clients whereas “best price” is an obligation owed by the Participant to the marketplaces. RS has always stated that the rules are “dynamic” but can not anticipate all future marketplace facilities.</p>