

## **5.2 Best Price Obligation**

- (1) A Participant shall make reasonable efforts at the time of the execution of an order to ensure that:
  - (a) in the case of an offer, the order is executed at the best bid price; and
  - (b) in the case of a bid, the order is executed at the best ask price.
  
- (2) Subsection (1) does not apply to the execution of an order which is:
  - (a) required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4 to be executed other than on a marketplace in order to maintain a fair or orderly market;
  - (b) a Special Terms Order unless:
    - (i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or
    - (ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display;
  - (c) directed or consented to by the client to be entered on a marketplace as:
    - (i) a Call Market Order,
    - (ii) a Volume-Weighted Average Price Order,
    - (iii) a Market-on-Close Order,
    - (iv) an Opening Order,
    - (v) a Basis Order, or
    - (vi) a Closing Price Order; or
  - (d) a client order on behalf of a non-Canadian account executed other than on a marketplace pursuant to clause (d) or (e) of Rule 6.4 provided such client order does not execute with a principal order or non-client order of the Participant.

### **POLICY 5.2 – BEST PRICE OBLIGATION**

#### **Part 1 – Qualification of Obligation**

*The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that an order receives the best price. “Reasonable efforts” does not require that a Participant become a member, user or subscriber of each protected marketplace.*

*The Market Regulator will accept that a Participant has made “reasonable efforts” to obtain the “best price” if the Participant:*

- enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if:
  - the order router has demonstrated an ability to access orders on a protected marketplace, and
  - the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace,
- enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order:
  - route all or any part of the order required to comply with Rule 5.2 to a protected marketplace,
  - execute the order at a price that will comply with Rule 5.2, or
  - automatically vary the price of the order to a price that will comply with Rule 5.2; or
- provides the order to another Participant for entry on a marketplace.

In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:

**Factors Related to Initial Consideration of a Particular Marketplace**

- whether the marketplace qualifies as a “protected marketplace”;
- whether the protected marketplace has recently:
  - commenced operations, or
  - had any material malfunction or interruption of service;
- whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and
- whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered.

**Factors Related to On-going Compliance**

- whether a “better-priced” order is on a protected marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered;
- whether the Participant has experienced:
  - disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or
  - an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being

executed only in part for a volume less than that displayed at the time the order was entered by the Participant; and

- whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be considered on an on-going basis

## **Part 2 – Orders on Other Marketplaces**

Subject to the qualification of the “best price obligation” as set out in Part 1, Participants may not intentionally trade-through a better bid or offer on a protected marketplace by making a trade at an inferior price (either one-sided or a cross) on another marketplace or on a foreign organized regulated market. This Policy applies even if the client consents to the trade on the other marketplace or the foreign organized regulated market at the inferior price.

A Participant will be considered to have taken reasonable efforts to obtain the best price if, at the time of the execution of the order on a particular marketplace or foreign organized regulated market, the Participant enters orders on behalf of the client, non-client or principal account on each protected marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume on that protected marketplace.

## **Part 3 – Foreign Currency Translation**

If a trade is to be executed on or reported to a foreign organized regulated market, the Participant shall determine whether there is in fact a better price on a protected marketplace. The foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction. A better price on a protected marketplace must be “taken out” if there is more than a marginal difference between the price on the protected marketplace and the price on or reported to the foreign organized regulated market. The Market Regulator regards a difference of one trading increment or less as “marginal” because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better price existed on a protected marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.

<b>Defined Terms:</b>	NI 21-101 section 1.1 – “information processor”, “member”, “order”, “subscriber”, “transaction fee” and “user” UMIR section 1.1 – “Basis Order”, “best ask price”, “best bid price”, “client order”, “Call Market Order”, “Closing Price Order”, “consolidated market display”, “disclosed volume”, “Exchange”, “foreign organized regulated market”, “last sale price”, “listed security”, “Market Maker Obligations”, “Market-on-Close Order”, “Market Regulator”, “marketplace”, “Marketplace Operation Instrument”, “Marketplace Rules”, “non-Canadian account”, “Opening Order”, “Participant”, “principal account”, “protected marketplace”, “quoted security”, “QTRS”, “related security”, “Special Terms Order”, “trading day”, “trading increment” and “Volume-Weighted Average Price Order” UMIR section 1.2(2) – “trade”
<b>Related Provisions:</b>	UMIR section 6.4(d) and (e), UMIR section 10.11(3)
<b>Regulatory History:</b>	Effective April 8, 2005, the applicable securities commissions approved an amendment to clause (c) of subsection (2) of Rule 5.2 to add subclause (v).

Effective March 9, 2007, the applicable securities commissions approved an amendment to clause (c) of subsection (2) of Rule 5.2 to add subclause (vi) and to Part 1 of Policy 5.2 to change the factors that may be considered. Prior to that date, Part 1 provided:

**Part 1 – Qualification of Obligation**

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

- the information available to the Participant from the information processor or information vendor;
- the transactions costs and other costs that would be associated with executing the trade on a marketplace;
- whether the Participant is a member, user or subscriber of the marketplace with the best price;
- whether market outside of Canada have been considered (particularly if the principal market for the security is outside of Canada); and
- any specific client instructions regarding the timeliness of the execution of the order.

Effective May 16, 2008, the applicable securities commissions approved amendments to Rule 5.2 and Policy 5.2 to:

1. replace subsection (1) of Rule 5.2 which, prior to the date, provided:
  - (1) A Participant shall make reasonable efforts prior to the execution of a client order to ensure that:
    - (a) in the case of an offer by the client, the order is executed at the best bid price; and
    - (b) in the case of a bid by the client, the order is executed at the best ask price.
2. add clause (d) to subsection (2) of Rule 5.2;
3. replace Part 2 of Policy 5.2 which, prior to the date, provided:

**Part 2 – Trade-Through of Marketplaces**

Subject to the qualification of the “best price obligation” as set out in Part 1, Participants may not intentionally trade through a better bid or offer on a marketplace by making a trade at an inferior price (either one-sided or a cross) on a stock exchange or other organized market. This Policy applies even if the client consents to the trade on the other stock exchange or other organized market at the inferior price. Participants may make the trade on that other exchange or organized market if the better bids or offers, as the case may be, on marketplaces are filled first or coincidentally with the trade on the other stock exchange or organized market. The time of order entry is the time that is relevant for determining whether there is a better price on a marketplace.

This Policy applies to “active orders”. An “active order” is an order that may cause a trade-through by executing against an existing bid or offer on another stock exchange or organized market at a price that is inferior to the bid or ask price on a marketplace at the time. This Policy applies to trades for Canadian accounts and Participants’ principal (inventory) accounts. The Policy also applies to Participants’ principal trades on foreign over-the-counter markets made pursuant to the outside-of-Canada exemption in clause (e) of Rule 6.4. Trades for foreign accounts are not subject to this Policy because they are exempt from Rule 6.4 pursuant to the “outside-of-Canada” exemption set out in clause (e) of Rule 6.4. For example, an order to sell from a non-Canadian account on the New York Stock Exchange at a price below the bid price on a marketplace may be executed by the Participant.

4. replace Part 3 of Policy 5.2 which, prior to the date, provided:

**Part 3 – Foreign Currency Translation**

If a trade is to be executed on a foreign market, the Participant shall determine whether there is in fact a better price on a marketplace. The foreign trade price shall be converted to Canadian dollars using the mid-market spot rate or 7-day forward exchange rate in effect at the time of the trade, plus or minus 15 basis points. A better price on a marketplace must be “taken out” if there is more than a marginal difference between the price on the marketplace and the price on the other stock exchange or organized market. The Market Regulator regards a difference of one-half of a tick or less as “marginal” because the difference would be attributable to currency conversion.

