CANADIAN SECURITIES ADMINISTRATORS NOTICE OF AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING RULES

I.   INTRODUCTION

The Canadian Securities Administrators (the CSA or we) have made amendments (Amendments) to the following instruments:

1.   National Instrument 21-101 *Marketplace Operation* (NI 21-101) and related Companion Policy 21-101CP (21-101 CP); and

2.   National Instrument 23-101 *Trading Rules* (NI 23-101) and related Companion Policy 23-101CP (23-101 CP).

The key part of the Amendments introduces a framework to require all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered (Order Protection Rule or trade-through rule). Other parts of the Amendments include a prohibition on intentionally locking or crossing markets, and changes to marketplace technology requirements, clock synchronization, and information processor requirements.

We note that the best execution reporting requirements for marketplaces and dealers are not going forward at this time. We intend to republish these proposed amendments and when we do, we will include a summary of the comments received in response to our questions related to these proposed requirements and our responses. We also note that we have replaced the term "trade-through protection" with "order protection" but have not changed the underlying concept.

Subject to Ministerial approval requirements, the Amendments, other than those relating to the Order Protection Rule (i.e. other than changes to Part 6 of NI 23-101), will come into force on January 28, 2010 in all CSA jurisdictions. The Order Protection Rule will come into effect on February 1, 2011. Additional information regarding the implementation or adoption of the instruments in each province or territory is included in Appendix A to this Notice.

In Ontario, the Amendments were delivered by the Ontario Securities Commission (OSC) to the Minister of Finance for approval on November 13, 2009. We note that a blackline indicating the Amendments may be found on various Commission websites.

Until the Amendments relating to the Order Protection Rule come into force, we expect participants, as defined in the Universal Market Integrity Rules (UMIR) of the Investment Industry Regulatory Organization of Canada (IIROC) to comply with UMIR 5.2 *Best Price Obligation* (UMIR Best Price Rule).

II.   BACKGROUND

On July 22, 2005, the CSA published Discussion Paper 23-403 *Market Structure Developments and Trade-through Obligations* (2005 Discussion Paper).[1] The purpose of the 2005 Discussion Paper was to discuss evolving market developments and the consequential implications for the Canadian capital market, and in particular the obligation to avoid trade-throughs (order protection).

The 2005 Discussion Paper asked a number of questions to get feedback on what values and rules were important to Canadian market participants. Because of the importance of the issues relating to order protection and their impact on the Canadian capital market, the CSA held a public forum on October 14, 2005 to permit all interested parties to participate in discussions relating to order protection.[2]

The CSA received feedback on a number of issues identified in the 2005 Discussion Paper where there was often no clear majority opinion and the views on either side of a given issue were split. However, the majority of commenters stated that they believed that all visible orders at a better price should trade before inferior-priced orders.

On April 20, 2007, the CSA along with Market Regulation Services Inc. or RS (now IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).[3] The Joint Notice outlined a proposal for an order protection regime.[4]

On October 17, 2008, the CSA published proposed amendments to NI 21-101 and NI 23-101 and the related companion policies (collectively, the 2008 Proposed Amendments).[5] The CSA invited public comment on all aspects of the 2008 Proposed Amendments. Eighteen comment letters were received. We have considered the comments received and thank all commenters

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[1] See (2005) 28 OSCB 6333 for background.
[2] The transcript of the trade-through forum is published on the OSC website at:
     http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20051014_23-403_trade-through-forum.
[3] (2007) 30 OSCB (Supp-3).
[4] The Joint Notice also included proposed rule changes regarding access to marketplaces and proposed rule changes regarding best execution. The CSA published the amendments to best execution in their final form on June 20, 2008, and again on September 5, 2008, to be effective on September 12, 2008. We intend to re-examine the proposed rule amendments relating to direct market access and republish them for comment in 2010.
[5] (2008) 31 OSCB 10033.

for their submissions. A list of those who submitted comments, as well as a summary of comments and our responses to them, are attached as Appendix B to this Notice.

In February 2009 the CSA formed an industry implementation committee (Implementation Committee) made up of interested parties representing marketplaces, dealers, vendors and buy side investors to assist in identifying and providing recommendations to the CSA and, where appropriate, to IIROC with respect to operational issues associated with the Order Protection Rule. Over 30 industry members have participated in this open committee. As part of its work, the Implementation Committee created sub-committees to discuss and make recommendations in five areas it believed could result in material changes to the rule. The recommendations of each sub-committee were presented to the Implementation Committee who then provided a report to the CSA. The Report of the Implementation Committee Regarding Potential Material Changes to the Proposed Trade-through Protection Rule (Implementation Committee Report) is attached as Appendix C to this Notice. We would like to thank all Implementation Committee members for their time and valuable contribution. We would especially like to thank Judith Robertson, Chair of the Implementation Committee.

III.   ORDER PROTECTION RULE

1.   What is Order Protection?

Order protection or trade-through protection, ensures that all immediately accessible, visible, better-priced limit orders are executed before inferior-priced limit orders and are not traded through. It is an obligation owed by all marketplace participants to the market as a whole. Many commenters on the 2008 Proposed Amendments indicated that they believe in the importance of an order protection obligation. Unlike the obligation for best execution, the obligation not to trade-through is not a fiduciary duty and cannot be waived.[6] Order protection applies whenever two or more marketplaces with protected orders are open for trading.

2.   Why is Order Protection Important?

In a multiple marketplace environment, the assurance that better-priced orders will be filled ahead of inferior-priced orders is essential to maintain investor confidence and fairness in the market. Order protection is especially important to ensure the future participation of retail investors that have an historical expectation of such protection. Without such protection, there may not be sufficient incentive to contribute to the price discovery process because investors who disclose their intentions are not assured of the benefit of having their better-priced orders filled while others are able to use this information in their trading decisions. In addition, investors, including retail investors, may lose confidence that their orders are being treated fairly. This in turn, may contribute to the perception that an unlevel playing field exists providing certain participants with advantages over others. Such a perception may ultimately result in the removal of investors from the market.

The CSA believe that it is important that participants of all kinds, especially retail investors, should have confidence in the fairness and integrity of the Canadian market. They should be confident that when they enter an order on a marketplace their order will be treated fairly irrespective of the sophistication of the participant or the size of the order. Such confidence encourages greater participation from all types of investors which in turn increases liquidity in the market and promotes a more efficient price discovery process. As a result, the CSA believe that order protection is an essential component to the integrity of the Canadian market.

3.   The Current Regulatory Regime

Currently in Canada, order protection is addressed in IIROC's UMIR Best Price Rule. The UMIR Best Price Rule requires dealers when trading on marketplaces in Canada to use reasonable efforts to obtain the best price available for their trades. Under the UMIR Best Price Rule, dealers are required to introduce and comply with policies and procedures outlining how they will meet their best price obligations. There are a number of exemptions available and the factors to be considered in determining if reasonable efforts have been used are broadly outlined.[7]

The UMIR Best Price Rule currently applies only to dealers, which results in different requirements for dealers and non-dealers who are subscribers of alternative trading systems (ATSs). In addition, the rule currently does not provide the necessary infrastructure to effectively prevent trade-throughs. For example, it does not provide for a framework that would allow marketplace participants to simultaneously route orders to more than one marketplace.

IIROC will be revoking the UMIR Best Price Rule when the Order Protection Rule comes into effect. For details, please see IIROC Notice 09-0328 *Provisions Respecting Implementation of the Order Protection Rule*. Until then, the CSA expects participants to comply with the UMIR Best Price Rule.

4.   The Proposed Order Protection Rule

This section outlines the key parts of the Order Protection Rule.[8] It identifies where changes have been made and describes the view of the Implementation Committee and our responses.

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[6] For a discussion about trade-through and best execution, please see the notice that accompanied the 2008 Proposed Amendments (2008) 31 OSCB at p. 10039.
[7] See UMIR Rule 5.2 *Best Price Obligation* and the related policy.
[8] The Order Protection Rule was previously referred to as the "trade-through protection rule" in the 2008 Proposed Amendments.

(a)   Key Aspects of the Order Protection Rule

(i)   Marketplace Obligation

The Order Protection Rule requires each marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. Marketplaces are required to regularly review and monitor the effectiveness of their policies and procedures and act promptly to remedy any identified deficiencies. The purpose of this approach is to require marketplaces to eliminate trade-throughs that can reasonably be prevented, but also provide them with flexibility about how to do so. Marketplaces may choose to implement the obligation in various ways including, for example, voluntarily establishing direct linkages to other marketplaces, rejecting orders, re-pricing orders, or designing specific trade execution algorithms. However, marketplaces are not able to avoid their obligations by establishing policies and procedures that require marketplace participants to take steps to reasonably prevent trade-throughs.

As part of the policies and procedures required under the Order Protection Rule, marketplaces are required to have policies and procedures relating to their automatic functionality and how they will handle failures, malfunctions or material delays experienced by other marketplaces. In addition, a marketplace is required to immediately inform all regulation services providers, any information processor (or any information vendor if no information processor exists), its marketplace participants, and all other marketplaces when it experiences a failure, malfunction or material delay of its systems or equipment or its ability to disseminate order and trade data.[9] It is also required to have policies and procedures that will outline how it will treat directed-action orders (see below for details on the directed-action order).

A marketplace is expected to show the effectiveness of its policies and procedures when evaluated by regulatory authorities by maintaining relevant information. This information would include how the marketplace evaluates its policies and procedures, any issues found and how issues were resolved.[10]

A marketplace is required to provide its policies and procedures, and any amendments thereto, to the securities regulatory authority and its regulation services provider 45 days prior to implementation. The CSA may be willing to grant an exemption to the 45 day time frame if appropriate.

(ii)   Protected Orders

Order protection only applies to a protected order which is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is required to be provided to an information processor or information vendor.[11] The CSA do not consider special terms orders that are not immediately executable or that trade in a special terms book, such as all-or-none, minimum fill, or cash or delayed delivery, to be orders that are protected.[12] However, those executing against these types of orders are required to execute against all better-priced orders first.

A marketplace that is considered to provide "automated functionality" offers the ability to immediately and automatically:

- permit an incoming order entered on the marketplace electronically to be marked as immediate-or-cancel,
- execute an immediate-or-cancel order,
- cancel unexecuted portions of that order,
- transmit a response to the sender indicating the action taken, and
- display information that updates the displayed orders on the marketplace.[13]

We note that we have changed the name for the marker of an order in the definition of automatic functionality in the 2008 Proposed Amendments from "fill-or-kill" to "immediate-or-cancel" to reflect industry standards.

(iii)   Visible Orders

The Order Protection Rule only applies to orders or parts of orders that are visible. For an order to be protected, it must be displayed by a marketplace and information about it must be provided to an information processor or information vendor.

Hidden orders or those parts of iceberg orders that are not visible are not protected under the Order Protection Rule. Currently, the non-visible or "dark" portions of orders can be avoided in a transparent order book through the use of the "bypass" marker introduced by IIROC.[14] The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity. The bypass marker can be used with the directed-action order exception described below.

(iv)   Full Depth-of-book

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[9] Section 6.3 of NI 23-101.
[10] Section 6.1 of NI 23-101 and section 6.2 of 23-101CP.
[11] Definition in section 1.1 of NI 23-101.
[12] See subsection 5.1(3) of 21-101CP.
[13] Section 1.1 of NI 23-101.
[14] See IIROC Market Integrity Notice 2008-008 published on May 16, 2008.

The Order Protection Rule will maintain the existing standard in the UMIR Best Price Rule and apply to all visible orders and visible parts of orders entered into the book (i.e. full depth-of-book). This means that in order to execute an order at an inferior price, a marketplace, or a marketplace participant using a directed-action order, has to ensure that all protected orders that are visible at better price levels have been executed. This approach is different from the one adopted in Regulation NMS in the United States, which provides protection only to the best bid and offer on each trading center (top-of-book).[15]

The Implementation Committee was divided on whether or not the CSA should move from full depth-of-book to a different level of protection. Although the Implementation Committee agreed that depth-of-book protection was more complete and philosophically consistent with the policy objectives of the CSA, the Implementation Committee did not reach a consensus on whether the incremental protection of full depth was sufficient to justify the incremental costs. In order to further investigate this issue, CSA staff provided the Implementation Committee members with specific questions designed to obtain information regarding the costs associated with full depth protection over top-of-book protection. These questions and a summary of the responses received are attached as Appendix D.

We have reviewed the information received from the Implementation Committee and gathered throughout this process to determine whether to maintain full depth order protection or to move to a top-of-book standard. Specifically, we reviewed the comments received in response to the 2005 Discussion Paper, the Joint Notice, and the 2008 Proposed Amendments, and the submissions made for top-of-book and depth-of-book in the Implementation Committee recommendations, and the responses to the questions provided to the Implementation Committee (marketplaces, dealers, buy side investors, and vendors). While we recognize that some have the view that a top-of-book standard should be adopted, we note:

- A review of commenters who responded to the 2005 Discussion Paper and the Joint Notice showed a majority were in support of order protection that would apply to all visible orders regardless of where they are in the book. The majority of the comments received to the 2008 Proposed Amendments were also in favour of a full depth standard however, some commenters expressed different opinions on how many levels of the book should be protected under the rule.

