

## **PART 5 – BEST EXECUTION OBLIGATION**

### **5.1 Best Execution of Client Orders**

A Participant shall diligently pursue the execution of each client order on the most advantageous execution terms reasonably available under the circumstances.

#### **POLICY 5.1 – BEST EXECUTION OF CLIENT ORDERS**

##### **Part 1 – General Factors to be Considered**

*In seeking the “most advantageous execution terms reasonably available under prevailing market conditions”, the Market Regulator would expect that the Participant would take into account a number of general factors, including:*

- *the price at which the trade would occur;*
- *the speed of execution;*
- *the certainty of execution; and*
- *the overall cost of the transaction.*

*These four broad factors encompass more specific considerations, such as order size, reliability of quotes, liquidity, market impact (the price movement that occurs when executing an order) and opportunity cost (the missed opportunity to obtain a better price when an order is not completed at the most advantageous time). The overall cost of the transaction is meant to include, where appropriate, all costs associated with accessing an order and/or executing a trade that are passed onto a client, including fees arising from trading on a particular marketplace, jitney fees (i.e. any fees charged between dealers to provide trading access) and settlement costs.*

*In considering the circumstances, Participants should take into account “prevailing market conditions” and consider such factors as:*

- *prices and volumes of the last sale and previous trades;*
- *direction of the market for the security;*
- *posted size on the bid and offer;*
- *the size of the spread; and*
- *liquidity of the security.*

##### **Part 2 – Specific Factors to be Considered**

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

- *any specific client instructions regarding the execution of the order;*
- *whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order, and*

- *whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:
 
  - *the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and*
  - *the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.**

### **Part 3 – Consideration of Foreign Organized Regulated Markets**

*In determining whether to consider the execution of a client order on a foreign organized regulated market, the Participant may consider, in addition to the factors set out in Parts 1 and 2:*

- *available liquidity displayed on a marketplace relative to the size of the client order;*
- *the extent of trading in the particular security on the foreign organized regulated market relative to the volume of trading on marketplaces;*
- *the extent of exposure to settlement risk in a foreign jurisdiction; and*
- *the extent of exposure to fluctuations in foreign currency exchange.*

### **Part 4 – Subject to Best Price Obligation**

*Notwithstanding any instruction or consent of the client, the provision of “best execution” for a client order is subject to compliance with the “best price” obligation under Rule 5.2. Similarly, if a foreign organized regulated market is considered in order to provide a client with “best execution”, the Participant has an obligation to better-priced orders on marketplaces that may be required for compliance with the “best price” obligation under Rule 5.2.*

<b>Defined Terms:</b>	<p>NI 21-101 – section 1.1 – “order”</p> <p>UMIR section 1.1 – “client order”, “consolidated market display”, “foreign organized regulated market”, “Market Regulator”, “marketplace” and “Participant”</p> <p>UMIR section 1.2(2) – “trade”</p>
<b>Related Provision:</b>	UMIR section 5.2
<b>Regulatory History:</b>	<p>Effective March 9, 2007, the applicable securities commissions approved an amendment to Policy 5.1 to add Part 2.</p> <p>Effective May 16, 2008, the applicable securities commissions approved an amendment to Part 2 of Policy 5.1 to replace the phrase “organized regulated markets outside of Canada” with “foreign organized regulated markets”.</p> <p>Effective September 12, 2008, the applicable securities commissions approved an amendment to replace Rule 5.1. Previously, Rule 5.1 read as follows:</p> <p>A Participant shall diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions.</p> <p>Effective September 12, 2008, the applicable securities commissions approved an amendment to replace Policy 5.1. Prior to that date, Policy 5.1 read as follows:</p> <p>“Best execution” refers to a reasonable period of time during which the order is handled, not merely the precise moment in time that it is executed. The price of the principal transaction must also be justified by the condition of the market. Participants should consider such factors as:</p> <ul style="list-style-type: none"> <li>• <i>prices and volumes of the last sale and previous trades;</i></li> <li>• <i>direction of the market for the security;</i></li> <li>• <i>posted size on the bid and offer;</i></li> <li>• <i>the size of the spread; and</i></li> <li>• <i>liquidity of the security.</i></li> </ul>

For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.

Of course, if a client expressly consents to a principal trade a fully informed basis, following the client's instructions will be reasonable.