Effective May 16, 2008, amendments were made to Rule 5.2 and Policy 5.2. These amendments were approved by the applicable securities commissions on April 17, 2009 with retroactive application to May 16, 2008. Reference should be made to Rules Notice 09-0107 – Notice of Approval – Provisions Respecting the "Best Price" Obligation (April 17, 2009) which approved amendments to:

- 1 repeal subsection (3) of Rule 5.2 which, prior to that date, provided:
  - (3) For the purposes of subsection (1), the Participant may take into account any transaction fees that would be payable to the marketplace in connection with the execution of the order as set out in the schedule of transaction fees disclosed in accordance with Marketplace Operation Instrument.
- 2 replace Part 1 of Policy 5.2 which, prior to that date, provided:

**Part 1 – Qualification of Obligation**

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

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

**Guidance:** The following is the relevant text of Market Integrity Notice 2005-015 issued on May 12, 2005 under the heading "**Guidance – Complying with "Best Price" Obligations**". Market Integrity Notice 2005-015 was repealed and replaced by Market Integrity Notice 2006-017 issued on September 1, 2006 under the heading "**Guidance – Securities Trading on Multiple Marketplaces**".

**Background**

This Market Integrity Notice provides guidance on the application of the "best price" obligations under the Universal Market Integrity Rules ("UMIR") to trading activity by a Participant. In particular, this Market Integrity Notice describes how a Participant may comply, pending consideration and implementation of proposed amendments to UMIR, with the current obligations under UMIR in an environment of multiple competitive marketplaces trading the same security. Reference is made to Market Integrity Notice 2005-012, Provisions Respecting "Off-Marketplace" Trades, issued on April 29, 2005 which sets out a number of proposed amendments to UMIR that would affect certain of the obligations of a Participant. These proposed amendments are subject to public comment and the approval of the applicable securities regulatory authorities.

**"Best Price" Obligations of a Participant**

Rule 5.2 of UMIR requires that a Participant make reasonable efforts prior to the execution of a client order to ensure that the client order is filled at the best price. Presently, Part 2 of UMIR Policy 5.2 establishes that a Participant may not intentionally trade-through better-priced orders on a marketplace when making a trade on a marketplace in Canada or a stock exchange or other organized regulated market outside of Canada.

Where there are multiple marketplaces in Canada where a trade can be executed the Participant must take appropriate steps to ensure that they do not trade through better-priced orders on marketplaces to which the Participant has trading access.

**Trading on Market Securities Inc.**

During May of 2005, Markets Securities Inc. ("MSI") proposes to commence operation as an alternative trading system known as BlockBook™. BlockBook will allow trading in any security that is an equity security which is listed on the Toronto Stock Exchange, TSX Venture Exchange or Canadian Trading and Quotation System Inc. ("CNQ").

The trading facilities offered by BlockBook include:

- a continuous market ("Continuous Auction Mode") in which orders of a minimum size (initially set at 25,000 shares for all securities) may be entered; and
- a "follow-on" auction (the "Follow-on Auction") in which orders of a minimum size (initially set at 1,000 shares for all securities) may be entered for a particular security that:
  - is triggered by an execution in Continuous Auction Mode,
  - permits the entry of orders to trade at the price of the most recent execution in Continuous Auction Mode for a period of between 60 and 90 seconds, and
  - precludes additional executions in Continuous Auction Mode in that security until the completion of the Follow-on Auction.

A Subscriber to MSI may enter “pegged” orders in both the Continuous Auction Mode and the Follow-on Auction. A pegged order can be structured such that it would not be executed if the price at which the trade would occur would be higher than the best ask price or lower than the best bid price on the marketplace on which the security is listed. At this time, use of an appropriate pegged order would ensure compliance with the trade-through obligations under UMIR.

A Subscriber to MSI who does not use a pegged order may have a “best price” obligation if an execution results in either the Continuous Auction Mode or the Follow-on Auction that is at a price which:

- in the case of a purchase, is above the ask price of orders on another marketplace indicated in a consolidated market display; or
- in the case of a sale, is below the bid price of orders on another marketplace indicated in a consolidated market display.

In such circumstances, a Participant will be expected to undertake reasonable efforts to execute as against better-priced orders displayed in a consolidated market display. In determining whether a Participant has undertaken reasonable efforts, consideration will be given to:

- whether the Participant had access to the marketplace with the better-priced order or orders;
- the additional costs that would be incurred in accessing such order or orders; and
- whether the Participant has met any applicable obligation under Part 2 of Policy 2.1 to move the market.

A Participant will be considered to have taken reasonable efforts if the Participant enters orders on a marketplace concurrent with, or immediately following, the trade on MSI and such orders have a sufficient volume and are at a price that will fill the volume of better-priced orders on that marketplace that are visible in the consolidated market display at the time of the trade on MSI. The obligation to fill better-priced orders is not limited by the size of the trade on MSI. The volume of the orders to be entered is determined solely by the visible volume of better-priced orders disclosed in the applicable consolidated market display.

In accordance with the “Best Execution Obligation” under Rule 5.1 of UMIR, a Participant who has trading access to MSI will have an obligation to consider execution opportunities in the Follow-on Auction if the price at which such trades will execute is a better price than available on another marketplace.

**Guidance:** The following is the relevant text of Market Integrity Notice 2005-023 issued on July 29, 2005 under the heading “**Guidance – Securities Trading on Multiple Marketplaces**”. Market Integrity Notice 2005-023 was repealed and replaced by Market Integrity Notice 2006-017 issued on September 1, 2006 under the heading “**Guidance – Securities Trading on Multiple Marketplaces**”. Additional background information from Market Integrity Notice 2005-023 is set out under Rule 3.1 and additional text is set out under Rules 5.3, 7.7 and 8.1.

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace to which they have trading access before executing a trade at an inferior price on another marketplace or a foreign market. As noted above, neither UMIR nor the ATS Rules requires a Participant to maintain trading access to every Canadian marketplace on which a security may trade. As such, the obligation currently attaches to a Participant only with reference to better-priced orders on marketplaces to which they have trading access.

**Example #3:** Canadian security ABC trades on both Marketplace D and Marketplace E. Participant X has access to Marketplace D only. Participant X enters a market order for ABC on Marketplace D, even though there is a better bid or offer for ABC on Marketplace E at the time of the order. Participant X is in compliance with its best price obligation.

**Example #4:** Canadian security ABC trades on both Marketplace D and Marketplace E. Participant X has access to Marketplace D and Marketplace E. Participant X enters a market order for ABC on Marketplace D, even though there is a better bid or offer for ABC on Marketplace E at the time of the entry of the order. Participant X takes no steps to fill the better bid or offer first or coincidentally. Participant X is not in compliance with its best price obligation.

**Example #5:** Canadian security ABC was traded only on Marketplace D until very recently. ABC is now traded on both Marketplace D and Marketplace E. Participant X utilizes an order management system (“OMS”) and has access to both Marketplace D and Marketplace E. A client or salesperson of Participant X codes a market order with “default marketplace” Marketplace D into Participant X’s OMS. At the time of the order, there is a better bid or offer for ABC on Marketplace E. Participant X is not in compliance with its best price obligation. In order for Participant X to comply with its best price obligation, Participant X must take reasonable steps to ensure that its clients and salespersons do not use its OMS systems to bypass better bids or offers.