- There was no clear consensus from the Implementation Committee on whether to maintain full depth protection or adopt top-of-book protection.

- The responses to the CSA's informal questions of the members of the Implementation Committee showed a majority who said that there were few incremental costs associated with full depth-of-book protection when compared to top-of-book. There was also no consensus on whether there may be an increased cost of latency associated with full depth protection.

The CSA have decided to maintain full depth-of-book protection. We believe the policy objectives of investor confidence in the fairness and integrity of the market are more effectively accomplished through full depth protection. We believe that it is important for investors, including retail investors, to know that any order they enter on a marketplace will be executed before an inferior-priced order. We also believe that shifting the current level of protection in Canada to a top-of-book obligation may be perceived as adopting a lower level of investor protection.

Several members of the Implementation Committee identified the potential for higher costs with full depth over top-of-book protection such as the cost of retaining a greater volume of data in order to show compliance with the Order Protection Rule. The CSA do not currently expect that demonstrating compliance with the Order Protection Rule will be materially different from showing compliance with dealers' best execution and best price obligations. We will be working with IIROC to develop our expectations regarding what information will need to be maintained by marketplaces and marketplace participants that choose to use the directed-action order. This expectation will be outlined in a staff notice.

(v) Anti-Avoidance

We have included an anti-avoidance provision that prohibits a person or company from routing orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.[16] In its report, the Implementation Committee recommended that any provision that required participants to execute better-priced orders in Canada before executing on foreign marketplaces should be limited to large, pre-arranged trades. As a result, IIROC will be publishing concurrently with this Notice amendments to UMIR to address this issue.[17]

We note however, that while marketplace participants are not required to assess foreign markets under the Order Protection Rule, they should consider foreign markets when addressing their best execution obligation.

(b)   "Permitted" Trade-throughs

The overall purpose of order protection is to promote confidence and fairness in the market where the visible portion of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to

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[15] Regulation National Market System, Section 242.611, Final Rule, Federal Register 124 (June 29, 2005) pp. 37620-37632.
[16] Section 6.7 of NI 23-101.
[17] On October 27, 2008 IIROC published a concept proposal respecting conditions on the conduct of trade on a foreign organized regulated market as part of IIROC Rules Notice 08-0163.

preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new order types and other market structure developments in Canada.

As a result, we have included a number of circumstances where trade-throughs are permitted.[18] These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market order protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition. A marketplace or marketplace participant must have policies and procedures that outline in what circumstances they may rely on the exception and how such reliance will be evidenced.

(i)   *Failure, Malfunction or Material Delay of Systems or Equipment or its Ability to Disseminate Marketplace Data (Systems Issues Exception)*

We are including an exception for any failure or malfunction or material delay of a marketplace's systems or equipment or ability to disseminate data (systems issues).[19] The intention of the Systems Issues Exception is to provide marketplaces and marketplace participants with flexibility when dealing with another marketplace that is experiencing a systems problem (either of a temporary nature or a longer-term issue). A marketplace that is experiencing a failure, malfunction, or material delay of its systems, equipment or ability to disseminate data is responsible for informing all other marketplaces, its marketplace participants, any information processor, and any regulation services providers when the failure, malfunction or material delay occurs.[20]

If a marketplace fails repeatedly to provide an immediate response to orders received or there are material delays in the response time, and no notification has been issued by the marketplace that may be experiencing systems issues, a routing marketplace or a marketplace participant may rely on paragraph 6.2(a) or 6.4(a)(i) of NI 23-101, in accordance with its policies and procedures that outline processes for dealing with these systems issues. This allows for the flexibility that is necessary to deal with concerns about potential issues that arise because of latency. In these circumstances, the marketplace or marketplace participant must immediately notify the marketplace that may be having systems issues, its own marketplace participants (where applicable), any information processor, and all regulation services providers. This notification will alert a marketplace to the fact that it may be experiencing systems issues and help the marketplace in verifying whether this is true.

In the next few months, we expect to consult with industry and examine a number of implementation issues associated with the Systems Issues Exception including the parameters around the notification procedures and protocols.

(ii)   *Directed-Action Order*

We have included an exception that informs a marketplace that if it receives a specific order type, it can immediately carry out the action specified by the sender without delay or regard to any other better-priced orders displayed by another marketplace.[21] We have changed the name of this order from an inter-market sweep order to a directed-action order (DAO).[22] We have also provided an exception for when simultaneous DAOs are sent.[23] In response to recommendations made by the Implementation Committee, the Amendments clarify the responsibilities of a marketplace and a marketplace participant when using the DAO. An order can be marked "DAO" by a marketplace or a marketplace participant. The marker, as its name suggests, allows for multiple actions to be taken. It may be sent to instruct the receiving marketplace to immediately execute and cancel, or immediately execute and book any remainder of the order. In addition, a DAO may be sent to instruct the receiving marketplace to book as a passive order awaiting execution.

To avoid interaction with hidden liquidity, the DAO may also be used in conjunction with the bypass marker, as defined in IIROC's UMIR. Regardless of whether a DAO uses the bypass marker, the sender is responsible for executing against all better-priced visible orders before executing at an inferior price. If a DAO is sent without the bypass marker and interacts with hidden liquidity, all better-priced visible orders must be taken out before executing at an inferior price.

The definition of a DAO allows for the simultaneous routing of more than one DAO in order to execute against protected orders. In addition, marketplace participants may send a single DAO to execute against the best protected bid or best protected offer. A DAO may enable participants to execute large block orders, provided that they simultaneously route one or more DAO's to execute against better-priced orders. This would facilitate compliance with the order protection obligation. Whenever a market participant uses a DAO, it must have policies and procedures outlining its use and be able to show compliance with its policies and procedures regarding its use.

The Implementation Committee recommended that the requirements be set out more specifically when marketplace participants choose to assume the responsibility for order protection compliance. Although this expectation was outlined in the policy, in response to the Implementation Committee's request, we clarified the obligation in subsection 6.4 of NI 23-101 which requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that that are reasonably designed to prevent trade-throughs before using a DAO.

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[18] The list of "permitted" trade-throughs is set out in section 6.2 of NI 23-101.
[19] Paragraphs 6.2(a) and 6.4(a)(i) of NI 23-101.
[20] Paragraph 6.3(1) of 23-101CP.
[21] Paragraph 6.2(b) of NI 23-101.
[22] Definition in section 1.1 of NI 23-101.
[23] Paragraphs 6.2(c) and 6.4(a)(ii) of NI 23-101.

(iii)   Changing Markets Exception

With the emergence of electronic trading, market conditions are changing and moving more rapidly with each new innovation in technology. The number of orders entered for every trade executed has increased dramatically in recent years. This means that the quoted price of a security can often change more quickly than the rate at which a trader can respond. As a result, we are allowing for a transaction that occurs when the marketplace displaying the best price that was traded through had displayed, immediately prior to executing a trade that resulted in a trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction.[24] This exception is meant to provide some relief due to rapidly moving or changing markets.

The Implementation Committee recommended that a look-back exception be adopted where marketplaces could print a pre-arranged trade outside the national best bid or offer (NBBO) at the time of the print as long as: (a) the price was within the NBBO at the time the trade was agreed to, and (b) the trade is printed by a marketplace within 10 seconds of when the parties agreed to the trade.

The CSA have responded by clarifying that the "changing markets" exception[25] addresses the Implementation Committee's concern regarding the latency involved when executing manual trades.

The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across all marketplaces in certain circumstances. The exception allows a trade-through to occur when an order has been sent to execute against the best protected bid or offer on a marketplace but by the time it is executed the best bid or offer across marketplaces has changed. The exception also permits a trade that has been agreed to off-marketplace (where a check has been performed to see if the negotiated price can be executed within the best bid or offer across marketplaces) to be traded when the best bid or offer displayed on another marketplace has changed before the trade is executed (i.e. printed) on the marketplace.

In Canada, the execution of orders of exchange-traded securities is only permitted to occur off-marketplace in a very limited number of circumstances. These circumstances are described in UMIR 6.4.[26] Negotiated trades that occur off-marketplace are not considered executed until they are printed on a marketplace. The "changing markets" exception will also facilitate the printing of manual trades after they have been agreed to in the context of the market, but may be outside of the market when they are entered on a marketplace.

However, the exception is not meant to change trading practices in Canada and allow for off-marketplace trading and reporting. Matched orders are considered to be executed only if they have been executed within the context of the marketplace on which the order is printed.

(iv)   Non-Standard Orders

Non-standard orders have been included on the list of "permitted" trade-throughs. A non-standard order refers to an order for the purchase or sale of a security that is subject to non-standard terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted.[27] A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order so that it qualifies for an exception to the Order Protection Rule.

(v)   Calculated-Price Order

We have included an exception for orders where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of the security at the time the commitment to execute the order was made.[28] We note that the language of the 2008 Proposed Amendments has been changed to more clearly describe the order. Orders that are included under this definition are:

- call market orders – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace,
- opening orders – where each marketplace may establish its own formula for the determination of opening prices,
- closing orders – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known,
- volume-weighted average price orders – where the price of a trade is determined by a formula that measures a weighted average price on one or more marketplaces, and

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[24] Paragraphs 6.2(d) and 6.4(a)(iii) of NI 23-101.
[25] Formerly known as the "flickering order" exception.
[26] Trades are permitted to occur off-marketplace if the trade is: an unlisted or non-quoted security, has received a regulatory exemption, to adjust an error, executed on a foreign organized regulated market, executed outside of Canada provided that the trade is reported appropriately, is the result of certain terms of the security, is the result of the exercise of an option, right, warrant or similar pre-existing contractual agreement, pursuant to a prospectus or exempt distribution, or is in a listed security that has been halted, delayed, or suspended.
[27] Subparagraphs 6.2(e)(i) and 6.4(a)(iv)(A) of NI 23-101.
[28] Subparagraphs 6.2 (e)(ii) and 6.4(a)(iv)(B) of NI 23-101.

- basis orders – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or exchange or quotation and trade reporting system that monitors the conduct of its members or users respectively.[29]

(vi)   Closing-Price Order

We have included an exception for an order entered on a marketplace for the purchase or sale of an exchange-traded security that executes at the established closing price on that marketplace for that trading day for that security.[30] Some marketplaces provide an after-hours trading session at a price established by that marketplace during its regular hours for marketplace participants who are required to benchmark to a certain closing price. Therefore, we have included an exception for trade-throughs resulting from the execution of transactions in these circumstances so that a better-priced order on another marketplace does not need to be accessed.

(vii)   Crossed Market

We have included an exception for a trade-through that occurs when the best protected bid was higher than the best protected offer (crossed market).[31] Without this exception, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. The CSA recognize that crossed markets may occur as a result of order protection only applying to displayed orders or parts of orders, and not to hidden or reserve orders. Intentionally crossing the market to take advantage of this exception would be a violation of section 6.5 of NI 23-101.

(c)   Fair Access to Marketplaces

We have made amendments to 21-101CP to enhance the fair access provisions in NI 21-101.[32] Rather than setting a threshold for ATSs to permit access to all marketplace participants, the provisions require marketplaces to provide fair access to all of their services relating to order entry, trading, execution, routing and data. As well, marketplaces should permit fair access to their services for the purpose of complying with order protection requirements.

With respect to non-member/subscriber access to a marketplace, our view is that a marketplace should not be required to provide direct access to non-members/subscribers. It will be left to the marketplaces to determine how best to meet their order protection obligations. In the 2008 Proposed Amendments, we asked for comments on the various alternatives available to a marketplace to route orders to another marketplace. Certain commenters suggested that one option was for marketplaces to be directly linked by marketplaces becoming members or subscribers of all marketplaces that display protected orders through dealer entities. Other commenters suggested other options including that ATSs should be allowed to route orders to an exchange without being required to become a participating organization of the exchange, utilize an in-house or related-party capability to smart order route, licence a stand alone third party capability to smart order route, and price improve the order to a non-offending price level or reject a potentially offending order. In the next few months, we intend to consult with industry to discuss other issues relating to access.

(d)   Trading Fee Limitation

In the 2008 Proposed Amendments, we proposed a principles-based trading fee limit. We asked for comments on whether the CSA should set an upper limit on fees charged to access an order for order protection purposes and if so, what this limit should be. Commenters were divided. Several expressed the view that an upper limit on fees should be set but there was no consensus what this limit should be. Others believed that a strict fee cap should not be set and that the issue would be addressed by market competition. We note that a trading fee is defined as "a fee that a marketplace charges for the execution of a trade on that marketplace."[33] It would include any fee charged to access an order, but does not include fees charged for routing or data dissemination.