### **Part 2 – Factors to be Considered**

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

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

**Guidance:** The following is the relevant text of Market Integrity Notice 2006-017 issued on September 1, 2006 under the heading “**Guidance – Securities Trading on Multiple Marketplaces**”. Additional text is set out under Rules 3.1, 5.2, 5.3, 7.7 and 8.1:

### **Rule 5.1 – Best Execution of Client Orders**

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

IIROC is also of the view that a Participant in discharging its best execution obligation should consider possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display, such as BlockBook and MATCH Now, if:

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

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

If a Participant in handling various “Good Till Cancelled” orders on behalf of clients has entered the orders on a marketplace that has closed for trading on a particular day, IIROC would not expect that the Participant would move the orders “en masse” to a marketplace that continues to trade those securities. In considering best execution of the client orders, the Participant must weigh the possible loss of priority against the likelihood of execution opportunities. Nonetheless, IIROC would expect that the Participant would continue to monitor trading opportunities on those marketplaces that are open for trading and would enter appropriate orders if the client orders would trade with orders displayed on the marketplace that continues to trade.

A Participant does not have to consider as part of its best execution obligation of a client order any marketplace to which dealers are not eligible to have trading access. If a marketplace limits access to dealers trading as principal, IIROC would permit a Participant to execute a trade on that marketplace as principal and then to unwind the position taken on as principal in a transaction with a client order on another marketplace without such transactions being considered “double printing” contrary to Rule 2.2 of UMIR on manipulative and deceptive activities.

Participants are reminded that they may have other legal obligations (including applicable securities law requirements or common law) to their clients that may require them, in certain circumstances, to consider other marketplaces and organized regulated markets that may not otherwise be required by Rule 5.1 of UMIR.

**Guidance:** The following is the relevant text of Market Integrity Notice 2007-015 issued on August 10, 2007 under the heading “**Guidance – Specific Questions Related to Trading on Multiple Marketplaces**”. Additional text is set out under Rules 2.2, 3.1, 5.2 and 7.1.

#### **Questions and Answers**

The following is a list of questions regarding the obligations of a Participant or an Access Person with respect to trading in a security that trades on more than one marketplace. UMIR defines a marketplace as a recognized exchange (“Exchange”), a recognized quotation and trade reporting system (“QTRS”) or an alternative trading system (“ATS”) that carries on business in Canada.

**7. Is a Participant required to consider organized regulated markets outside of Canada as part of “best execution” obligation?**

IIROC published Market Integrity Notice 2007-002 – Amendment Approval – Provisions Respecting Competitive Marketplaces (February 26, 2007) which contained a series of amendments to UMIR, including additional factors that IIROC would consider when determining whether a Participant has diligently pursued the best execution of a client order. One of the additional factors to be considered is whether a Participant has considered organized regulated markets outside of Canada (particularly if the principal market for the security is outside of Canada) in handling of a client order. The addition of the factor to consider organized regulated markets outside of Canada as part of best execution of a client order parallels a provision on best execution contained in the Companion Policy to the CSA Trading Rules.<sup>1</sup>

To the extent that a foreign market is considered in order to provide a client with “best execution” in accordance with Rule 5.1, the Participant would nonetheless have an obligation to better-priced orders on Canadian marketplaces under the “best price” obligation under Rule 5.2.

**10. What are the specific risks to a Participant in accepting an “All-or-None” client order in a multiple marketplace environment?**

Rule 5.1 of UMIR requires a Participant to diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions. To the extent that a Participant accepts “All-or-None” orders from clients, IIROC expects a Participant to adopt policies and procedures with respect to the handling of such client orders and inform its clients of such policy, including the implications and risks (i.e. partial fills) associated with the use of an “All-or-None” order. If a Participant has not informed clients of the Participant’s policy on the handling of “All-or-None” orders, IIROC would expect that the Participant will handle an “All-or-None” order in conformity with client instructions.

If a Participant, in handling an “All-or-None” order assumes the risk of a partial fill, that is, any unfilled portion of the client order is filled to the client out of the Participant’s error account, or the partial fill is re-allocated into the Participant’s error account, such orders continue to be considered a client order, and must continue to be properly marked “client”.