**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, 5.1, 5.3, 7.7 and 8.1: **This part of the guidance was repealed effective May 16, 2008 by Market Integrity Notice 2008-010 – Guidance – Complying with “Best Price” Obligations (May 16, 2008)**

#### **Rule 5.2 - Best Price Obligation**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. In accordance with the requirements of the CSA as set out in the CSA Notice, a Participant must take into account order information from all marketplaces trading a particular

security (and not just marketplaces for which the Participant is a member, user or subscriber). In order to undertake “reasonable efforts” to effect a trade at the best price, a Participant must take appropriate steps to access orders on any marketplace. These steps may include the Participant making arrangements with another Participant who is a member, user or subscriber of the particular marketplace to handle the order as a jitney on behalf of the Participant who is not a member, user or subscriber of the particular marketplace.

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

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

Of the current marketplaces, only CNQ, TSX and TSXV meet all four conditions and it is anticipated that Pure Trading will meet the four conditions. BlockBook, Bloomberg, Liquidnet and TriAct do not, or will not, disseminate order data. While Shorcan disseminates order data, Shorcan limits access to dealers trading as principal and is a “manual” marketplace. RS is of the opinion that “reasonable efforts” does not require a Participant to take into account orders displayed on a manual marketplace that can not be immediately and electronically accessed. As such, a Participant has an obligation to execute against better-priced orders on CNQ, Pure Trading, TSX and TSXV before executing at an inferior price on any marketplace or organized regulated market.

Since the “better-priced” orders are determined from information in a consolidated market display, a Participant owes an obligation only to the “visible” portion of a “better-priced” order on another marketplace. If a marketplace permits the entry of an “iceberg” order for which only a portion of the volume is disclosed, no “best price obligation” is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under the Rule 5.2. At the present time, iceberg orders are permitted on CNQ, TSX and TSXV and it is anticipated that iceberg orders will be permitted on Pure Trading.

If a marketplace has visible orders but the marketplace is not open for trading at that time, a Participant does not owe a “best price” obligation to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. This obligation will apply to special trading facilities of a marketplace which conducts trading before or after “regular” trading hours if orders in such special facility are visible.

As originally set out in Market Integrity Notice 2005-015 – Guidance – Complying with “Best Price” Obligations, RS is of the opinion that a Participant will be considered to have taken reasonable efforts if the Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace. The obligation to fill better-priced orders is not limited by the size of the trade. The volume of the orders to be entered is determined solely by the visible volume of better-priced orders.

Since TriAct will not have pre-trade transparency, UMIR would not require a Participant to determine if a “better-priced” order existed on TriAct prior to executing on another marketplace. However, under its proposed market model, TriAct will provide price improvement over the “best ask price” and the “best bid price” on the execution of a trade at the time of execution. As such, no order executing on TriAct would owe a “best price obligation” to an order on another marketplace

**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, 5.1 and 7.1. **Questions 5, 8, 9 and 12 in Market Integrity Notice 2007-015 were repealed and replaced effective May 16, 2008 by Market Integrity Notice 2008-010 – Guidance – Complying with “Best Price” Obligations (May 16, 2008).**

#### **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.

##### **5. When entering a short sale order on a marketplace what obligation does a Participant have to “better-priced” orders on another marketplace?**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace. A Participant will be considered to have undertaken “reasonable efforts” if the Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace.

The following assumption and chart provides the basis for the two examples below:

Assume that a particular security is listed on an Exchange that is the “principal market” and on two ATSS.

Marketplace	Undisclosed Bid Size	Disclosed Bid Size	Bid Price	Ask Price	Disclosed Ask Price	Last Sale	Time of Last Sale
Principal Market	10,000	1,000	\$10.00	\$10.10	3,000	\$10.10	11:15 a.m.
ATS 1		5,000	\$9.90	\$10.20	4,000	\$9.90	11:20 a.m.
ATS 2		1,000	\$9.89	\$10.05	4,000	\$10.05	10:15 a.m.

**Example 3:** A Participant wishes to enter a market order to sell 7,000 shares “short”.

A Participant or Access Person would be able to enter the short sale on:

- the Principal Market at \$10.10 (being the “last sale price” on that marketplace);
- ATS 1 at \$9.90 (as the last sale on ATS 1 was established subsequent to the last sale on the Principal Market); and
- ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).

However, if a Participant executed the short sale on ATS 1, the Participant would owe an obligation to the “better-priced” orders disclosed in the consolidated market display. Rule 5.2 of UMIR would require a Participant to immediately enter an order on the Principal Market to execute against the better-priced visible order (\$10.00 for 1,000 shares).

Since the order entered on the Principal Market by the Participant to satisfy its displacement obligation would be a “short sale”, the Participant may have to enter the order as “short exempt” in order to ensure that it trades (as the trading system of the Principal Market may be programmed not to permit a short sale below the last sale price on that market). Since the short sale was properly executed on ATS 1, orders entered by the Participant on the Principal Market to meet “best price” obligations under Rule 5.2 will not be considered to be a violation of price restrictions on short sales for the purposes of Rule 3.1. While there was another 10,000 shares at a better price on the Principal Market, that volume was not “visible” in the consolidated market display and, as such, the Participant would not have a “best price” obligation to such undisclosed volume.

**Example 4:** Same scenario as above, however the better-priced bid on the Principal Market is fully disclosed (\$10.00 for 10,000 shares).

A Participant would be able to enter the short sale on:

- the Principal Market at \$10.10 (being the “last sale price” on that marketplace);
- ATS 1 at \$10.00 (to avoid trading-through the better-priced order on the Principal Market); and
- ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).

As set out in example 3 above, a Participant will be considered to have made “reasonable efforts” to comply with its best price obligations if a Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such order(s) have a sufficient volume and are at price that will fill the volume of better-priced orders in the consolidated market display at the time of the trade. In this example, while the last sale of the security on ATS 1 was subsequent to the last sale on the principal market, because the volume of the proposed short sale (7,000 shares) if executed, is not of sufficient volume to fill the volume of better-priced orders in the consolidated market display (10,000 shares) a Participant may not enter a short sale on ATS 1.

**8. Is a Participant required to consider orders in a special terms book of a marketplace as part of its “best price” obligation?**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. Under UMIR, the determination of the “best ask price” and “best bid price” excludes the price of any order that is a Special Terms Order and a number of “specialty” orders such as Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order and Volume-Weighted Average Price Order. While a Participant is not required to consider Special Terms Orders in determining best price, a Participant may be required to consider execution opportunities in the special terms book of a marketplace in accordance with its best execution obligation under Rule 5.1 of UMIR.

**9. If a Participant executes a trade on a marketplace at an inferior price, and immediately thereafter attempts to displace a specific better-priced order on another marketplace that is cancelled before the Participant is able to enter the order, is a Participant obligated to displace other orders at that same price and volume?**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace. As originally set out in Market Integrity Notice 2005-015 – Guidance – Complying with “Best Price” Obligations (May 12, 2005), RS is of the opinion that a Participant will be considered to have undertaken reasonable efforts if the Participant enters orders on another marketplace

concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace. To the extent that the better-priced orders visible at the time of the of the trade are “immediately” replaced with another order or orders the Participant has an obligation to trade with such other order(s) even though it will trade with a different order(s) than intended. The volume of the order to be entered is determined solely by the visible volume of the better-priced order(s) at the time of the trade on the particular marketplace.

In the view of RS, an order entered by a Participant on a marketplace to satisfy its displacement obligation must be entered concurrently with, or immediately following the trade on another marketplace, regardless of whether the order(s) that gave rise to the displacement obligation continue to be “available”. As such, a Participant may wish to enter an order to satisfy its displacement obligation in a manner that ensures that the order trades only with the volume of better-priced orders that are then “available”, and that any unfilled portion of the order may be “killed” to prevent the unfilled portion of the order from being “booked” on the other marketplace.