In its report, the Implementation Committee concluded that it was advisable to include a trading fee limitation as part of the proposed rule. While divided on a specific cap, the Implementation Committee recommended that the CSA should consider adopting the model used in the United States that defines a set fee cap for stocks trading above $1, and a percentage of the value of the trade, for stocks trading below $1.

The CSA considered at great length whether to move from a principles-based approach to prescribing a specific trading fee cap. In our consideration, the following difficulties were identified in choosing a fee cap:

- When setting a trading fee as an amount per share, the fee will be a higher percentage of the transaction value for lower priced stocks than for those with higher prices.

- Dictating that fees should be charged on a cents per share or percent of value basis could limit the ability of marketplaces to implement innovative fee structures.

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[29] Section 1.1.3 of NI 23-101CP.
[30] Subparagraphs 6.2(e)(iii) and 6.4(a)(iv)(C) of NI 23-101.
[31] Paragraphs 6.2(f) and 6.4(v) of NI 23-101.
[32] Sections 7.1 and 8.2 of 21-101CP.
[33] Section 1.1 of NI 21-101.

- The Canadian market has a higher proportion of stocks that trade below $1 than in the U.S. and so simply implementing the U.S. fee model could have unanticipated implications. For example, setting the maximum allowable trading fee as a percent of value could unduly impact the viability of Canada's junior markets.

As a result, the CSA have decided to maintain taking a principles-based approach and not set a specific trading fee cap. Set out below is a three pronged approach that will be taken with respect to fees to prevent marketplaces from raising their fees to take advantage of the order protection regime and to address issues raised by the Implementation Committee.

a) Proposed Provision: The Order Protection Rule prohibits a marketplace from imposing a term for the execution of an order that has the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.[34]

b) Current Requirements: Sections 5.1 and 6.13 of NI 21-101 currently require marketplaces to not unreasonably prohibit, condition or limit access by a person or company to services offered by it. This includes limiting or conditioning access through the imposition of an unreasonable fee or fee model. In assessing whether such a barrier to access may exist, the marketplace should consider a number of factors including:

- the value of the security traded,
- the amount of the fee charged relative to the value of the security traded,
- the amount of fees charged on other marketplaces, and
- with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace.

Concern was expressed by the Implementation Committee that a prohibition on marketplaces from imposing trading fees that are equal to or greater than the trading increment defined in UMIR could imply that any trading fee up to the trading increment is reasonable. In fact, the intention of the provision was not to set the fees charged by marketplaces, but to preserve the integrity of the Order Protection Rule. Therefore, to address the issue of maintaining the policy goals of the Order Protection Rule, we have added a fifth factor in 21-101CP[35] that a marketplace should consider when determining if its fees unreasonably prohibit, condition or limit access to its services. In addition, we have maintained in 21-101CP that a trading fee greater than or equal to the minimum trading increment as defined in UMIR would unreasonably limit access to a marketplace's services as it would be inconsistent with the policy goals of order protection.

c) Letter to Marketplaces: In order to ensure that the fees that are currently charged by marketplaces in Canada do not unreasonably condition or limit access to their services, we will be asking all marketplaces to explain and justify their current fees and fee models and any changes made to their fees going forward prior to implementation to demonstrate that they are in compliance with NI 21-101.

(e)   Locked and Crossed Markets

A "locked market" occurs when there are multiple marketplaces trading the same security and a bid (offer) on one marketplace is posted at the same price as an offer (bid) on another marketplace. Had both orders been entered onto the same marketplace the bid and the offer would have matched and a trade would have been executed. There are two ways for a locked market to be unlocked:

- typically, more buyers and sellers appear resulting in subsequent trades and immediate correction; or

- one of the participants involved in the lock removes its order and places the order on another marketplace to immediately execute the trade.

In contrast, a "crossed market" occurs when one participant's bid (offer) on one marketplace is higher (lower) than another participant's offer (bid) on a different marketplace. A crossed market condition between marketplaces usually does not last for a long period of time as someone will usually take advantage of the arbitrage opportunity.

While market participants agree that intentionally crossing markets should be prohibited, some argue that locking the market philosophically represents the most efficient market by eliminating the bid-ask spread. Others argue that locking the market creates confusion as market participants, including investors, do not understand why a displayed order is not being executed if there is an opposite order posted on another marketplace at the same price. Such confusion may impact the perception of the efficiency and fairness of the Canadian market which may in turn impact confidence levels and discourage participation. In addition, if the trader locking the market is acting as agent for her client, locking the market instead of executing the order could be a violation of best execution obligations.

In the view of the CSA, the practice of intentionally locking or crossing the market may detract from market efficiency, lead to a perception of a lack of market integrity, and may create investor confusion. We think that if there is a posted order at which price the participant is willing to trade, that order should be executed. Furthermore, the prohibition could encourage more interaction between buyers and sellers and encourage the use of limit orders (by offering some protection to the first displayed order).

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[34] Subsection 10.2 of NI 21-101.
[35] Subsections 7.1(4)(e) and 8.2(4)(e) of 21-101CP.

Section 6.5 of NI 23-101 prohibits a marketplace participant from intentionally locking or crossing a market by entering a protected order to buy a security at the same price or higher than the best protected offer or entering a protected order to sell a security at the same price or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order intentionally to lock or cross a particular marketplace or the market as a whole. It is not intended to prohibit the use of marketable limit orders. As mentioned in subsection 4(b)(vii) of this Notice, an exception from the Order Protection Rule has been provided to allow for the resolution of crossed markets that occur unintentionally. An exception is not necessary to resolve locked markets.

An example of when a marketplace participant intentionally locks the market is when a marketplace participant enters a locking order on a particular marketplace to avoid paying a fee charged by a marketplace or to take advantage of a rebate offered by a marketplace. As well, the CSA would consider an order marked DAO or the remainder of a DAO that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of NI 23-101.

The CSA recognize that locked or crossed markets may occur unintentionally. An unintentional lock or cross could occur in the following circumstances:

- as a result of latency issues when a marketplace participant has routed multiple DAOs to a variety of marketplaces;
- when one of the marketplaces displaying an order that is involved in the lock or cross was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data;
- when the order locking or crossing the market was entered when the market was already crossed; and
- when an order that is posted after all displayed liquidity has been executed against and a reserve order generated a new visible bid above the displayed offer or a new offer below the displayed bid.[36]

IV. ADDITIONAL AMENDMENTS

Along with the Order Protection Rule, we have made additional amendments to NI 21-101 and NI 23-101.

1. Marketplace Systems

A number of changes have been made to the system requirements for a marketplace in Part 12 of NI 21-101. Most of these changes update the technical descriptions of the requirements and modify the requirements to better reflect what is taking place in practice. They also address some of the concerns raised regarding standards for marketplaces.

Part 12 of NI 21-101 requires a marketplace to address specific issues related to capacity management, system development and testing, system vulnerabilities and business continuity. The amendments also require a marketplace to develop and maintain a more comprehensive and integrated concept of a system of internal control. The defined scope of the annual independent systems review (ISR) is to provide assurance on these same issues.

The Amendments have removed the threshold to exempt an ATS from conducting an ISR. ATSs are now required to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument. A regulator or the securities regulatory authority may consider granting an exemption from this requirement. An exemption may be granted provided that the marketplace prepare a control self-assessment and file it with the regulator. In determining whether to grant the exemption, a number of factors will be considered including: the market share of the marketplace, the timing of the last independent systems review, and changes to systems or staff of the marketplace.[37]

Changes have also been made to the requirements for marketplaces to make available their technological requirements regarding interfacing with, or accessing the marketplace and, make available systems facilities for testing access. Before a new marketplace begins operations, it must make these requirements available for at least three months and offer systems testing for at least a two-month period. If the marketplace is already operating, all material changes to these requirements must be made available for a three-month period and offer testing to these systems for a two-month period.[38] In response to public comments, we have included some flexibility so that if a marketplace must make an immediate change to address a failure, malfunction or material delay to its systems or equipment, such a change can be implemented if the marketplace immediately notifies the regulator and its regulation services provider of its intention to make the change and make the amended technological requirements available as soon as practicable.[39]

2. Transparency

Amendments have been made to Parts 9 and 10 of 21-101CP for the purposes of clarifying the requirements under sections 7.1, 7.2, 8.1 and 8.2 of NI 21-101 for marketplaces, inter-dealer bond brokers and dealers to provide accurate and timely order and trade information to an information processor, or to an information vendor that meets the standards set by a regulation services

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[36] Subsection 6.4(2) of 23-101CP.
[37] Subsection 14.1(4) of 21-101CP.
[38] Subsections 12.3(1) and (2) of NI 21-101.
[39] Subsection 12.3(4) of NI 21-101.

provider. Such information should not be made to any other person or company on a more timely basis than it is made to an information processor or information vendor.

3.   Information Processor Requirements and Systems

We have made amendments to section 14.5 of NI 21-101 and Part 16 of 21-101CP regarding the technological requirements and obligations of an information processor. An information processor has similar requirements as marketplaces in this area including the ability to assess capacity management, system development and testing, system vulnerabilities and business continuity.[40]

NI 21-101 requires an information processor to provide accurate, timely and fair collection processing and distribution of information for orders and trades in securities. The CSA expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers will be given access on fair and reasonable terms. In addition, we also expect that no preferential treatment will be given to those providing information or those receiving information. Information should not be provided on a more timely basis to a single person or company or group of persons or companies over others.[41]

As of July 1, 2009 TSX Inc. is the information processor for equity securities in Canada. CanPX is the information processor for corporate debt securities.

4.   Amendments to Sections 7.2, 7.4, and 8.3 of NI 23-101 - Agreement Between a Marketplace and a Regulation Services Provider

Because of the development to multiple marketplaces operating in Canada, amendments have been made that ensure that information from all marketplaces will be provided to a regulation services provider so that it can effectively conduct cross market surveillance. Subsections 7.2(c), 7.4(c), and 8.3(d) require that the agreement between a regulation services provider and a marketplace mandates the marketplace to provide all information that a regulation services provider reasonably requires to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces and the conduct of the marketplaces as applicable. This amendment in no way changes the existing relationship between an exchange or quotation and trade reporting system and the regulation services provider that it has retained. Instead, it clarifies our expectation that the regulation services provider will be provided with the information it needs to effectively monitor trading on multiple marketplaces and to facilitate monitoring to ensure that certain standards and obligations are uniformly met by all marketplaces that the regulation services provider surveils. These standards and obligations will include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.[42]

V.   IMPLEMENTATION PERIOD

The Amendments, other than those relating to the Order Protection Rule, will become effective on January 28, 2010. The Amendments relating to the Order Protection Rule (Part 6 of NI 23-101, Part 6 of 23-101CP and the relevant definitions) will become effective on February 1, 2011. The difference in these dates reflects a transition period necessary for marketplaces and marketplace participants to be ready to implement the Order Protection Rule. We expect to provide further details regarding implementation in a separate notice to be published shortly.

VI.   QUESTIONS

Questions may be referred to any of:

Tracey Stern
Ontario Securities Commission
(416) 593-8167

Sonali GuptaBhaya
Ontario Securities Commission
(416) 593-2331

Matthew Thompson
Ontario Securities Commission
(416) 593-8223

Élaine Lanouette
Autorité des marchés financiers
(514) 395-0337 ext. 4356

Serge Boisvert
Autorité des marchés financiers
(514) 395-0337 ext.4358

Doug Brown
Manitoba Securities Commission
(204) 945-0605

Lorenz Berner
Alberta Securities Commission
(403) 355-3889

Meg Tassie
British Columbia Securities Commission
(604) 899-6819

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[40] Subsection 14.5 of NI 21-101.
[41] Subsection 16.1(3) of 21-101CP.
[42] Section 7.5 of 21-101CP.

November 13, 2009

APPENDIX A

IMPLEMENTATION OR ADOPTION OF THE INSTRUMENTS

The instruments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario, the Northwest Territories, the Yukon Territory, Nunavut and Prince Edward Island;
- a regulation in Québec; and
- a commission regulation in Saskatchewan.

The companion policies will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the instruments and other required materials were delivered to the Minister of Finance on November 13, 2009. The Minister may approve or reject the instruments or return them for further consideration. If the Minister approves the instruments (or does not take any further action), the instruments will come into force on January 28, 2010.

In Québec, the instruments are a regulation made under section 331.1 of The Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The instruments will come into force on the date of their publication in the Gazette officielle du Québec or on any later date specified in the regulation. They are also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the instruments is subject to ministerial approval. Provided all necessary approvals are obtained, British Columbia expects the instruments to come into force on January 28, 2010.