If an “All-or-None” order is “triggered” and trades-through a better-priced order on a marketplace, IIROC would consider the trade to be a violation of Rule 5.2. A violation of Rule 5.2 would occur even if the marketplace with the better-priced order does not display sufficient volume at a better price to fully satisfy the “All-or-None” order. In light of the risk of “best price” obligations posed by the use of “All-or-None” orders, IIROC expects a Participant to have a clear understanding of the manner in which the marketplace handles “All-or-None” orders and that the Participant will take appropriate steps to fulfill any “best price” obligations.

**Guidance:** The following is the relevant text of Market Integrity Notice 2007-019 issued on September 21, 2007 under the heading “**Guidance – Entering Client Orders on Non-Transparent Marketplaces and Facilities**”. Additional text is set out under Rules 5.2, 5.3, and 6.3:

<sup>1</sup> Companion Policy 23-101CP, ss 4.1(3). The text of that subsection provides:  
For inter-listed securities, the Canadian securities regulatory authorities are of the view that in making reasonable efforts, a dealer should consider whether it would be appropriate in the particular circumstances to look at markets outside of Canada.

## Summary

This Market Integrity Notice provides guidance on the application of the best execution, client priority and order exposure requirements of the Universal Market Integrity Rules (“UMIR”) to the entry of client orders on marketplaces and facilities of marketplaces that do not disseminate information on orders to information vendors.

## Background

Part 7 of National Instrument 21-101 – Marketplace Operation (the “Marketplace Operation Instrument”) provides that a marketplace that displays orders to any person shall provide accurate and timely information regarding orders to the information processor, if any, or an information vendor. A marketplace need not distribute order information to the information processor or an information vendor if the marketplace does not make details of orders available to persons other than those retained to assist in the operation of the marketplace. As at September 7, 2007, the equity marketplaces that are:

- “transparent” marketplaces which disclose order information are: the Toronto Stock Exchange (“TSX”) , the TSX Venture Exchange and CNQ, including Pure Trading; and
- “non-transparent” marketplaces which do not disclose order information are: BlockBook, Liquidnet, and MATCH Now.

In the near future, the TSX intends to enable the “community matching” features of its pre-trade matching facility known as “Alternative Trade eXecution” (“ATX”). Under the “community matching” feature of ATX, a non-transparent “intent” entered by a Participant that participates in ATX may match with intents entered by other Participants or with order flow that is destined for entry in the central limit order book of the TSX. Any “match” in ATX must occur between the best ask price and the best bid price as displayed in a consolidated market display (comprised of all “transparent” marketplaces trading the particular security). The match is reported to the TSX and executed in the central limit order book at a price that is then at or between the best ask price and best bid price. One of the features of ATX allows “intents” from a particular account to be assigned to a “priority allocation group” (“PAG”) that will determine the order in which the intents will match.

None of BlockBook, Liquidnet or MATCH Now provides pre-trade transparency as contemplated by Part 7 of the Marketplace Operation Instrument of any orders entered on their marketplace (through the provision of order information to information vendors for dissemination). BlockBook uses proprietary signalling to indicate to all subscribers the presence of liquidity based on certain parameters. In the case of Liquidnet, subscribers are informed if another subscriber has a matching “indication of liquidity”, following which a one-on-one negotiation of orders may take place. None of BlockBook, Liquidnet or MATCH Now provides a mechanism for orders to be assigned different priorities for execution outside of the priorities established by the operating model of the respective marketplace.

For a summary comparison of the basic features of each marketplace, reference should be made to the chart available through the IIROC homepage at [www.iirocs.ca](http://www.iirocs.ca) under the heading “Markets We Regulate”. For more detailed guidance on the application of UMIR to trading on multiple marketplaces, reference should be made to:

- Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006);
- Market Integrity Notice 2006-020 – Guidance – Compliance Requirements For Trading On Multiple Marketplaces (October 30, 2006); and
- Market Integrity Notice 2007-015 – Guidance – Specific Questions Related to Trading on Multiple Marketplaces (August 10, 2007).

## Questions and Answers

The following are the most frequently asked questions regarding the obligations of a Participant when entering a client order on a non-transparent marketplace or facility and the responses of IIROC to each:

**2. Are there circumstances when the “best execution” obligation would require a Participant to consider a “non-transparent” marketplace or facility?**

Rule 5.1 of UMIR requires a Participant to diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions. IIROC is of the view that a Participant in discharging its best execution obligation should consider possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display, such as BlockBook and MATCH Now, if:

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

As access to Liquidnet is limited to institutions other than dealers, a Participant would not have an obligation to consider Liquidnet or any other marketplace to which the Participant could not otherwise, directly or indirectly, obtain access to trade as agent.