**12. Can a Participant factor in connectivity costs or other fees related to accessing a marketplace in determining “best price”?**

Rule 5.2 of UMIR requires that a Participant make reasonable efforts prior to the execution of a client order to ensure that the client order is executed at the best available price. Transaction costs and other costs (including access fees and settlement charges) associated with executing a trade on a marketplace may be considered in determining whether a Participant has made “reasonable efforts”. In order to undertake “reasonable efforts” to effect a trade at the best price, a Participant must take appropriate steps to access orders on any marketplace trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber).

If a Participant has a specific arrangement with a client or generally charges clients (either as a separate fee or increased commission) transaction costs related to accessing a particular marketplace, a Participant may consider such transaction costs in determining the marketplace with the “best price”. For example, if fees charged directly to a client to access a marketplace with the “best price” result in a client receiving a net price for the trade (trade price less costs related to accessing the particular marketplace) that is inferior to the price that the client would have received had the Participant executed the trade on another marketplace, a Participant may trade with orders on such other marketplace. To the extent that a Participant does not directly charge “access” costs to a client (i.e. the Participant does not charge a separate fee or increased commission to execute a trade on a particular marketplace), a Participant must direct a client order to the marketplace with the best available price as determined from information in a consolidated market display.

Presently, a marketplace is allowed to establish fees to access its marketplace without limitation. While differences in access fees charged by marketplaces is allowed, the regulation of access fees is currently the subject of a proposal by the Canadian Securities Administrators (“CSA”), which among other things, proposes to establish a maximum amount that a visible marketplace can charge for access to a quote. Reference should be made to Market Integrity Notice 2007-007 – Request for Comments - Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces (April 20, 2007) for a discussion of CSA “trade-through” proposal. The provisions of UMIR and their interpretation and application would be modified to conform to the position adopted by the CSA.

**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 5.1, 5.3, and 6.3.

**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:

**3. What “best price” obligation is owed if a client order executes on a non-transparent marketplace at a price that is inferior to an order displayed on a transparent marketplace?**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. In the view of IIROC, the “best ask price” and “best bid price” can only be determined by reference to orders on marketplaces that provide pre-trade transparency. In order for a Participant to demonstrate that it had made “reasonable efforts” to execute a client order at the best price, IIROC expects the Participant will deal with “better-priced” orders on another marketplace if that marketplace:

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

Of the current marketplaces, only CNSX (including Pure Trading), TSX and TSXV meet all four conditions. BlockBook, Liquidnet and MATCH Now are “non-transparent” marketplaces that do not disseminate order data.

Since the “better-priced” orders are determined from information in a consolidated market display, a Participant owes an obligation only to the “visible” portion of a “better-priced” order on another marketplace. If a marketplace has visible orders but the marketplace is not open for trading at that time, a Participant does not owe a “best price” obligation to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. This obligation will apply to special trading facilities of a marketplace which conducts trading before or after “regular” trading hours if orders in such special facility are visible.

Since neither ATX nor MATCH Now will provide pre-trade transparency, UMIR would not require a Participant to determine if a “better-priced” order existed on ATX or MATCH Now prior to executing on another marketplace. However, both ATX and MATCH Now have been structured to provide price improvement over the “best ask price” and the “best bid price” at the time of execution on MATCH Now and at the time of “match” on ATX. (When a “match” on ATX is executed as a trade on the TSX, the price must be at or between the “best ask price” and the “best bid price”.) As such, no order executing on MATCH Now or matching on ATX would owe a “best price obligation” to an order on another marketplace.

**Guidance:** The following is the relevant text of Market Integrity Notice 2007-021 issued on October 24, 2007 under the heading “**Guidance – Expectations Regarding “Best Price” Obligations”**”. **Market Integrity Notice 2007-021 was repealed and replaced effective May 16, 2008 by Market Integrity Notice 2008-010 – Guidance – Complying with “Best Price” Obligations (May 16, 2008).**

### **Summary**

This Market Integrity Notice provides guidance on the expectations of Market Regulation Services Inc. (“RS”) regarding compliance with the “best price” obligations of the Universal Market Integrity Rules (“UMIR”) in an environment of multiple transparent marketplaces. In particular, this notice focuses on the expectations of RS as a result of the launch of continuous auction market trading on Pure Trading (“Pure”) of securities listed on the Toronto Stock Exchange (“TSX”).

### **Background**

#### **Summary Description of the Best Price Obligation**

RS issued Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006) which provides general guidance on the obligations of a Participant or Access Person under UMIR with respect to trading activity in a security that trades on more than one marketplace including the best price obligation of a Participant under Rule 5.2 of UMIR. Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. A Participant must take into account order information from all marketplaces trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber). In order to undertake “reasonable efforts” to effect a trade at the best price, a Participant must take appropriate steps to access orders on any marketplace. These steps may include the Participant making arrangements with another Participant who is a member, user or subscriber of the particular marketplace to handle the order as a jitney on behalf of the Participant who is not a member, user or subscriber of the particular marketplace.

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

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

Of the current marketplaces, only CNQ (including Pure), TSX and TSX Venture Exchange (“TSXV”) meet all four conditions. BlockBook, Bloomberg, Liquidnet and MATCH Now do not disseminate order data. As such, a Participant has an obligation to execute against better-priced orders on CNQ, Pure, TSX and TSXV before executing at an inferior price on any marketplace or foreign organized regulated market.

Since the “better-priced” orders are determined from information in a consolidated market display, a Participant owes an obligation only to the “visible” portion of a “better-priced” order on another marketplace. If a marketplace permits the entry of an “iceberg” order for which only a portion of the volume is disclosed, no “best price obligation” is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under the Rule 5.2. At the present time, iceberg orders are permitted on CNQ, Pure, TSX and TSXV.

If a marketplace has visible orders but the marketplace is not open for trading at that time, a Participant does not owe a “best price” obligation to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. This obligation applies to special trading facilities of a marketplace which conducts trading before or after “regular” trading hours if orders in such special facility are visible.

RS is of the opinion that a Participant will be considered to have taken reasonable efforts if the Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace. The obligation to fill better-priced orders is not limited by the size of the trade. The volume of the orders to be entered is determined solely by the visible volume of better-priced orders.

Since MATCH Now does not provide pre-trade transparency, UMIR does not require a Participant to determine if a “better-priced” order existed on MATCH Now prior to executing on another marketplace. However, MATCH Now provides price improvement over the “best ask price” and the “best bid price” on the execution of a trade. As such, no order executing on MATCH Now owes a “best price” obligation to an order on another marketplace.

For additional guidance on trading on multiple marketplaces, reference should be made to:

- 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).

#### **Launch of Continuous Auction Trading on Pure**

On September 14, 2007, the “Pure Trading” facility of CNQ launched continuous auction trading for three TSX-listed securities. Pure has expanded its trading list to include a total of 15 TSX-listed securities as of October 12, 2007. The schedule for the inclusion of additional TSX-listed securities in the Pure stock list is available on the Pure website at [www.puretrading.ca](http://www.puretrading.ca) under the heading “Stock List”.

With the commencement of continuous auction trading, the cross printing facility of Pure is limited to those securities which are supported in the continuous auction market.

#### **Questions and Answers**

The following is a list of questions dealing with the expectations of RS regarding the compliance by a Participant with the “best price” obligations under Rule 5.2 of UMIR as a result of the launch of continuous auction market trading of TSX-listed securities on Pure.