Summary of Public Comments on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (NI 23-101)	
Comments	*CSA Responses*
Necessity of Order Protection Many commenters indicated that they believe in the importance of an order protection obligation. One commenter however, was of the view that an order protection requirement is not necessary in light of advances in direct market access technology, smart order routing technology, improved transaction cost analysis products and other technology developments in the market.	*In our view, order protection is important for maintaining investor confidence and fairness in the market, especially where there is a high degree of retail participation and an historical expectation of order protection. The advances in technology do not address these important policy objectives.*
Depth of Order Protection Some commenters expressed an opinion as to how far the order protection obligation should be applied. Two commenters favoured full depth-of-book trade-through protection. One of these commenters further explained that current technology has addressed the complexity of a full-depth obligation and stated that unless analysis of the data generated to date provides evidence of a disadvantage, the obligation should remain as is. One commenter indicated that full depth-of-book protection would not provide substantial and meaningful protection and would introduce considerable latency into marketplace systems. This commenter suggested that the appropriate level of trade-through protection should be limited to five price levels. Another commenter supported initially implementing trade-through protection for top-of-book quotes only and expanding the obligation later on. One other commenter suggested protecting more than top-of-book but less than full depth-of-book. Some commenters had concerns about the implementation costs of a full-depth requirement.	*As discussed in the Canadian Securities Administrators Notice of Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (Notice), after review and analysis of the comment letters and the information and recommendations provided by the Implementation Committee (for details on the Implementation Committee, see Part II of the Notice) we have decided to maintain full depth-of-book protection. We believe that it is important for investors to know that any order they enter on a marketplace will be executed before an inferior-priced order.*
Fees One commenter suggested that the trading fees regime should be broadened to an "access fees" regime that restricts the fees a marketplace may charge other markets and smart order routing vendors for displayed "protected quote data" that they are obligated to consume to enforce order protection obligations. Commenters requested two clarifications with respect to fees: (1) that marketplaces are not restricted in setting fees for non-protected or specialty order types that are not executed strictly to comply with trade-through, such as benchmark orders, where the market participant elects to use such order types and (2) that a marketplace cannot discriminate based on the order's originating marketplace and that imposing different terms on orders depending on the identity of the originating marketplace should also not be permitted.	*We have removed the trading fee limitation requirement but have added language to sections 7.1 and 8.2 of 21-101CP to further explain certain factors the Canadian securities regulatory authorities will consider when determining if a marketplace's fees unreasonably condition or limit access to its services.* *We also note that a marketplace is prohibited from imposing terms that discriminate between orders that originate on that marketplace and those that are routed to that marketplace under section 10.2 of NI 21-101.*

Protected Orders	
One commenter submitted that the definitions of "protected bid" and "protected offer" as proposed need to be narrowed to include only those orders that are required to be provided to an information processor or information vendor. The following language was suggested: "…about which information is <u>required to be</u> provided pursuant to Part 7 of NI 21-101 to an information processor…".	*We agree and have made this suggested amendment.*
Enforcement	
A number of commenters requested clarification as to how the order protection obligation will be monitored and enforced. A commenter also called for meaningful fines or other penalties.	*We will be providing further information as to how the order protection obligation will be monitored and enforced in a subsequent notice prior to the implementation of the Order Protection Rule.*
Implementation of Order Protection Requirement	
One commenter specifically noted that the CSA should consider whether the industry is currently able to comply with the proposed requirements, and if not, whether additional time to develop the appropriate tools will cure their lack of ability to comply. This commenter also added that flexibility in implementation is needed to accommodate the various interests and levels of sophistication.	*We have been consulting with industry with respect to this issue and expect to provide a more detailed implementation schedule shortly.*
Locked and Crossed Markets	
One commenter stated that unless there is a prohibition on intentionally locking or crossing markets, marketplaces will have a difficult time implementing technology systems to comply with order protection requirements.	*We agree that there should be a prohibition on intentionally placing orders that lock or cross the market and have included this prohibition in section 6.5 of NI 23-101.*
Some solutions suggested by commenters included: (1) marketplaces should automatically re-price orders to prevent them from locking or crossing another market and (2) a designated information processor should be used to address or minimize locked and crossed markets.	
Trading Hours	
Some commenters cited that the application of order protection should only be required during regular trading hours and one commenter specifically suggested that that trade-through protection should be required either: (1) during the regular trading hours of 9:30 a.m. and 4:00 p.m. or (2) during such period of time when more than one marketplace operating a transparent continuous order book is open for trading.	*We are of the view that the order protection obligation is in effect if there are two or more marketplaces with protected orders open for trading. However, under paragraph 6.2(e) of NI 23-101, a marketplace would not be required to take steps to reasonably prevent trade-throughs during its after hours trading session where the price is established by that marketplace during its regular trading hours.*
Technology Systems Requirements	
The comments with respect to the proposed technology systems requirements were mixed.	*We are of the view that the proposed technology systems requirements are necessary and important in order to update the existing requirements and to better reflect current practice.*
One commenter indicated that the increased detail proposed is generally useful and another was in favour of the proposed requirement for alternative trading systems (ATSs) to perform an annual independent systems review.	*With respect to the suggestion that specific disaster recovery standards be set, we will consult with industry regarding a more detailed marketplace protocol to follow when experiencing systems issues in the context of the systems issues exception.*
One commenter suggested imposing requirements to prescribe specific disaster recovery standards and for the CSA to consider establishing minimum standards to be met by marketplaces in the event of non-disaster systems incidents. This commenter submitted that a "reasonable" disaster recovery plan is not sufficient and more detailed standards are required to address incidents that create	*With respect to the comment that an exception clause be added to allow a marketplace to expedite material technology changes if deemed necessary, we agree and have amended paragraph 12.3 (4) of NI 21-101 accordingly.*

systems outages.

Another commenter indicated that ATSs should publish a full description of their fill allocation methodology in order for routing marketplaces to adequately adapt their routing logic in a way that will provide for the most effective execution of the trade-through obligation.

Two commenters believed that the proposed requirements are too prescriptive and onerous. One of these commenters suggested that the level of requirements should be related to the complexity of the business and reliance by others on the system.

With respect to the proposed notice and testing time periods, one commenter indicated that these time periods should not be prescribed but should be stated in terms of what is reasonable or appropriate under the circumstances while another commenter suggested shortening the time periods to 60 and 30 days and advised that an exception clause be added that would allow a marketplace to expedite material technology changes if deemed necessary in the circumstances.

Fill-or-Kill Orders

Two comments were made in relation to "fill-or-kill" orders. One commenter noted that "fill-or-kill" and "fill-and-kill" are terms that are used interchangeably and have different meanings in different jurisdictions. This commenter suggested that the CSA's definition of "fill-or-kill" or a description of such an order's functionality be included in the amendments.	*We have replaced the term "fill-or-kill" with "immediate-or-cancel" in NI 23-101 to avoid any possible confusion and better reflect industry practice.*

Another commenter suggested that the definition of "automated functionality" be revised to replace the references to "fill-or-kill" with "immediate-or-cancel" as this is the term that is consistently used throughout marketplaces in the U.S.

Agreement between Marketplace and Regulation Services Provider

One commenter indicated that the amendment to subsection 7.2(c) of NI 23-101 should be redrafted so that it does not reference that a regulation services provider monitors an exchange.	*These amendments clarify our expectation that a regulation services provider shall receive information it considers necessary from the marketplace participants and marketplaces it surveils to effectively monitor trading on multiple marketplaces. In addition, we expect that because it has the infrastructure in place to do so, IIROC will monitor certain aspects of a marketplace's compliance with respect to a limited number of applicable regulatory requirements including, order protection and clock synchronization.*

Onus of Order Protection Rule

One commenter argued that the obligation of order protection should rest on dealers if a marketplace passes the obligation on. Another argued that the obligation should be on dealers and possibly on non-dealer subscribers, and a third supported placing the obligation only on dealers and non-dealer participants as an alternative to allowing dealers to assume the responsibility for themselves. One advocated allowing marketplaces to transfer or download the obligation to dealers because regulations in the U.S. allow marketplaces to either pass on part or all of the	*We continue to be of the view that the Order Protection Rule is best implemented at the marketplace level. The CSA have decided to shift this obligation to a marketplace level as opposed to a dealer-level to level the playing field that currently exists in Canada because the UMIR Best Price Rule only applies to dealers but not to non-dealers who are ATS subscribers. The Order Protection Rule makes all participants in the market subject to the rule. In addition, there are fewer marketplaces than dealers, and we are of the view that a marketplace level obligation is more efficient.*

obligation to marketplace participants and that a marketplace may be required to take action which can have the impact of contradicting a decision made by the dealer with the purpose of complying with their fiduciary obligation.

However, we have provided for the ability of dealers to maintain control of their order flow by using a directed-action order.

This commenter also cited several difficulties with moving the order protection obligation to marketplaces which included that the speed of trading would be dictated by trading venues and that a market participant's use of inter-market sweep orders (ISOs) would need to be overseen in addition to trading on foreign markets in order to determine compliance with the anti-avoidance provision.

A commenter stated that cost and technology concerns of placing the obligation on dealers and non-dealer subscribers have already been addressed in practice by many dealers. However, a different commenter noted that not all dealers have found solutions.

Filing of Order Protection Policies and Procedures

One commenter noted that the requirement to file policies and procedures relating to the prevention of trade-throughs and any material changes at least 45 days prior to implementation decreases the flexibility of a marketplace to adapt to events as they occur and that it is not clear why these policies and procedures should be treated any differently than any other policies or procedures.

We acknowledge that there may be circumstances where a marketplace may need to change its order protection policies and procedures in a prompt manner. We therefore note that an application requesting an abridgement of this timeframe would be a viable alternative to the legislated timeframe.

Application of Order Protection Obligation to Active and Passive Orders

One commenter requested clarification as to whether the order protection obligation applies to both active orders and passive orders sitting in the book. This commenter noted that the definition of "protected order" excludes special terms orders if passive. This commenter also noted that as the value of special terms orders is different than the value of trades executed on standard terms, there is no reason for the distinction between passive and active and concluded that all special terms trades should be excluded from the definition of a "protected order".

There is no distinction between passive and active orders under the definition of "protected order".

Trade-through Exceptions

Systems Failure

One commenter pointed out that both order entry malfunctions as well as data malfunctions could force a routing marketplace to claim "self help". This commenter also noted that a marketplace could reasonably conclude that another marketplace is experiencing systems issues when in fact there is a connectivity breakdown between the two marketplaces. As well, this commenter suggested that marketplaces would need to act reasonably together and with third party suppliers to rectify this disconnect.

We agree that marketplaces will need to act reasonably together and with third party suppliers in the event there is a problem in the communications lines between marketplaces. Relying on 6.2(a) of NI 23-101, a marketplace may cease routing to another marketplace if it reasonably concludes that the other marketplace is experiencing systems issues. As well, each marketplace would be expected, as part of its policies and procedures under Part 6 of NI 23-101 to document and retain data that contributed to its decision to cease routing to another marketplace.

In addition, this commenter also suggested that there should be a requirement for each marketplace to document and retain, in an auditable manner, the data that contributes to the marketplace's decision to cease routing to another marketplace.

Inter-market Sweep Order (ISO) Requirements

One commenter indicated that there should not be any additional steps imposed on a marketplace to verify an ISO order as long as a marketplace feature exists to check for

We confirm that a marketplace that receives a directed-action order (previously referred to as an inter-market sweep order or ISO) will not have to perform any additional steps to verify it is

	a bone fide directed-action order but instead merely needs to check for the appropriate marker and execute and/or route or book accordingly. Its policies and procedures must outline what steps it will take upon receipt of a directed-action order.
an ISO marker and execute and route accordingly.	
Certain commenters requested further guidance on the use of ISO orders, particularly with respect to who bears the regulatory burden in this instance and which regulator will be enforcing these rules.	*We have included a specific requirement with respect to a marketplace participant's responsibility when using a directed-action order in section 6.4 of NI 23-101 and provided more detailed guidance in the companion policy as to the regulatory obligation and how it should be met by the marketplace participant.*
Anti-Avoidance	
A few commenters supported the inclusion of an anti-avoidance provision.	*We agree there should be an anti-avoidance provision and have included this provision in section 6.7 of NI 23-101.*

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

Comments	*CSA Responses*
The majority of commenters responding to this question were of the view that marketplaces should not be permitted to pass on the order protection obligation to marketplace participants except in certain circumstances. Some of these commenters indicated that when certain exceptions to the trade-through protection rule such as inter-sweep market orders and systems failure are triggered, it would be appropriate for dealers to assume the order protection responsibility for their orders. Three commenters were in favour of allowing marketplaces to pass on all or part of the order protection obligation to dealers. One commenter noted that this is the approach taken in the U.S. Another commenter was of the view that there is no useful purpose in prohibiting marketplaces from using any particular alternative for meeting the trade-through protection obligation.	*The CSA agree with the majority of commenters that marketplaces should not be permitted to pass on the order protection obligation to marketplace participants.* *However, if a marketplace participant sends a directed-action order, the order protection obligation is shifted to that marketplace participant.* *We also note that if a marketplace participant initiates the systems issues exception, we would expect that it could, among other things, send its orders to another marketplace, relying on the marketplace's order protection obligation, or choose to send a directed-action order. Sending a directed-action order would relieve the marketplace of its order protection obligation.*

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

Comments	*CSA Responses*
Three commenters suggested that an immediate response could be considered to be any response time less than one second. One commenter suggested that an "immediate" response time should be interpreted as less than 50 milliseconds and another mentioned that 20 milliseconds or less should be used as a limit. Certain commenters were of the view that it is inappropriate to fix a particular time increment since the evolution in technology will change what is considered reasonable over time. These commenters suggested that a more appropriate measure of immediacy should be put in relative terms to the performance of other marketplaces or an agreed upon benchmark. Two commenters believed that the best approach is for	*We have decided not to attribute a specific time period to the word "immediate" but instead expect that marketplaces and marketplace participants will evaluate whether a response is "immediate" in the context of the type of order sent (electronic or manual) and the relative response time of other marketplaces.* *We will consult with industry to flesh out a consistent approach and develop a protocol to be followed by marketplaces and marketplace participants. We would expect the protocol to be reflected in the policies and procedures of marketplaces and marketplace participants.*

marketplaces and market participants to include what constitutes an immediate response time in their written policies and procedures. One commenter indicated that marketplaces should provide the same speed of execution of ISO's as they do for other orders to ensure a prompt response to ISO's.	