**6. Is an “intent” entered into ATX considered to be an “order” for the purpose of UMIR?**

While the rules of the TSX refer to “active intents” and “passive intents” entered into the ATX facility (principally to avoid confusion with respect to orders entered into the central limit order book of the TSX), these “intents” are a firm indication of a willingness to buy or sell a security that may be executed. As such, an “intent” entered into the

ATX facility is considered an “order” for the purposes of Marketplace Operation Instrument and UMIR (and a client order entered on ATX as an “intent” will be monitored by IIROC and subject to review as part of a trade desk review undertaken by IIROC of a Participant).

Nonetheless, ATX is a “matching facility” rather than a marketplace. Any match of an order or active intent with a passive intent in ATX does not constitute a trade. The match only becomes a trade when executed in the trading engine of the TSX. As such, the critical point in time for the purposes of the application of certain UMIR provisions dealing with “trades” will be at the execution of the trade in the central limit order book of the TSX.

**Guidance:** The following is the relevant text of IIROC Notice 09-0244 issued on August 27, 2009 under the heading “**Guidance Note – UMIR – “Best Execution” and “Best Price” Obligations For Securities Listed On TSX Venture Exchange**”.

#### **Summary**

This IIROC Notice provides a reminder to Participants respecting their best execution and best price obligations under the Universal Market Integrity Rules (“UMIR”) as a result of securities which are listed on the TSX Venture Exchange (“TSXV”) trading on other marketplaces.

#### **“Best Execution” and “Best Price” Obligations under UMIR**

This IIROC Notice does not change the guidance that IIROC has previously issued on how a Participant would comply with their “best execution”<sup>2</sup> and “best price”<sup>3</sup> obligations for securities trading on multiple marketplaces. This IIROC Notice simply reminds Participants of their obligations given that securities listed on the TSXV now trade on other marketplaces.

Under Rule 5.1 of UMIR, the obligation to monitor information on orders entered on and trades executed on marketplaces trading TSXV-listed securities falls to the Participant handling the client order. Participants are expected to take into account order and trade information from all marketplaces that trade the same securities when discharging their best execution obligations. Where appropriate, a Participant who does not have trading access to a particular marketplace would be expected to make arrangements with another dealer who is a Participant of the particular marketplace. In the view of IIROC, a Participant would be expected to make such arrangements if the particular marketplace had demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for a specific security relative to the size of the client order.

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

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

The “best price” obligation under Rule 5.2 of UMIR requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a “protected marketplace”<sup>4</sup> at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. IIROC will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

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

If a Participant uses another means to enter an order on a marketplace, IIROC will determine whether a Participant has made “reasonable efforts” to obtain the best available prices on a “protected marketplace”. Each Participant must adopt policies and procedures to ensure compliance with its “best price” obligation, which will include the relevant factors upon which it is relying in making trading decisions. IIROC has indicated that each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure (which would include the fact that securities listed on TSXV now trade on multiple marketplaces).

<sup>2</sup> See Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplace (September 1, 2006) under the sub-heading “Rule 5.1 – Best Execution of Client Orders”.

<sup>3</sup> See IIROC Notice 09-0107 - Rules Notice – Notice of Approval – UMIR – Provisions Respecting the “Best Price” Obligation (April 17, 2009), IIROC Notice 09-0108 - Rules Notice – Guidance Note – UMIR – Specific Questions Related to the “Best Price” Obligation (April 17, 2009) and Market Integrity Notice 2008-010 – Guidance –Complying with “Best Price” Obligations (May 16, 2008).

<sup>4</sup> Under UMIR, a “protected marketplace” means a marketplace that:

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

Of those marketplaces currently trading TSXV-listed securities, each of TSXV, Pure Trading, Alpha and Omega qualify as a “protected marketplace” while Liquidnet and MATCH Now do **not** qualify as a “protected marketplace”.

### Trading of TSXV-Listed Securities on Multiple Marketplaces

On March 12, 2007, Liquidnet Canada Inc. ("Liquidnet") became the first ATS to trade securities listed on the TSXV. Trading of TSXV-listed securities followed on MATCH Now on September 3, 2008 and on Omega ATS Limited ("Omega") on November 17 2008. However, by December 31, 2008, only 223 trades in a security listed exclusively on TSXV had been made on an ATS. The full TSXV stock list became eligible for trading on Pure Trading on February 27, 2009 and on Alpha Trading Systems ("Alpha") on March 30, 2009. During the first quarter of 2009, a total of 1,884 trades with a volume of 26,655,998 shares in TSXV-listed securities occurred on these markets but, during the second quarter of 2009, the number of trades expanded significantly to 19,342 trades with a volume of 156,763,422.