- 1. With the launch of continuous auction market on Pure, will RS provide Participants with a “grace period” in order to adjust to compliance with “best price” obligations?**

RS will **not** provide a “grace period”. RS recognizes that the launch of continuous auction trading on Pure of TSX-listed securities represented the first time since the introduction of UMIR in 2002 that two transparent marketplaces with orders displayed in a consolidated display have conducted trading in relatively-liquid securities. RS is aware that not all Participants and/or service providers have been able to fully implement systems changes (including the introduction of “smart order router” capacity) or procedures that are necessary to ensure compliance with the “best price” obligation to visible orders on both Pure and the TSX. Each Participant is expected to implement interim measures in a “reasonable effort” to comply with its best price obligations. The interim measures adopted by a Participant are to be adequate taking into account the size and type of order flow of the Participant. The interim measures may involve routing orders for securities which trade on more than one transparent marketplace for “special handling” and entry on the appropriate marketplace or directing order flow to another Participant that has fully implemented a systems solution for entry on a jitney basis on the appropriate marketplace.

RS acknowledges that the interim measures adopted by a Participant may nonetheless result in an isolated number of trade-throughs. Provided the Participant has followed its interim measures during this transition period, RS will not consider an isolated trade-through to be a violation of UMIR requirements.

- 2. Will a Participant have satisfied its “best price” obligation if the trading decision is based on information available to the Participant?**

A Participant must take into account order information from all transparent marketplaces trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber). Provided the Participant has taken such information into account when entering an order, RS will be satisfied that the Participant has made “reasonable efforts” to comply with the best price. RS recognizes that there will be different latencies in the delivery of information between the various data vendors, service providers and the internal systems of the Participant. The standard of conduct for compliance with the best price obligation is “particular” for each Participant.

- 3. Does RS consider a “trade-through” to have occurred if the displayed market changes after the entry of an order by a Participant?**

No. The “best price” obligation under Rule 5.2 is based on a Participant taking “reasonable efforts”. In “race conditions”, a Participant that enters an order based on the available information at the time of the entry of the order will be in compliance with Rule 5.2.

- 4. Why is RS distributing Potential Violation Alert Notices (“PVANS”) regarding possible “trade-throughs” of better-priced orders?**

On a regular basis since the launch of continuous auction trading on Pure, RS has been distributing PVANS or notifications of possible trade-throughs to each of the Participants that may have executed a trade-through of a better-priced order between Pure and the TSX. RS recognizes that each Participant is in a period of transition to trading in a multiple marketplace environment and the purpose of the distribution of the PVANS is to bring to the attention of each Participant the possibility that their systems or procedures may need to be adjusted to ensure compliance with the best price obligation. The production of these notices is based on information available to RS.

RS expects that each Participant will investigate these potential violations to determine if any adjustment is necessary to the systems or procedures used by the Participant to ensure compliance with the best price obligation.

**5. What is RS's expectation with respect to the monitoring and testing to be undertaken by a Participant for compliance with the "best price" obligation?**

With the launch of continuous auction market trading in same securities on multiple transparent marketplaces, each Participant must review and update the policies and procedures adopted pursuant to Rule 7.1 of UMIR to ensure compliance with the "best price" obligation. RS also expects that the compliance procedures adopted by a Participant will be reviewed to ensure that there is adequate testing for compliance with "best price" obligations, particularly with respect to any portion of the order flow of the Participant that has not been handled by a smart order router or other automated solution.

RS expects that each Participant will periodically test any automated solution to verify that the "solution" remains effective for the type of businesses being conducted by the Participant. RS expects that such tests will be conducted whether the automated solution has been developed by the Participant or provided by a third party service provider. The results of these tests must be retained by the Participant and RS expects to be in a position to review the results of these tests during regularly scheduled trade desk reviews conducted by RS.

**6. What are the obligations of a Participant that "bids through" or "offers through" an order contained in a consolidated market display?**

If a Participant actively "bids through" or "offers through" on a particular marketplace the prices indicated in a consolidated market display on another marketplace, this action will result in "crossed markets" where the bid on one marketplace is higher than the offer on another marketplace. A "bid through" occurs when an order to purchase is booked on a marketplace at a price which is higher than an offer to sell that security displayed on another transparent marketplace. A "offer through" occurs when an order to sell is booked on a marketplace at a price which is lower than a bid to purchase that security displayed on another transparent marketplace.

At the time the Participant enters the order that "bids through" or "offers through", this order will be considered the "active order" since there is an existing order booked on a transparent marketplace against which the order that "bids through" or "offers through" could have executed at least in part. The fact that the order that "bids through" or "offers through" is "booked" on marketplace does not change its status as the "active order" for the purposes of the best price obligation under UMIR.

In the view of RS, a Participant that intentionally "bids through" or "offers through" orders on another marketplace is in breach of the requirements of UMIR, including under Rule 2.1 to transact business openly and fairly and in accordance with just and equitable principles of trade. In addition, if the Participant is entering a client order when "bidding through" or "offering through", the Participant may be in violation of the "best execution" requirements under Rule 5.1 to diligently pursue the execution of the client order on the most advantageous terms for the client as expeditiously as practicable.

**7. Can a Participant that executes a "trade-through" when handling a client order rectify the problem by improving the price payable to or by the client?**

No. The "best price" obligation is an obligation which each Participant owes to the market generally rather than to the client. While a Participant that executes a trade-through in the handling of a client order may not have obtained "best execution" for that client order and may therefore need to adjust the price of the trade for the benefit of the client, the "best price" obligation requires that the Participant, concurrent with, or immediately following, the execution of the trade-through, enter orders on another marketplace of sufficient volume and at a price that will fill the volume of better-priced orders on that other marketplace that are visible at the time of the execution of the trade-through.

**8. How will a Participant know if a particular security is traded on more than one marketplace?**

It is the obligation of each Participant to monitor the marketplaces to determine which securities are eligible to trade on each marketplace. RS has noted that many of the potential trade-throughs have been executed on the day that the security is initially eligible for trading on more than one transparent marketplace. In the case of Pure, the Participant or its service provider should monitor the schedule of TSX-listed securities eligible to trade on the continuous auction market of Pure that is available on the Pure website at [www.puretrading.ca](http://www.puretrading.ca) under the heading "Stock List".

Participants should also be aware that a limited number of securities may be inter-listed from time to time between CNQ and TSXV and that these securities may trade on each marketplace under different symbols. Presently, there are two such inter-listed securities: United Reef Limited, which is listed on CNQ under the symbol "URPL", is also listed on the TSXV under the symbol "URP"; and Roxmark Mines Limited, which is listed on CNQ under the symbol "RMKL" and is also listed on TSXV under the symbol "RMK".

**Guidance:** The following is the relevant text of Market Integrity Notice 2008-010 issued on May 16, 2008 under the heading “Guidance – Complying with “Best Price” Obligations”.

#### Summary

This Market Integrity Notice provides guidance on the expectations of the Investment Industry Regulatory Organization of Canada (“IIROC”) regarding compliance with the “best price” obligations of the Universal Market Integrity Rules (“UMIR”) in an environment of multiple protected marketplaces. This guidance reflects the adoption of amendments to UMIR as set out in:

- o Market Integrity Notice 2008-008 – Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008); and
- o Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008).

**This Market Integrity Notice repeals and replaces, effective May 16, 2008, the guidance related to Rule 5.2 from the following notices:**

- **Market Integrity Notice 2007-021 – Guidance – Expectations Regarding “Best Price” Obligations (October 24, 2007).**
- **Market Integrity Notice 2007-015 – Guidance – Specific Questions Related to Trading on Multiple Marketplaces (August 10, 2007);**
- **Market Integrity Notice 2006-020 – Guidance – Compliance Requirements For Trading On Multiple Marketplaces (October 30, 2006); and**
- **Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006).**

#### Revised Guidance

##### Amendments to the “Best Price” Obligation

Concurrent with this Market Integrity Notice, IIROC has published notice of certain amendments to UMIR that are effective as of May 16, 2008 that change the “best price” obligation. Reference should be made to the following Market Integrity Notices which contain details of the amendments, together with certain guidance on the interpretation and application of the amendments:

- o Market Integrity Notice 2008-008 – Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008) (the “Off-Marketplace” Amendments); and
- o Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008) (the “Interim Amendments”).