Question 3: Are any additional exceptions necessary?	
Commenters indicated that consideration should be given to: • how block trades may be executed in light of the proposed requirements; • routing of ISOs after cancellations, short sales and odd lots; • expanding the definition of "Calculated Price Order" to include "basket trades" where parties to a transaction agree to a price for a basket of securities where no single security makes up a substantial proportion of the basket; • situations where a buyer wishes to remain under 9.9% (or 5% where a bid is already present or for inter-listed shares) in the context of toe-hold purchases; and • situations where a buyer must remain below a specified level prescribed by law. Contingent Orders, Internal Crosses One commenter indicated that contingent orders and internal crosses should be exempted from the trade-through protection rule. Systems Issues Exception Some commenters indicated that the systems issues exception should place a higher standard on marketplaces to be more transparent regarding the systems problem they are experiencing and demonstrate that they have resolved the systems issues. Negotiated Trades Two commenters indicated that an exception should be provided for negotiated trades. One commenter specifically mentioned that the negotiation system should only prohibit any bid or offer outside the spread at the time the bid or offer is made, but be permitted to execute the trade if the bid or offer moves outside the spread at the time the bid or offer is accepted by the counter-party (i.e. 20 seconds later). Odd Lot Orders One commenter submitted that odd lot orders should not receive trade-through protection because to grant such protection would be unmanageable from a routing perspective and could result in higher clearing costs if market participants were required to execute against non-standard trading units. Additional Exceptions	*Upon consideration of the suggestions received by commenters and the recommendations from the Implementation Committee, we have decided to add language to clarify a number of exceptions.* *Please see section 4(b) in Part III of the Notice for a full discussion of these changes.* *Marketplaces are required to provide notice of the problems under section 6.3 of NI 23-101 and we expect that they will issue a notice once the problems have been resolved. Details of how to declare a systems issue and actions to be taken in response will be fleshed out in a protocol.* *This issue was discussed by the Implementation Committee. Please see our response to this recommendation in subsection 4(b)(iii) in Part III of the Notice.* *Order protection only applies to orders that are in the regular book. If odd lot orders are listed outside of the regular book, they would not garner order protection.*

Two commenters stated that while there did not appear to be any other additional exceptions necessary at this point, the CSA should remain open to re-assessing the rules as issues arise.	*We agree and once the Order Protection Rule is implemented, we will monitor the market to discern if any additional exceptions are required.*

Question 4*: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

The following have been suggested as alternatives to marketplaces routing orders to another marketplace: • marketplaces could be directly linked. Some of the commenters indicated that this could be done by marketplaces becoming members or subscribers of all the protected marketplaces through dealer entities, however it was mentioned that the cost of establishing these dealer entities would be significant; • one commenter expressed a concern about the above-mentioned alternative, specifically with respect to if a marketplace acts as a jitney for its participants, it would have to reveal the participants' codes and suggested that a marketplace should be able to transmit jitney orders under the marketplace's code instead; • new ATSs could display their quotes through a self-regulatory organization such as done through NYSE or NASDAQ in the U.S.; • an in-house or related-party capability to smart order route, license a stand-alone third-party capability to smart order route, price improve the order to a non-offending price level or reject a potentially offending order; • route an order intact, including the broker ID; and • adjust the definition of "jitney order" so that a participant of a marketplace could execute trades for other market participants that are not necessarily members of, or have an agreement with the marketplace where the trade is executed.	*We thank all commenters for their suggestions on the alternatives available to a marketplace to route orders to another marketplace. In addition, we expect that the industry will further discuss the possible methods to be used to route orders.*

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

Comments	*CSA Responses*
A few commenters agreed that an upper limit on fees that are charged to access an order for order protection purposes should be set with one commenter specifically stating that the UMIR Rule 6.1 limit was appropriate, another indicating that the $0.003 fee limit used in the U.S. is appropriate and yet another stating merely that the access fee should be nominal. A number of other commenters however, were of the view that a strict fee cap should not be set. One commenter indicated that the adoption of a principles-based approach would be preferable to establishing a strict fee cap and another indicated that this issue will be addressed by market competition. Another commenter	*We note that in addition to these comments, the CSA also took into account the Implementation Committee's recommendation to include a specific cap on trading fees as part of the Order Protection Rule when determining the final rule regarding fees. Please see section 4(d) of the Notice for further details.*

cited that the CSA must adopt procedures to prevent marketplaces from establishing fee models which take advantage of the order protection requirements by paying large credits for liquidity with the intention of charging high fees for orders routed pursuant to the order protection obligation.

Another commenter suggested that the CSA define what would constitute a pricing abuse warranting an explicit fee cap and move to implement any necessary rule change only if there is clear evidence that such pricing abuses are occurring or are imminent based on announced pricing changes.

Certain other commenters supported taking marketplace fees into account when determining best price or determining routing table priorities.

Several commenters supported the principle of non-discriminatory fees.

Question 6: Should there be a prohibition against intentionally creating a "locked market"?

Comments	CSA Responses
/	*We agree with the majority of commenters responding to this question and have maintained the prohibition against intentionally placing a "locking" order on a marketplace in section 6.5 of NI 23-101. The section is meant to capture the situation where a marketplace participant intentionally enters an order that locks or crosses a particular marketplace or the market as a whole.* *Additional guidance has been included in section 6.4 of Companion Policy 23-101CP to provide more detail as to which circumstances would be considered to be an unintentional locking or crossing of the market.*

SUMMARY OF PUBLIC COMMENTS ON PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING RULES

List of Commenters

1. Alpha ATS
2. BMO Nesbitt Burns Inc.
3. Canadian National Stock Exchange
4. Canadian Security Traders Association Inc.
5. CanDeal
6. Chi-X Canada ATS Limited
7. CIBC World Markets
8. Investment Industry Association of Canada
9. ITG Investment Technology Group
10. Liquidnet Canada Inc.
11. Omega ATS
12. RBC Asset Management Inc. and Phillips, Hager & North Investment Management Ltd.
13. RBC Dominion Securities Inc.
14. TD Asset Management
15. TD Securities Inc.
16. Simon Romano
17. TMX Group Inc.
18. TriAct Canada Marketplace

Report of the Implementation Committee Regarding Potential Material Changes to the Proposed Trade-Through Protection Rule

Committee Members

Judith Robertson	Chair, Belzberg	Chris Sparrow	Liquidnet
Michael Brady	Alpha	Mark Armstrong	National Bank Financial
Randee Pavalow	Alpha	Nadyne McConkey	National Bank Financial
AnneMarie Ryan	AMR Associates	Fera Jeraj	National Bank Financial
Doug Clark	BMO Capital Markets	Al Kovacs	National Bank Financial
James Ehrensperger	BMO Capital Markets	Michael Sheridan	Norstar Securities
Jenny Drake	CCL Group	Mario Josipovic	Omega
Tal Cohen	Chi-X	Greg King	Omega
Matthew Trudeau	Chi-X	Spencer MacCosham	Raymond James
Kevin McCoy	CIBC	Kelley Hoffer	RBC
Cindy Petlock	CNSX Markets	Greg Mills	RBC
Richard Carleton	CNSX Markets	Vanessa Gardiner	Scotia Capital
Sonny Lennon	CSTA	Peter Haynes	TD Newcrest
Martin Hakker	Fidessa	Ray Tucker	TD Newcrest
Iven Bryer	Fidessa	Deanna Dobrowsky	TMX Group
Steve Harvey	Fidessa	David Chmelnitsky	
Darren Sumarah	Goldman Sachs	Tim Thurman	
Shawna Katan	Haywood Securities		
Susan Copland	IIAC		
Stephen Plut	ITS		
Torstein Braaten	ITG		
Jim Davies	IRESS		
Dave Mulder	IRESS		

The Implementation Committee identified 5 areas in the proposed rule where desired changes could rise to a level of materiality that would require a republication of the rule ("material changes"). We created a sub-committee to address each of these areas. The sub-committees were open to participation from all members of the Implementation Committee. They met to discuss the issues at least twice. The results of those discussions were presented and further discussed by the full Implementation Committee at least twice. The results of the sub-committee deliberations are included as Appendix A.

This report summarizes the concluding discussion of the Implementation Committee regarding the 5 areas of potential material change. In some circumstances, we have been able to create a specific recommendation(s). In others areas, a consensus conclusion was not possible. However, even where we were unable to agree on conclusions, we agreed on many of the supporting arguments. We have included this information to provide insight for the regulators and a direction of further investigation to assist in their deliberations.

1. Anti-Avoidance
   - Recommendations
     i. The anti-avoidance provisions in the proposed rule and the proposed IIROC rule should be harmonized. This will ensure that all marketplace participants are operating under the same rule set.
     ii. It should contain prescriptive language, rather than remain principle based.
     iii. It should not constrain normal cross-border trading activities, or be in conflict with best execution decisions. It should be expressly limited to large, pre-arranged trades.
     iv. The CSA rule should reference the IIROC rule in some way to ensure continued harmonization and to allow for more timely changes to dollar amounts etc., as warranted.
     v. Proposed wording is included as Appendix B.

2. Exceptions
   - Recommendations
     i. One additional exception should be considered to address the situation where a trade is negotiated off-marketplace, in a manual manner. The exception would recognize that the parties to the trade could have negotiated the trade price to be within the NBBO at the time of the trade, but the market may have moved by the time the trade is posted, creating the appearance of a trade-through.
     ii. The exception should include the concept of a "look back" i.e. the parties can look back to market levels up to 10 seconds prior to the trade print for the purposes of compliance with trade-through.
     iii. The CSA should consider other constraints to this exception to avoid the potential for gaming or abuse. Many members were concerned about the seeming contradiction in creating an exception to accommodate manual trading when the general thrust of regulatory oversight is to migrate towards electronic audit trails and transparent, on marketplace, trading. For example, the rule should clearly define at what point the time clock starts. In some instances, (e.g. Liquidnet) the time of the trade is clearly captured by an electronic system whereas in other instances (e.g. phone based trading) the

time of trade is not electronically captured. Another constraint to consider would be a size constraint. This exception is not necessary for normal course trading and should be restricted to exceptional circumstances like block trades.

    iv.   It was recognized that there would need to be harmonization with the UMIR wording which defines a trade occurring at the point it is printed on a marketplace.

    v.   The Committee thought the US rule of basing the look-back window around the time the trade was entered into an automated system had merit, but did not agree that 20 seconds was necessary or that the exception should only apply to agency block trades. The point was made that in the Canadian market, dealer capital has historically played a more important role than in the US and that there are circumstances where one block sized order is matched by several smaller, non-block orders.

    vi.   It is expected that there may be additional exceptions that will only be surfaced when the mechanics of implementation are more fleshed out. The CSA should imbed a simplified mechanism for adopting additional exceptions in the future, as needed. It should be noted that in the US experience, there were 17 additional exceptions granted after the rule was made final.