While more than 98% of trades and volume in TSXV-listed securities continued to be made through the TSXV during the first six months of 2009, the increase in trading activity in TSXV-listed securities on the ATSs indicates that trading opportunities in TSXV-listed securities are increasingly available on the ATSs. Participants must take this increased liquidity on multiple marketplaces into account when making determinations with respect to their "best execution" and "best price" obligations under UMIR. In particular, IIROC expects each Participant will monitor the changes in the liquidity available on each marketplace for securities listed on the TSXV and that each Participant will review their policies and procedures for both "best execution" and "best price" to take account of any changes in the liquidity patterns.

The following tables set out more detailed information on trading of TSXV-listed securities during the first six months of 2009, including the number of trades and the associated volume.

Number of Trades of TSXV-listed Securities	Total All Marketplaces	Marketplace					
		TSX Venture Exchange	Pure Trading	Liquidnet	Match Now	Omega	Alpha
2009 to Date	1,932,692	1,911,466	10,110	5	1,734	924	8,453
09-Jan	258,806	258,685	-	0	121	0	-
09-Feb	257,096	256,737	104	2	198	55	0
09-Mar	284,205	282,801	903	3	138	351	9
09-Apr	330,491	325,540	1,924	0	442	200	2,385
09-May	372,532	366,358	2,075	0	488	33	3,578
09-Jun	429,562	421,345	5,104	0	347	285	2,481

Volume of TSXV-listed Securities Traded	Total All Marketplaces	Marketplace					
		TSX Venture Exchange	Pure Trading	Liquidnet	Match Now	Omega	Alpha
2009 to Date	19,268,144,033	19,084,724,613	68,880,299	5,800,000	8,027,200	4,639,400	96,072,521
09-Jan	2,705,924,102	2,705,726,102	-	0	198,000	0	-
09-Feb	2,632,236,154	2,627,309,854	739,900	3,500,000	319,400	367,000	0
09-Mar	2,723,612,429	2,702,080,731	13,860,010	2,300,000	4,696,700	323,200	351,788
09-Apr	3,150,499,202	3,100,226,639	25,099,800	0	1,077,300	3,223,000	20,872,463
09-May	3,814,225,957	3,758,285,742	16,069,589	0	790,300	79,600	39,000,726
09-Jun	4,241,646,189	4,191,095,545	13,111,000	0	945,500	646,600	35,847,544

#### Disciplinary Proceedings: In the Matter of TD Securities Inc. ("TDSI") (July 5, 2006) DN 2006-007

Facts – Between December 2003 and January 2005, TDSI on numerous occasions failed to transmit retail client orders to Dealer A, a CNQ Market Maker, for entry onto the CNQ marketplace. TDSI held back client orders that were either not immediately tradeable or which remained outside the posted quote until expiry, including orders for less than 50 standard trading units. Such orders expired unfilled without ever being entered onto CNQ. It was also found that TDSI failed to maintain a complete audit trail relating to these orders.

*Disposition – TDSI failed to meet its obligations under several provisions of UMIR in relation to the handling, trading, compliance and supervision of retail client orders for CNQ listed securities. In failing to adequately consider and plan with supervisory, compliance and trading staff an appropriate method of handling and monitoring client orders for CNQ, TDSI failed to fulfill its best execution and order exposure obligations to clients in respect of some CNQ orders. In failing to adopt adequate policies and procedures to be followed by its employees TDSI failed to fulfill its supervisory obligations under UMIR.*

*Requirements Considered – Rules 5.1, 6.3(1), 10.11(1), 10.12(1), 7.1(1) and Policy 7.1*

*Sanctions - \$350,000 fine and costs of \$80,000*

**Proposed Amendments:** *For information on the current proposed amendments to Policy 5.1 of UMIR – Best Execution of Client Orders, refer to IIROC Notice 09-0328 – Request for Comments – UMIR – Provisions Respecting Implementation of the Order Protection Rule (November 13, 2009) which includes the following proposed amendment:*

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

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

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