IIROC considers these to be “interim” amendments because the Canadian Securities Administrators (“CSA”) are developing a trade-through proposal.<sup>1</sup> Depending upon the final form of this trade-through regime, conforming changes may be required to UMIR, in particular the “best price” obligation under Rule 5.2 as modified by the Interim Amendments. IIROC expects that the Interim Amendments will be in effect from May 16, 2008 until changes implementing the final form of the CSA’s trade-through regime become effective.

**All of Market Integrity Notice 2007-021 – Guidance – Expectations Regarding “Best Price” Obligations (October 24, 2007) is repealed and replaced with the following:**

##### Questions and Answers

The following is a list of questions dealing with the expectations of IIROC regarding the compliance by a Participant with the “best price” obligations under Rule 5.2 of UMIR as a result of the launch of new protected marketplaces:

**1. Will a Participant have satisfied its “best price” obligation if the trading decision is based on information as seen by the Participant?**

IIROC recognizes that there will be different latencies in the delivery of information between the various data vendors, service providers and the internal systems of the Participant. The standard of conduct for compliance with the best price obligation is “particular” for each Participant.

For a discussion of the obligation of a Participant to consider information from a particular protected marketplace, reference should be made to Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008)

**2. Does IIROC consider a “trade-through” to have occurred if the displayed market changes after the entry of an order by a Participant?**

No. The “best price” obligation under Rule 5.2 is based on a Participant taking “reasonable efforts”. In “race conditions”, a Participant that enters an order based on the available information at the time of the entry of the order will be in compliance with Rule 5.2.

<sup>1</sup> See Market Integrity Notice 2007-007 – Request for Comments – Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces (April 20, 2007).

**3. What communications will I receive from IIROC regarding trade-through alerts after May 16, 2008?**

On a regular basis since the launch of continuous auction trading on Pure Trading in September of 2007, IIROC has been distributing "Notifications of Trade-Through Alerts" to Participants to assist firms in their efforts to ensure compliance with the "best price" obligation. As of May 16, 2008, IIROC will no longer be providing the Notifications of Trade-Through Alerts. However, IIROC will continue to monitor for trade-throughs and may issue a Potential Violation Alert Notifications ("PVAN") if the facts of the "trade-through" of better-priced orders warrant.

**4. What is IIROC's expectation with respect to the monitoring and testing to be undertaken by a Participant for compliance with the "best price" obligation?**

With the launch of continuous auction market trading in same securities on multiple protected marketplaces, each Participant must review and update the policies and procedures adopted pursuant to Rule 7.1 of UMIR to ensure compliance with the "best price" obligation. IIROC also expects that the compliance procedures adopted by a Participant will be reviewed to ensure that there is adequate testing for compliance with "best price" obligations, particularly with respect to any portion of the order flow of the Participant that has not been handled by a smart order router or other automated solution.

IIROC expects that each Participant will periodically test any automated solution to verify that the "solution" remains effective for the type of businesses being conducted by the Participant. IIROC expects that such tests will be conducted whether the automated solution has been developed by the Participant or provided by a third party service provider. The results of these tests must be retained by the Participant and IIROC expects to be in a position to review the results of these tests during regularly scheduled trade desk reviews conducted by IIROC.

**5. What are the obligations of a Participant that "bids through" or "offers through" an order contained in a consolidated market display?**

If a Participant actively "bids through" or "offers through" on a particular marketplace the prices indicated in a consolidated market display on another marketplace, this action will result in "crossed markets" where the bid on one marketplace is higher than the offer on another marketplace. A "bid through" occurs when an order to purchase is booked on a marketplace at a price which is higher than an offer to sell that security displayed on another protected marketplace. A "offer through" occurs when an order to sell is booked on a marketplace at a price which is lower than a bid to purchase that security displayed on another protected marketplace.

In the view of IIROC, a Participant that intentionally "bids through" or "offers through" orders on another marketplace is in breach of the requirements of UMIR, including under Rule 2.1 to transact business openly and fairly and in accordance with just and equitable principles of trade. In addition, if the Participant is entering a client order when "bidding through" or "offering through", the Participant may be in violation of the "best execution" requirements under Rule 5.1 to diligently pursue the execution of the client order on the most advantageous terms for the client as expeditiously as practicable.

**6. Can a Participant that executes a "trade-through" when handling a client order rectify the problem by improving the price payable to or by the client?**

No. The "best price" obligation is an obligation which each Participant owes to the market generally rather than to the client. While a Participant that executes a trade-through in the handling of a client order may not have obtained "best execution" for that client order and may therefore need to adjust the price of the trade for the benefit of the client, the "best price" obligation requires that the Participant concurrent with, or immediately following, the execution of the trade-through to enter orders on another marketplace of sufficient volume and at a price that will fill the volume of better-priced orders on that other marketplace that are visible at the time of the execution of the trade-through.

**7. How will a Participant know if a particular security is traded on more than one marketplace?**

It is the obligation of each Participant to monitor the marketplaces to determine which securities are eligible to trade on each marketplace. IIROC has noted that many of the potential trade-throughs have been executed during the period immediately following the security becoming eligible for trading on an additional protected marketplace.

**Questions 5, 8, 9 and 12 in Market Integrity Notice 2007-015 – Guidance – Specific Questions Related to Trading on Multiple Marketplaces are repealed and replaced with the following:**

**5. When entering a short sale order on a marketplace what obligation does a Participant have to "better-priced" orders on another marketplace?**

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. A Participant will be considered to have undertaken "reasonable efforts" if the Participant enters orders on a protected marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other protected marketplace that are visible at the time of the trade on the particular marketplace.

The following assumption and chart provides the basis for the two examples below:

Assume that a particular security is listed on an Exchange that is the "principal market" and on two ATs and that

each of the marketplaces qualify as a “protected marketplace”.<sup>2</sup>

Marketplace	Undisclosed Bid Size	Disclosed Bid Size	Bid Price	Ask Price	Disclosed Ask Price	Last Sale	Time of Last Sale
Principal Market	10,000	1,000	\$10.00	\$10.10	3,000	\$10.10	11:15 a.m.
ATS 1		5,000	\$9.90	\$10.20	4,000	\$9.90	11:20 a.m.
ATS 2		1,000	\$9.89	\$10.05	4,000	\$10.05	10:15 a.m.

**Example 3:** A Participant wishes to enter a market order to sell 7,000 shares “short”.

A Participant or Access Person would be able to enter the short sale on:

- the Principal Market at \$10.10 (being the “last sale price” on that marketplace);
- ATS 1 at \$9.90 (as the last sale on ATS 1 was established subsequent to the last sale on the Principal Market); and
- ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).

However, if a Participant executed the short sale on ATS 1, the Participant would owe an obligation to the “better-priced” orders disclosed in the consolidated market display. Rule 5.2 of UMIR would require a Participant to immediately enter an order on the Principal Market to execute against the better-priced visible order (\$10.00 for 1,000 shares).

Since the order entered on the Principal Market by the Participant to satisfy its displacement obligation would be a “short sale”, the Participant may have to enter the order as “short exempt” in order to ensure that it trades (as the trading system of the Principal Market may be programmed not to permit a short sale below the last sale price on that market). Since the short sale was properly executed on ATS 1, orders entered by the Participant on the Principal Market to meet “best price” obligations under Rule 5.2 will not be considered to be a violation of price restrictions on short sales for the purposes of Rule 3.1. While there was another 10,000 shares at a better price on the Principal Market, that volume was not “visible” in the consolidated market display and, as such, the Participant would not have a “best price” obligation to such undisclosed volume.