3.   Dealer Responsibility
-   Recommendations
  - i.   The Committee believes that there are circumstances where a market participant would prefer not to rely on the routing mechanisms of a marketplace to ensure compliance with the trade-through rule. Therefore the proposed rule should be amended to set out the requirements more specifically when market participants choose to assume the responsibility for trade-through compliance. It is important to note that while the Committee used "dealer responsibility" as shorthand, the recommendation applies to all market participants, including access persons.
  - ii.   The key reason is the recognition that some market participants may invest in specialized routing technology for competitive purposes. They desire the freedom to use their specialized technology and ignore the routing technology of the marketplace, provided that they can ensure the same standard of compliance.
  - iii.   The suggested solution is to create a voluntary marker called an IEB ("Immediately Execute and Book"). This marker would signal to the marketplace that they need not enforce trade-through for that particular order, but should execute immediately and book the remainder or book the order without checking prices on other marketplaces.
  - iv.   The Committee confirmed that the dealer would be responsible for trade-through compliance if a DMA client selected the IEB marker.
  - v.   One issue that was raised by the Committee for consideration by the CSA was what the marketplace should do if booking the remainder of the IEB order would result in a crossed market.
  - vi.   The subcommittee created a draft language proposal for inclusion in the rule (attached as Appendix C).

4.   Depth-of-book
-   Recommendation – The Committee recommends that the CSA oversee an independent review of the costs and benefits of full depth-of-book versus top-of-book. The Committee members are willing to assist through providing data and their particular views, however it must be recognized that each individual member's cost position will be different, competitive issues will have influence on responses and an over arching view is beyond the scope of this Committee. However, while the Committee is supportive of further research to guide the policy conclusions, there is no appetite for adding delay to this already lengthy process. Therefore, the CSA should only accept this recommendation if it is possible to conduct the further research in a timely manner.
  - i.   The Committee was split on its views on whether the CSA should consider limiting the protected orders to the top-of-book. While there were many strongly held views supporting a full depth-of-book standard among the dealers, marketplaces and vendors on the Committee, it is recognized that opinions on this matter in the dealer community appear to have shifted to supporting top-of-book, as evidenced by the IIAC survey results. It is further recognized that the Committee is lacking a full representation of buy-side, retail investors and smaller dealers. There was no support for a standard which incorporates an arbitrary number of levels.
  - ii.   There was agreement on many of the decision inputs; however different conclusions were drawn depending on the facts and weighting given.
  - iii.   The Committee agreed that depth-of-book protection was more complete and philosophically consistent with some of the policy objectives of the CSA.
  - iv.   The Committee agreed that depth-of-book was more complex and potentially more costly to the industry in aggregate. The Committee's view on costs is an industry wide perspective and includes the specific costs of implementing the rule which will vary by entity, plus the on-going costs of monitoring and enforcing the rule.
  - v.   The differences arose around the conclusions of whether the incremental protection of full depth was sufficient to justify the incremental costs.

vi. The benefits of full depth are difficult to quantify, but a change from this standard would represent a change from the current standard which may contribute to the perception of a lower level of investor protection.

vii. The incremental costs of full depth over top-of-book are also disputed and vary across participants and marketplaces. It is acknowledged that the current regime is a full depth-of-book regime, although this standard is not currently strictly enforced. Therefore the cost of implementing either full depth or top-of-book for each party (marketplace, vendor, and participant) from this point will depend on what they have currently put in place and whether the final rule is a change from the status quo.

viii. The Committee requests the CSA facilitate the research which may allow a greater consensus on this topic. An independent cost-benefit analysis, including the on-going costs of enforcement, data and impact on market structure would be extremely helpful. However, the Committee is not supportive of this additional research adding delay in the implementation of this rule. Below are some of the issues we recommend be further researched.

    i) Latency – there is a concern that the requirement to exhaust full depth will contribute to the latency associated with routing for trade through. If the trader must wait for the slowest market to respond multiple times they risk missing liquidity on other markets. What are the mitigations available to ensure that latency does not unduly disrupt trading e.g. self help, minimum standard for response time for marketplaces?

    ii) Enforcement – The costs of depth-of-book protection increase with a higher standard of enforcement. At the extreme, a zero-tolerance, trade by trade enforcement of full depth would be significantly more costly than a "pattern of behaviour" standard. What will the enforcement model require to ensure compliance? Will this be consistently applied between the CSA and IIROC?

    iii) Record keeping and data – What are the standards of record keeping, audit trail and data storage required to protect against trade-throughs and ensure the ability to prove this when challenged? The requirement for full depth data for all markets solely for the purpose of trade-through compliance is significantly more costly than a top-of-book regime. Will the information processor supply sufficient data at a reasonable cost to allow regulatory compliance?

    iv) Investor confidence/price formation – The majority of the current routing technology in Canada is iterative. With the increasing proportion of ELP providers the market structure may be changing. Depending upon the specific capabilities and speed of the order routers, the result may be that the market's ability to comply with trade through is *de facto* top-of-book. The orders that are actually protected may be ELP or hidden (iceberg) orders because they can replenish the top-of-book faster than an iterative order router can take out orders farther down the book. If this scenario is the norm, will the CSA find this outcome acceptable or will they look to create enforcement or other measures that will require additional costs to ensure those orders below the top are actually taken out e.g. requiring spray routers?

    v) Block trades – There was a greater agreement, even among those favouring top-of-book, although still not a consensus, that a pre-arranged, block trade that would trade through several price levels should provide some liquidity for those orders lower in the book, as is done now. This could be possibly achieved with a hybrid structure (e.g. top-of-book for standard trades and full depth for blocks), a consistent application of the anti-avoidance provision and a stricter enforcement of the best execution requirements. Would the CSA consider whether this hybrid structure would accomplish enough of the benefit of full depth-of-book with lower costs to the industry?

    vi) Best execution – Those members favouring full depth-of-book are concerned that, if the CSA selects a top-of-book solution, enforcement of best execution would need to be significantly increased. A cohesive enforcement regime of best execution and the anti-avoidance provisions would mitigate the lower level of order protection. What are the CSA and IIROC plans for monitoring and enforcing best execution?

    vii) Intersection with other rules - There is the potential that a depth-of-book standard increases the complexity and cost of compliance with other trading rules. For example, the recent costs incurred by marketplaces, vendors and participants to accommodate the bypass marker would not have been incurred if the standard was a top-of-book. Are there other areas where we can anticipate increased costs to accommodate the intersection of trade through with other rules?

5. Fee Caps
- Recommendations

    i. The Committee agreed that including fee caps for trading fees in the proposed rule was advisable. While the marketplaces generally felt that competitive forces were adequate to govern trading fees, they acknowledged the concern of market participants and were willing to accept a reasonable constraint.

    ii. Given the concerns of the market participants, the Committee agreed that the proposed level of fee cap referencing a trading increment was not the most appropriate.

    iii. One proposal that the Committee suggests the CSA consider is a model similar to the US model of a set price for stocks trading above $1 and a % of share price for stocks trading below $1.

    iv. Although there were concerns regarding access, data and routing fees, the Committee did not believe it was necessary to impose any other fee caps at this time.

Trade-through Implementation Committee Recommendation Summary

SUB-COMMITTEE	MANDATE	SUBCOMMITTEE RECOMMENDATION(S)	OTHER VIEWS EXPRESSED	FINAL IMPLEMENTATION COMMITTEE RECOMMENDATION
Anti-Avoidance	To determine whether the anti-avoidance provision in the proposed rule is adequate, or additional requirements, as proposed by IIROC, are necessary.	1. Suggested changes to UMIR were presented (attached at TAB A). Prescriptive language in the ATS Rules rather than a principles-based rule was recommended. Clarity should be provided around the rules that regulators are concerned about large pre-arranged trades taking place in other jurisdictions and not trades of smaller size.	Other views expressed were that: - it would be better to use a relative metric because hard dollar values will need to be updated in time; and - a prescriptive rule should be included in UMIR that can be referenced in the ATS Rules. This would allow for quicker updates when needed.	
Exceptions	To determine whether there were gaps in the proposed rule that should be addressed through additional exemptions.	1. A 10 second look-back for pre-arranged trades was recommended. This look back exception would allow markets to print a pre-arranged trade outside the NBBO at the time of the print as long as: (a) the price was within the NBBO at the time the trade was agreed to, and (b) the trade is printed by a marketplace within 10 seconds of when the parties agreed to the trade. 2. The CSA should be able to adopt additional exceptions quickly, without the need for a long comment period, should a need present itself.	A contrary view was expressed that Recommendation #1 goes against the principles of trade-through protection and will have a negative impact on price discovery.	
Dealer Responsibility	To determine: - the extent of a dealer's responsibility with respect to preventing trade-throughs when relying on an ISO or systems exception; - the extent of a marketplace's responsibility in those circumstances; and - whether marketplaces should	1. Presented revised language (attached at Tab B) to the proposed rule that: - introduces an "immediately execute/book" (IEB) order where a receiving marketplace would be required to immediately execute the order with any remainder to be booked and not implement its own policies and procedures to reasonably	Alternative language was presented (attached at Tab C) that does not materially change the recommended language but clarifies that after entering an IEB, one or more additional orders of sufficient volume must be routed, as necessary, to protected marketplaces with a better price to the IEB.	

SUB-COMMITTEE	MANDATE	SUBCOMMITTEE RECOMMENDATION(S)	OTHER VIEWS EXPRESSED	FINAL IMPLEMENTATION COMMITTEE RECOMMENDATION
	have the ability to rely on a dealer (or other participant) to take responsibility for compliance with the trade-through protection rule.	prevent trade-throughs; - provides for IEBs to be used in conjunction with by-pass and immediate-or-cancel markers, depending on the sender's objectives; and - requires a marketplace or marketplace participant using an IEB to have policies and procedures to reasonably prevent trade-throughs that include the use of such an order.		
Depth of Book	To examine the proposal to continue a full depth-of-book trade-through obligation or whether there are policy reasons to impose it at a lesser depth (top-of-book or multi-levels).	1. Suggested maintaining full depth of book protection for the following reasons: - best alternative for maintaining investor confidence and maintaining the incentive to contribute to the price discovery process; - technology considerations should serve the market and its regulatory requirements; - SORs currently operating protect full depth of book; and - comparison with U.S. top of book requirement is not valid given the significantly greater number of trading venues and greater liquidity in U.S.	Others held that top of book protection is preferable to full depth because: - most SORs operate in an iterative, top of book approach; - it is a more practical way to regulate trade-through requirements; - investor confidence has not suffered in U.S. or Europe; - marketable orders typically exhaust 2 or 3 price levels making full depth of book protection unnecessarily onerous for the marginal protection it would provide over top of book protection; - it is important to consider limits and costs of technology; and - the latency of some marketplaces and race conditions could cause trade-throughs in a full depth of book environment,	
Fee Caps	To determine whether the proposed fee cap in the CSA amendments was appropriate and if not, what alternatives are available.	There was no agreed upon recommendation from the subcommittee.	Certain members of the sub-committee recommended: - the proposed cap for stocks should be a fee less than one half of one tick increment; - the use of a net pricing model; - fees should be capped for	

SUB-COMMITTEE	MANDATE	SUBCOMMITTEE RECOMMENDATION(S)	OTHER VIEWS EXPRESSED	FINAL IMPLEMENTATION COMMITTEE RECOMMENDATION
			stocks priced under $1.00 using a percentage of the price.	

Anti-Avoidance Committee - Suggested changes to UMIR Anti-avoidance

(3)   The exemption provided for in clause (d) of subsection (2) is unavailable if the order to be executed on the foreign organized regulated market would avoid execution against a better-priced order on a marketplace pursuant to Part 6 of the Trading Rules had the order been entered on a marketplace rather than the foreign organized regulated market and the order is on behalf of a Canadian account denominated in Canadian funds and is:

(a)   part of an intentional cross;

(b)   part of a pre-arranged trade;

(c)   for more than 50 standard trading units; or

(d)   has a value of $250,000 or more.

Page 4.(iv) Visible Orders
The Proposed Trade-through Protection Rule would only apply to orders or parts of orders that are visible. In other words, the orders would have to be displayed by the marketplace and information about them would have to have been provided to an information processor or information vendor.

In addition, hidden orders or those parts of iceberg orders that are not visible would not be protected. Currently, the manner by which "dark" portions of orders in an otherwise transparent order book would be avoided is by using the "bypass" marker introduced by IIROC.12 The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity.

Page 4.(b) "Permitted" Trade-throughs
The overall purpose of trade-through protection is to promote confidence and fairness in the marketplace where the visible portions of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new types of orders and other developments in market structure in Canada.

As a result, we have proposed a number of circumstances where, if trade-throughs result, they would be permitted.13 These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market trade-through protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition.

Trade-though protection is an obligation owed by all marketplace participants to the market as a whole. It is important that marketplace participants create policies and procedures that will reasonably prevent trade-throughs and maintain relevant information so that the effectiveness of section 6.1 of NI 23-101 can be adequately evaluated by regulatory authorities.14 Although we are placing a policies and procedures obligation on marketplaces to reasonably prevent trade-throughs, in certain circumstances a marketplace would not be in violation of this obligation when trading through better-priced orders on other marketplaces. One such circumstance would be where the marketplace executes an order from a marketplace participant or other marketplace that notifies the receiving marketplace that it should not take any action other than to execute and/or book the order. By marking an order "immediately execute/book" the sender of the order is accepting the obligation for complying with trade-through requirements.