**Example 4:** Same scenario as above, however the better-priced bid on the Principal Market is fully disclosed (\$10.00 for 10,000 shares).

A Participant would be able to enter the short sale on:

- the Principal Market at \$10.10 (being the “last sale price” on that marketplace);
- ATS 1 at \$10.00 (to avoid trading-through the better-priced order on the Principal Market); and
- ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).

As set out in example 3 above, a Participant will be considered to have made “reasonable efforts” to comply with its best price obligations if a Participant enters orders on a protected marketplace concurrent with, or immediately following, the trade on a particular marketplace and such order(s) have a sufficient volume and are at price that will fill the volume of better-priced orders in the consolidated market display at the time of the trade. In this example, while the last sale of the security on ATS 1 was subsequent to the last sale on the principal market, because the volume of the proposed short sale (7,000 shares) if executed, is not of sufficient volume to fill the volume of better-priced orders in the consolidated market display (10,000 shares) a Participant may not enter a short sale on ATS 1.

**8. Is a Participant required to consider orders in a special terms book of a marketplace as part of its “best price” obligation?**

Under UMIR, the determination of the “best ask price” and “best bid price” excludes the price of any order that is a Special Terms Order and a number of “specialty” orders such as Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order and Volume-Weighted Average Price Order. While a Participant is not required to consider Special Terms Orders in determining best price, a Participant may be required to consider execution opportunities in the special terms book of a marketplace in accordance with its best execution obligation under Rule 5.1 of UMIR

**9. If a Participant executes a trade on a marketplace at an inferior price, and immediately thereafter attempts to displace a specific better-priced order on another marketplace that is cancelled before the Participant is able to enter the order, is a Participant obligated to displace other orders at that same price and volume?**

<sup>2</sup> For a discussion of the definition of a “protected marketplace”, see “Definition of Protected Marketplace” on pages 9 and 10 of Market Integrity Notice 2008-008 - Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2009).

IIROC is of the opinion that a Participant will be considered to have undertaken reasonable efforts if the Participant enters orders on another protected marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other protected marketplace that are visible at the time of the trade on the particular marketplace. To the extent that the better-priced orders visible at the time of the trade are “immediately” replaced with another order or orders, the Participant has an obligation to enter an order even though it may trade with a different order(s) than intended or not trade at all. The volume of the order to be entered is determined solely by the visible volume of the better-priced order(s) at the time of the trade on the particular marketplace.

In the view of IIROC, an order entered by a Participant on a protected marketplace to satisfy its displacement obligation must be entered concurrently with, or immediately following the trade on another marketplace, regardless of whether the order(s) that gave rise to the displacement obligation continue to be “available”. As such, a Participant may wish to enter an order to satisfy its displacement obligation in a manner that ensures that the order trades only with the volume of better-priced orders that are then “available”, and that any unfilled portion of the order may be “killed” to prevent the unfilled portion of the order from being “booked” on the other marketplace.

The “Off-Marketplace” Amendments introduced a requirement for a “bypass order” marker to facilitate compliance with obligations owed to order comprising part of the disclosed volume. This marker will be implemented on a future date to be determined by the Board of Directors of IIROC. When implemented, the “bypass order” marker will allow orders entered on a protected marketplace for the purpose of meeting “best price” obligations to “bypass” certain types of orders including undisclosed volume of iceberg order, Special Terms Orders and other specialty types of orders.<sup>3</sup>

**12. Can a Participant factor in connectivity costs or other fees related to accessing a marketplace in determining “best price”?**

Rule 5.2 of UMIR requires that a Participant make reasonable efforts at the time of the execution of an order to ensure that the order is executed at the best available price. As a result of the Interim Amendments, transaction costs and other costs (including access fees, trade processing fees and settlement charges) associated with executing a trade on a marketplace was repealed as one of the factors to be considered in complying with the “best price” obligation. Transaction costs may **no** longer be considered in determining whether a Participant has made “reasonable efforts”.

Presently, a marketplace is allowed to establish fees to access its marketplace without limitation. While differences in access fees charged by marketplaces is allowed, the regulation of access fees is currently the subject of a proposal by the Canadian Securities Administrators (“CSA”), which among other things, proposes to establish a maximum amount that a visible marketplace can charge for access to a quote. Reference should be made to Market Integrity Notice 2007-007 – Request for Comments - Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces (April 20, 2007) for a discussion of CSA “trade-through” proposal. The provisions of UMIR and their interpretation and application would be modified to conform to the position adopted by the CSA. Under the proposals with respect to “best execution”, the overall cost of the transaction will be one of the factors that a Participant will be able to take into account in complying with the “best execution” obligation.

**Questions 5, 7 and 9 in Market Integrity Notice 2006-020 – Guidance – Compliance Requirements For Trading On Multiple Marketplaces (October 30, 2006) are repealed and replaced with the following:**

**5. How should an “immediately tradeable” order from a client be handled if not all of the marketplaces are open at the time the order is received?**

The traditional continuous auction trading hours of exchanges in Canada have been between 9:30 a.m. and 4:00 p.m. Certain of the marketplaces open earlier or close later than these traditional trading hours. IIROC expects that a Participant will adopt policies and procedures with respect to the handling of “market” and other “immediately tradeable” orders that are received outside of historic trading hours. IIROC also expects that a Participant will inform its clients of such policy and its implications. It is the view of IIROC that the adoption of such a policy will reduce the likelihood of confusion on the part of clients with respect to when and where a “market” or other immediately tradeable orders may trade. Any policy adopted by a Participant must be consistent with the “best execution” obligations owed to the client under Rule 5.1.

How an immediately tradeable client order received outside of traditional trading hours is handled by a Participant will depend on the policy adopted by the Participant as communicated to its clients. For example, the policy may provide that a Participant that receives a market order after 4:00 p.m. and before 9:30 a.m. the next trading day may consider trading opportunities on any visible marketplace that is then open for trading or the Participant may “hold” the order until all marketplaces or the principal market is open for trading.

Notwithstanding any policy adopted by a Participant, Rule 6.3 dealing with the exposure of client orders provides that a Participant is able to withhold entry of a client order to purchase or sell 50 standard trading units or less if the

<sup>3</sup> See “Definition of Disclosed Volume” on pages 7 and 8 of Market Integrity Notice 2008-008 - Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008).

Participant “determines based on market conditions that entering the order would not be in the best interests of the client”. If the Participant withholds the orders in these circumstances, the Participant guarantees that the client will receive a price at least as good as the price the client would have received if the client order had been executed on receipt by the Participant or a better price if the client order executes against a principal or non-client order.

**7. Is a Participant required to consider visible orders on a protected marketplace that is not then open for trading in order to meet its “best price” obligation in the handling of a client order?**

Under Rule 5.2, a Participant must make reasonable efforts to ensure that an order is executed at the “best price”. If a marketplace displays orders in a consolidated market display but that marketplace is not open for trading at that particular time, a Participant does not need to consider such orders in evaluating its “best price” obligation. A Participant need only consider visible orders on protected marketplaces that are then open for trading. A Participant will have to consider as part of its “best price” obligation visible orders entered on special trading facilities of a protected marketplace which conducts trading before or after its “regular” trading hours.

Reference should be made to Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008) for a discussion of other circumstances when a Participant is not required to take account of visible orders on a protected marketplace.