Page 5.Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

(ii) Immediately Execute/Book Order

We are proposing an exception from the obligation on marketplaces to utilize their policies and procedures to reasonably prevent trade-throughs to allow the use of immediately execute and/or book orders. An order marked "immediately execute/book" (IEB) informs the receiving marketplace that it can execute the order and book the remainder or book the order, as applicable, without delay or regard to any other better-priced orders displayed by another marketplace.16 In such situations the receiving marketplace would not have an obligation to implement its policies and procedures to reasonably prevent trade-throughs, which could include routing, re-pricing or rejecting the order. Any order may be marked "immediately execute/book" by a marketplace or a marketplace participant. The concept allows for simultaneous routing by a participant of more than one IEB order to execute against protected orders in a number of different marketplaces. In addition, marketplace participants may send a single IEB order to execute against the best protected bid or best protected offer. When used in conjunction with the "Bypass" and immediate-or-cancel markers, an IEB order would enable participants to execute large block orders, provided that they simultaneously route one or more IEB orders to execute against all better-priced protected orders, facilitating that participant's compliance with the trade-through requirements. The IEB order may be used in conjunction with the bypass and immediate-or-cancel markers, depending on the sender's objectives.

Page 87 – **Section 1.1 Definition** - "immediately execute and/or book order" or "IEB" means an order for the purchase or sale of an exchange-traded security, other than a derivative,

(a) entered on or routed to a marketplace to be executed immediately with any remainder to be booked or to be immediately placed in an order book; and
(b) identified as an immediately execute and/or book order;

and at the same time it is entered or routed, one or more additional orders of sufficient volume are routed, as necessary, to a marketplace to execute against the displayed volume of any protected order on that marketplace with a better price to the orders referred to in paragraph (a), so long as a marketplace participant that has marked an order "immediately execute and/or book", has policies and procedures to reasonably prevent trade-throughs that include the use of such an order;

page 90 6.3 Immediately Execute And/Or Book Order Requirements – A marketplace or marketplace participant responsible for the routing of an order marked execute and/or book must ensure it has appropriate policies and procedures to reasonably prevent trade-throughs when using such orders..

Page 98, 2.4 Definition of Immediately Execute And/Or Book Order – An order marked immediately execute and/or book informs the receiving marketplace that it can be immediately executed or booked as a passive order without reference to better-priced orders displayed by other marketplaces. An IEB order is utilized by a marketplace or marketplace participant to notify the recipient marketplace that it should immediately execute and/or book the order and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs.

Page 101, (3) In certain circumstances, including in anticipation of utilizing an immediately execute and/or book order, a marketplace participant should create policies and procedures to reasonably prevent trade-throughs and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an immediately execute and/or book order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively as well as policies and procedures to reasonably prevent trade-throughs where an immediately execute and/or book order is utilized. If a marketplace participant regularly uses immediately execute and/or book orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

Page 102 (b) Paragraph 6.2(b) of the Instrument contemplates that a marketplace would immediately execute or book any order identified as an immediately execute and/or book order. A marketplace that receives an immediately execute and/or book order would not need to delay its execution or take any action to reasonably prevent trade-throughs.

APPENDIX D

<u>Summary of Responses to CSA Staff Questions regarding costs of a full depth-of-book vs. a top-of-book order
protection obligation</u>

Note that a list of commenters has not been provided with this summary due to the sensitive commercial information that has
been requested in some of the questions below.

Marketplaces	
We received responses to the questions below from four marketplaces.	

Question	Response Summary
1. How do you intend to implement your policies and procedures in order to comply with the proposed trade-through protection rule? How would a full depth-of-book trade-through obligation impact this strategy? How would a top-of-book trade-through obligation impact this strategy?	*Strategies that were identified included: (i) using a smart order routing service that was based on a full-depth obligation, (ii) using a reject and re-price strategy that utilizes the Canadian best bid/best offer (CBBO), and (iii) accepting only orders or methodologies (e.g. directed-action orders) that will not violate the requirements. The first two methods would not be impacted by implementing either a top-of-book or full depth-of-book obligation.* *One marketplace stated that full depth-of-book would require a marketplace to obtain and store full depth-of-book data from all marketplaces for all securities, which would have substantial cost impact.*
2. Does your marketplace currently offer routing capabilities to participants? If so, is the router intended to provide smart order routing services or to simply avoid trade-throughs? If the routing is intended to provide a smart order routing solution, how many price levels does the router evaluate when making routing decisions?	*Most of the responding marketplaces do offer routing capabilities to its participants. The router in most cases is designed to simply avoid trade-throughs. One smart order router that is intended to provide smart order routing services consolidates the entire depth-of-book.*
3. Please provide any estimates of the incremental latency associated with the router evaluating more than the best bid or offer when making routing decisions, including the measurement points.	*The majority of the respondents indicated that there is no additional latency associated with the router evaluating more than the best bid or offer when making routing decisions. One marketplace indicated that there would be an increase in processing time depending on the number of levels considered.*
4. If the router complies with the current depth-of-book best price requirements would there be any costs or cost savings associated with moving to a top-of-book standard (i.e. hardware or operating costs)? Would such a change result in changes to the router (i.e. software re-development)?	*The majority of responding marketplaces stated that they would not incur additional costs to implement a top-of-book standard.* *One marketplace indicated that substantial investment by developers of order routing and execution management technology and market making software systems used by electronic liquidity providers would be required if moving to a top-of-book standard.*
5. If your marketplace does not currently have routing technology or if the router only evaluates top-of-book information, please provide estimates of the incremental costs associated with developing and implementing a full depth-of-book router relative to a top-of-book only router.	*One respondent noted that a compliance solution that only requires use of the CBBO would comply equally with a top-of-book or full depth-of-book obligation.*
6. If you intend to use an ISO/IEB (inter-sweep market order/immediate execute and/or book order) order, how do you intend to comply with a	*Most marketplaces indicated that they are in the process of determining their approach to ISO/IEB orders.*

full depth of book trade-through requirement? How would this change if a top-of-book trade-through obligation were imposed instead?	

Dealer/Market Participants

We received responses to the questions below from eight dealer/market participants.

Question	Response Summary
1. If you intend to use an ISO/IEB marker, how would you implement your policies and procedures in order to comply with a full depth-of-book trade-through requirement? How would this change if a top-of-book trade-through obligation were imposed instead?	*One respondent indicated that there would be no change in the manner in which they comply with the requirements. Another respondent indicated that the current router that is used sweeps top-of-book information and can receive updates to evaluate the best price.* *One respondent indicated that demonstrating compliance with the requirements under a full-depth standard would require an increase in resources to review trading on a real-time basis resulting in enhanced system monitoring and testing, policies, procedures and record keeping to monitor the marketplaces.* *One commenter stated that if "sprays" occur for a single order, then the full depth-of-book prices will need to be captured each time.*
2. Relative to your current best execution obligation, what would be the incremental cost of implementing a top-of-book trade-through obligation? Please focus on the cost of developing and implementing a solution rather than the data storage cost associated with demonstrating compliance with the obligation or the cost of connecting/accessing marketplaces.	*Most respondents to this question do not believe that the incremental costs will be significant.* *One commenter was uncertain about incremental costs, but expected that they would be much higher.* *Another commenter expected to need new software, hardware, and telecom lines.*
3. Relative to your current best execution obligation, what would be the incremental cost of implementing a full depth-of-book trade-through obligation? Please focus on the cost of developing and implementing a solution rather than the data storage cost associated with demonstrating compliance with the obligation or the cost of connecting/accessing marketplaces.	*One respondent noted that the incremental costs of a top-of-book or full depth-of-book obligation are roughly the same if the costs associated with compliance, monitoring and increased latency are discounted. This respondent indicated that the cost of increased latency associated with a full depth requirement would surpass technology related costs.* *One respondent stated that a full depth requirement could lead to situations where a client order, when eventually filled is executed at a higher price than what was contemplated. This respondent also noted that a full depth-of-book obligation would impose a competitive disadvantage as U.S. markets only require top-of-book protection.* *Another respondent indicated that the only other cost under a full depth obligation would be acquiring a system to monitor compliance independent of the routing technology used.* *Another commenter was uncertain about the cost implications but expected they would be much higher.* *Another commenter anticipated slightly higher costs.*
4. How many levels of order book information would be consumed and evaluated by your systems in order to demonstrate compliance with the existing best execution requirements?	*Most respondents indicated that the full depth-of-book data is consumed.*
5. Given that the current best price obligation	*Responses indicated that cost savings would be realized given that*

applies to all price levels, what additional costs or cost savings would be incurred by moving to a top-of-book standard?	*systems modifications would be minimal to ensure compliance. Respondents further explained they would save costs with respect to: consolidated data feeds, data storage, monitoring, exception reporting, and personnel. A couple of respondents also mentioned the cost of latency, with one respondent being of the view that the largest cost savings would be in terms of latency as opposed to hard dollars.*
6. Do you currently use a smart order router? Is it provided by a third party vendor or is it proprietary? Do you use more than one router (i.e. different desks use different routers?) In what areas? How much of your order flow is routed through a router?	*The vast majority of respondents use smart order routers. Most use a third party smart order router and most use more than one router. The majority of respondents indicated that they send most of their order flow through a smart order router.*

Vendors

We received responses to the questions below from three vendors.

Question	Response Summary
1. Please identify if your routing product is an iterative or spray router.	*All respondents currently supply an iterative router.*
2. How many levels of order book information does the router currently consume and evaluate when making routing decisions?	*The majority of respondents indicated that the iterative router bases routing decisions on the top-of-book information but the router continues to send orders until the full depth of the book is exhausted.*
3. How many levels of information are considered a requirement for a router to be able to assist its user in achieving best execution?	*All respondents indicated that top-of-book information is required for a router to be able to assist the user in achieving best execution.*
4. Relative to the requirements associated with the current best execution standard, what is the incremental cost of developing and operating a full depth-of-book router?	*The majority of respondents stated that there would be no incremental cost. One respondent indicated that if a more complicated algorithm needs to be designed to consider the entire depth of book across all markets prior to sending orders there would be costs incurred with the design, development and implementation of this algorithm.*
5. Please identify any incremental costs that would be incurred if the regulatory standard was changed to top-of-book.	*The majority of respondents stated that there would be no incremental cost. However, one indicated that it would need to build the capability to pull orders because the number of times a locked and cross market will occur will increase in a top-of-book environment.*
6. What would be the cost-savings of such a change?	*The majority of respondents indicated that there would be none or negligible savings. One predicted that it would incur increased costs.*
7. Please provide any estimates of the incremental latency associated with evaluating the order book's full depth when making routing decisions.	*The majority of respondents stated that there would be no incremental latency associated with a full-depth evaluation.* *One respondent indicated that there would be additional latency because of the increased amount of data that must be considered.*
8. Optional question – please provide us with an estimate of how many participants and/or how much order flow is routed through your router to the Canadian marketplaces.	*The vendors responding to this question provide their services to a large number of traders (including all major Canadian banks) and route a great amount of the order flow in Canada.*

AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

1.1   Amendments

(1)   This Instrument amends National Instrument 21-101 *Marketplace Operation*.

(2)   The definitions in section 1.1 are amended as follows:

    (a)   the definition of "IDA" is repealed and replaced by the following ""IIROC" means the Investment Industry Regulatory Organization of Canada";

    (b)   the definition of "inter-dealer bond broker" is amended by:

        (i)   striking out "IDA" and substituting "IIROC";

        (ii)   striking out "By-law No. 36" and substituting "Rule 36"; and

        (iii)   striking out "Regulation 2100" and substituting "Rule 2100";

    (c)   the definition of "recognized exchange" by repealing and replacing paragraph (b) and substituting with the following:

    "(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization"; and

    (d)   the definition of "recognized quotation and trade reporting system" is amended by

        (i)   adding "and Québec" between "British Columbia" and ", a quotation and trade reporting system" in paragraph (a);

        (ii)   striking out "and" at the end of paragraph (a) and adding "and" at the end of paragraph (b); and

        (iii)   adding the following:

    "(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization";

(3)   The following subsection is added to section 1.4:

    "(3) In Québec, the term "security", when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*.".

(4)   Part 10 is amended by:

    (a)   striking out "Disclosure of" in the title of Part 10; and

    (b)   adding the following section after section 10.2:

    "**10.3 Discriminatory Terms** – With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.".

(5)   (a)   Subsection 11.5(1) is amended by:

        (i)   adding "and" between "securities," and "a dealer";

        (ii)   striking out "and a regulation services provider monitoring the activities of marketplaces trading those securities"; and

        (iii)   adding "with the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities." at the end of the sentence; and

    (b)   subsection 11.5(2) is amended by:

        (i)   adding "and" between "securities," and "an inter-dealer bond broker";

        (ii)   striking out "and a regulation services provider monitoring the activities of marketplaces, inter-

      (iii)   adding "with the clock used by a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities." at the end of the sentence.

(6)   Part 12 is repealed and replaced with the following:

"**PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**

12.1 System Requirements – For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall

(a)   develop and maintain

      (i)   reasonable business continuity and disaster recovery plans;

      (ii)   an adequate system of internal control over those systems; and

      (iii)   adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b)   in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

      (i)   make reasonable current and future capacity estimates;

      (ii)   conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

      (iii)   test its business continuity and disaster recovery plans; and

(c)   promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.

12.2 System Reviews – (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a)   its board of directors, or audit committee, promptly upon the report's completion, and

(b)   the regulator or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities – (1) A marketplace shall make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a)   if operations have not begun, for at least three months immediately before operations begin; and

(b)   if operations have begun, for at least three months before implementing a material change to its technology requirements.

(2) After complying with subsection (1), a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a)   if operations have not begun, for at least two months immediately before operations begin; and

(b)   if operations have begun, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

(4) Subsections 12.3(1)(b) and (2)(b) do not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if

(a)   the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and

(b)   the marketplace publishes the changed technology requirements as soon as practicable.".

(7)   Section 14.5 is repealed and replaced with the following:

"**14.5   System Requirements** – An information processor shall

(a)   develop and maintain

(i)   reasonable business continuity and disaster recovery plans;

(ii)   an adequate system of internal controls over its critical systems; and

(iii)   adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b)   in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,

(i)   make reasonable current and future capacity estimates for each of its systems;

(ii)   conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

(iii)   test its business continuity and disaster recovery plans;

(c)   annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d)   provide the report resulting from the review conducted under paragraph (c) to

(i)   its board of directors or the audit committee promptly upon the report's completion, and

(ii)   the regulator or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e)   promptly notify the following of any failure, malfunction or material delay of its systems or equipment

(i)   the regulator or, in Québec, the securities regulatory authority; and

(ii)   any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.".

1.2   **Effective Date** – This Instrument comes into force on January 28, 2010.

AMENDMENTS TO COMPANION POLICY 21-101CP – **To National Instrument 21-101 Marketplace Operation**

1.1   Amendments

(1)   This instrument amends Companion Policy 21-101CP.

(2)   Part 1 is amended by adding the following section as section 1.4:

"**1.4   Definition of Regulation Services Provider** – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace.".

(3)   Subsection 2.1(7) is amended by:

(a)   striking out all references to the "IDA" and substituting "IIROC"; and

(b)   striking out all references to "By-law No. 36" and substituting "Rule 36"; and

(c)   striking out all references to "Regulation 2100" and substituting "Rule 2100".

(4)   Subsection 3.4(5) is amended by striking out the reference to the "IDA" and substituting "IIROC".

(5)   Subsection 6.1(6) is amended by striking out "any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers." and substituting "a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.".

(6)   Section 7.1 is repealed and replaced by the following:

"**7.1   Access Requirements** – (1) Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not restrict the authority of a recognized exchange or recognized quotation and trade reporting system to maintain reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, fees and practices of the exchange or quotation and trade reporting system do not unreasonably create barriers to access to the services provided by the exchange or quotation and trade reporting system.".

(7)   Section 7.1 is amended by adding the following after subsection (1):

"(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access to

(a)   a member or user that directly accesses the exchange or quotation and trade reporting system,

(b)   a person or company that is indirectly accessing the exchange or quotation and trade reporting system through a member or user, or

(c)   a marketplace routing an order to the exchange or quotation and trade reporting system.

The reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a member or user.

(3) The reference to "services" in paragraph 5.1(b) of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing and data.

(4) Recognized exchanges and recognized quotation and trade reporting systems are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a recognized exchange or recognized quotation and trade reporting system should consider a number of factors, including

(a)   the value of the security traded,

(b)   the amount of the fee relative to the value of the security traded,

(c)   the amount of fees charged by other marketplaces to execute trades in the market,

(d)   with respect to market data fees, the amount of market data fees charged relative to the market share of the exchange or quotation and trade reporting system, and,

(e)   with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a recognized exchange or recognized quotation and trade reporting system unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a recognized exchange's or recognized quotation and trade reporting system's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a recognized exchange's or recognized quotation and trade reporting system's services when taking into account factors including those listed above.".

(8)   Section 8.2 is repealed and replaced by the following:

"8.2   Access Requirements – (1) Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. The purpose of these access requirements is to ensure that the policies, procedures, fees and practices of the ATS do not unreasonably create barriers to access to the services provided by the ATS.".

(9)   Section 8.2 is amended by adding the following:

"(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, an ATS should permit fair and efficient access to

(a)   a subscriber that directly accesses the ATS,

(b)   a person or company that is indirectly accessing the ATS through a subscriber, or

(c)   a marketplace routing an order to the ATS.

In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a subscriber that is a dealer.

(3) The reference to "services" in paragraph 6.13(b) of the Instrument means all services that may be offered to a person or company and includes all services related to order entry, trading, execution, routing and data.

(4) ATSs are responsible for ensuring that the fees they set are in compliance with section 6.13 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, an ATS should consider a number of factors, including

(a)   the value of the security traded,

(b)   the amount of the fee relative to the value of the security traded,

(c)   the amount of fees charged by other marketplaces to execute trades in the market,

(d)   with respect to market data fees, the amount of market data fees charged relative to the market share of the ATS, and,

(e)   with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by an ATS unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to an ATS's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to an ATS's services when taking into account factors including those listed above.".

(10)   Part 9 is amended by:

(a)   striking out the first two sentences of subsection 9.1(1) and substituting the following:

"(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider."; and

(b)   repealing and replacing subsection 9.1(2) with the following:

"(2) In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.".

(11)   Part 10 is amended by:

(a)   striking out "; and" at the end of section 10.1(9); and

(b)   adding the following as section 10.2:

"**10.2 Availability of Information** – In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.".

(12)   The following is added as section 12.2:

"**12.2   Discriminatory Terms** – Section 10.2 of the Instrument prohibits a marketplace from imposing terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.".

(13)   Section 13.2 is repealed and replaced with the following:

"**13.2 Synchronization of Clocks** – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the trading of the relevant securities on marketplaces, and by, as appropriate, inter-dealer bond brokers or dealers. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system are also required to coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.".

(14)   Section 14.1 is repealed and replaced with the following:

"**14.1 Systems Requirements** – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from The Canadian Institute of Chartered Accountants (CICA) and '*COBIT'* from the IT Governance Institute.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business

practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a) of the Instrument. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

(4) Under section 15.1 of the Instrument, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirement to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, and changes to systems or staff of the marketplace.".

(15)   The following is added as section 14.2:

"**14.2 Availability of Technology Specifications and Testing Facilities** – (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.

(3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.".

(16)   Part 16 is amended by:

(a)   repealing and replacing subsection 16.1(2) with the following:

"(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.";

(b)   striking out "which are not unreasonably discriminatory" from paragraph 16.2(1)(b); and

(c)   adding the following as section 16.4:

"**16.4 System Requirements** – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.".

1.2   **Effective Date** – This instrument comes into force on January 28, 2010.

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1.1   Amendments

(1)   This Instrument amends National Instrument 23-101 *Trading Rules.*

(2)   The following definitions are added to section 1.1:

"automated functionality" means the ability to

(a)   immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;

(b)   immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;

(c)   immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(d)   immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and

(e)   immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;

"calculated-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

(a)   is not known at the time of order entry; and

(b)   is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

"closing-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is

(a)   entered on a marketplace on a trading day; and

(b)   subject to the conditions that

(i)   the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii)   the order be executed subsequent to the establishment of the closing price;

"directed-action order" means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

(a)   when entered on or routed to a marketplace is to be immediately

(i)   executed against a protected order with any remainder to be booked or cancelled; or

(ii)   placed in an order book;

(b)   is marked as a directed-action order; and

(c)   is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than an option

(a)   that is displayed on a marketplace that provides automated functionality; and

(b)   about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than an option,

(a)   that is displayed on a marketplace that provides automated functionality; and

(b)   about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of an order at a price that is,

(a)   in the case of a purchase, higher than any protected offer, or

(b)   in the case of a sale, lower than any protected bid.".

(3)   Subsection 3.1(2) is amended by adding "and the *Derivatives Act*" between "*Securities Act"* and "(Québec)".

(4)   Part 6 is repealed and replaced by the following:

"**PART 6   ORDER PROTECTION**

6.1 Marketplace Requirements for Order Protection – (1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

(a)   to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and

(b)   to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a)   a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(b)   the execution of a directed-action order;

(c)   a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(d)   a trade-though if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;

(e)   a trade-through that results when executing

(i)   a non-standard order;

(ii)   a calculated-price order; or

(iii)   a closing-price order;

(f)   a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay – (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

      (a)   all other marketplaces;

      (b)   all regulation services providers;

      (c)   its marketplace participants; and

      (d)   any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

      (a)   the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;

      (b)   all regulation services providers;

      (c)   its marketplace participants; and

      (d)   any information processor disseminating information under Part 7 of NI 21-101.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

      (a)   the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and

      (b)   all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection – (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

(a) to prevent trade-throughs other than the trade-throughs listed below:

      (i)   a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

      (ii)   a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

      (iii)   a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;

      (iv)   a trade-through that results when executing

            (A)   a non-standard order;

            (B)   a calculated-price order; or

            (C)   a closing-price order;

      (v)   a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally

    (a)   enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

    (b)   enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – A marketplace shall set the hours of trading to be observed by marketplace participants.

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

6.8 Application of this Part – In Québec, this Part does not apply to standardized derivatives.".

(5)   Part 7 is amended by:

    (a)   repealing paragraph 7.2(c) and replacing it with the following:

    "(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

    (i)   the conduct of and trading by marketplace participants on and across marketplaces, and

    (ii)   the conduct of the recognized exchange, as applicable; and"; and

    (b)   repealing paragraph 7.4(c) and replacing it with the following:

    "(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

    (i)   the conduct of and trading by marketplace participants on and across marketplaces, and

    (ii)   the conduct of the recognized quotation and trade reporting system, as applicable; and"; and

    (c)   amending section 7.5 by striking out "under this Part" and substituting "under Parts 7 and 8".

(6)   Paragraph 8.3(d) is repealed and replaced by the following:

"(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

    (i)   the conduct of and trading by marketplace participants on and across marketplaces, and

    (ii)   the conduct of the ATS; and".

(7)   Section 9.3 is amended by striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets".

1.2   Effective Date – (1) This Instrument, other than subsections 1.1(2) and 1.1(4), comes into force on January 28, 2010.

    (2)   Subsections 1.1(2) and 1.1(4) come into force on February 1, 2011.

AMENDMENTS TO COMPANION POLICY 23-101CP – **To National Instrument 23-101 Trading Rules**

1.1 Amendments

(1) This instrument amends Companion Policy 23-101CP.

(2) Part 1.1 is amended by adding the following after section 1.1.1:

"1.1.2 Definition of automated functionality – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

1.1.3 Definition of calculated-price order – The definition of "calculated-price order" refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.4 Definition of directed-action order **–** (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked "DAO" by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

(a) execute the order and cancel the remainder using an immediate-or-cancel marker,

(b) execute the order and book the remainder,

(c) book the order as a passive order awaiting execution, and

(d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC's Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender's instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace's own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

1.1.5 Definition of non-standard order – The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

1.1.6 Definition of protected order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.".

(3)   Part 6 is repealed and replaced with the following:

     "**PART 6   ORDER PROTECTION**

6.1 Marketplace Requirements for Order Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a)   steps taken by the marketplace to evaluate its policies and procedures;

(b)   any breaches or deficiencies found; and

(c)   the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection – (1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace participant to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

6.3 List of Trade-throughs – Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of "permitted" trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

(a)   (i)   Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

         (ii)   Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Instrument respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Instrument respectively.

(b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.

(c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across marketplaces in certain circumstances. This could occur for example:

         (i)   where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and

         (ii)   where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as displayed across marketplaces may have changed, thus causing a trade-through.

(d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets – (1) Section 6.5 of the Instrument provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

(2) Section 6.5 of the Instrument prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

(a)   when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,

(b)   the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

(c)   the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(d)   the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of a directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

6.5 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.".

(4)   Part 7 is amended by:

(a)   striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets" in section 7.3;

(b)   adding the following as section 7.5:

"**7.5 Agreement between a Marketplace and a Regulation Services Provider** – The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or

policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.".

(c)   adding the following as section 7.6:

"**7.6 Coordination of Monitoring and Enforcement** – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.".

1.2   **Effective Date** – (1) This instrument, other than subsections 1.1(2) and 1.1(3), comes into force on January 28, 2010.

(2) Subsections 1.1(2) and 1.1(3) come into force on February 1, 2011.