**9. What “best price” obligation does a Participant have with respect to orders entered on a particular marketplace by a client with “direct market access”?**

If a Participant has provided direct market access to a client with respect to the entry of orders on a particular marketplace, the Participant has the obligation to fill any better-priced orders on a protected marketplace in respect of which an obligation under Rule 5.2 is owed. For a discussion of the orders of marketplaces for which an obligation is owed under Rule 5.2, reference should be made to Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008).

If the Participant routes orders from a client with direct market access through a “smart order router”, the Participant must ensure that the client is entitled to have direct market access to any marketplace to which the smart order router may direct the order.

**That part of Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006) under the heading “Rule 5.2 – Best Price Obligation” is repealed.** For a discussion of the application of the “best price” obligation for securities trading on multiple marketplaces, reference should be made to the “Background to the Interim Amendments” and “Description of the Interim Amendments” in Market Integrity Notice 2008-009 - Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008).

**Guidance:** The following is the relevant text of IIROC Notice 08-0028 issued on July 14, 2008 under the heading “Rules Notice - Guidance Note – Entering Orders on a Protected Marketplace that supports Hidden Order Types”.

**Summary**

This Rules Notice provides guidance on the expectations of the Investment Industry Regulatory Organization of Canada (“IIROC”) regarding compliance with the “best price” obligations under the Universal Market Integrity Rules (“UMIR”) when entering an order on a protected marketplace that supports hidden order types.

Effective June 1, 2008, Market Regulation Services Inc. (“RS”) merged with the Investment Dealers Association of Canada to form IIROC. IIROC adopted the Universal Market Integrity Rules (“UMIR”) as the rules of IIROC governing trading on marketplaces for which IIROC acts as the regulation services provider and IIROC adopted the guidance on the interpretation of UMIR previously published by RS. As a result of the merger, references to “RS” in the Market Integrity Notices mentioned in this Rules Notice should also include IIROC.

**Background**

Market Integrity Notice 2008-008 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008) (“Best Price Notice”) set out that the “best price” obligation of a Participant under Rule 5.2 of UMIR requires a Participant to make reasonable efforts to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market.<sup>4</sup> Concurrent with the publication of the Best Price

<sup>4</sup> The Amendments to the “best price” obligation contained in the Best Price Notice were effective as of May 16, 2008, subject to approval by the applicable securities commissions following public comment. Reference should be made to the Best Price Notice for additional guidance on the principal components of other amendments to “best price”, which include:

- examples of order handling methods that IIROC will automatically consider to be “reasonable efforts”;
- factors that IIROC will take into account in determining whether “reasonable efforts” have been made if a Participant is using an order handling method other than one which is automatically considered “reasonable efforts”;
- the requirement for each Participant to adopt policies and procedures to ensure compliance with the “best price” obligation;
- clarification that “reasonable efforts” does not require a Participant to maintain a connection to each protected marketplace; and
- removal of “transaction costs” as a factor to be taken into consideration in determining compliance with the “best price” obligation.

Notice, Market Integrity Notice – Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008) (“Off-Marketplace Notice”) provided notice of the approval of amendments to UMIR which included the definition of a “protected marketplace” as a marketplace that:

- disseminates order data in real-time and electronically to the information processor or one or more information vendors in accordance with National Instrument 21-101 (“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.

As of the date of this Rules Notice, the marketplaces which are regulated by IIROC that qualify as a protected marketplace are: the Toronto Stock Exchange (“TSX”); TSX Venture Exchange (“TSXV”); Canadian Quotation and Trading System (“CNQ”), including the Pure Trading Facility of CNQ; Omega ATS (“Omega”) and Chi-X Canada ATS Limited (“Chi-X”). Alpha Trading Systems LP (“Alpha”) is expected to commence operations as an ATS in the fall of 2008 and to qualify as a protected marketplace.

#### **“Fully-Hidden” Orders on a Protected Marketplace**

Under Rule 5.2 of UMIR, a Participant only owes a “best price” obligation to the “disclosed volume” of better-priced orders on a protected marketplace.<sup>5</sup> In other words, UMIR does not require a Participant to determine if a “better-priced” order exists on a “non-transparent” marketplace prior to executing an order on another marketplace. The ability of a Participant to effectively “bypass” orders on a dark marketplace in complying with the “best price” obligation reflects the policy rationale that provides priority at the same price level to visible orders over hidden orders or hidden portions of visible orders (i.e. iceberg orders). However, a Participant may be required to consider execution opportunities on a “non-transparent” marketplace in accordance with its best execution obligation under Rule 5.1 of UMIR.

IIROC expects that, in the near-term, one or more protected marketplaces may propose to support the entry of a “fully-hidden” order type that will be eligible to interact with “regular” orders on its marketplace.

IIROC will consider a Participant to have undertaken “reasonable efforts” to comply with its “best price” obligation if, concurrently with, or immediately following a trade on a marketplace at an inferior price, the Participant enters orders on each protected marketplace and that such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on those protected marketplaces that were visible at the time of the trade at the inferior price. The introduction of fully-hidden orders on a protected marketplace would distort the ability of a Participant to effectively “displace” better-priced orders if “fully-hidden” orders participate in the trade executions ahead of orders that had been included as part of the “disclosed volume”.

The amendments to UMIR contained in the Off-Marketplace Notice address this issue with the introduction of the concept of a “bypass order” which will ensure that an order entered on a marketplace by a Participant to satisfy the “best price” obligation under Rule 5.2 of UMIR trades only with orders that are included in the “disclosed volume”. The requirement for a “bypass order” will come into effect on a date determined by the IIROC board on or after August 14, 2008. IIROC will issue IIROC Rules Notice announcing the date this provision will be implemented at least 30 days in advance of the implementation date determined by the IIROC board.

Until the implementation of the “bypass order” type on a date established by the IIROC board, IIROC is of the view that the introduction by a protected marketplace of a fully-hidden order type is subject to the following conditions:

1. **No Priority “At the Market”** – For disclosed orders and fully-hidden orders at the same price, the protected marketplace must give priority to the disclosed orders regardless of the time of entry of the fully-hidden order.
2. **Adequate Notice to Market Participants** – The protected marketplace must provide at least three months notice of the introduction of a fully-hidden order type to those persons who have access to the marketplace.
3. **Exclusion from Consideration by a Marketplace Smart Order Router** – If the protected marketplace offers a smart order router to those persons who have access to the marketplace, the order router should only take account of those orders on the protected marketplace which are included in the “disclosed volume”. In the view of IIROC, if an order router offered by a marketplace could take advantage of undisclosed volume on that marketplace when making a routing determination, such a router would have an unfair advantage over other routers that would not have access to information regarding the “hidden” orders.

Reference should also be made to Market Integrity Notice 2008-010 – Guidance – Complying with “Best Price” Obligations (May 16, 2008) which repeals and replaces aspects of previous guidance related to Rule 5.2 under UMIR.

<sup>5</sup> The term “disclosed volume” includes the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

4. **Introduction of “Bypass” Functionality** – A protected marketplace that proposes to introduce a fully-hidden order type must at the time of the introduction of the fully-hidden order type support an order marker which allows incoming orders to fulfill displacement obligations to “bypass” hidden volume on the protected marketplace and execute only with the disclosed volume.
5. **Order Exposure Requirements** – Rule 6.3 of UMIR requires that client orders for 50 standard trading units or less be immediately entered on a marketplace which displays orders in accordance with Part 7 of the Marketplace Operation Instrument. The intent of this provision is to ensure transparency of retail-sized orders. An exception to the “order exposure” requirements is provided if the client specifically instructs the Participant to deal otherwise with the particular order. In the view of IROC, a client entering an order for 50 standard trading units or less must specifically consent to the entry of their order as “fully-hidden”. A protected marketplace that intends to introduce a fully-hidden order type should consider including a reminder to its subscribers of the “order exposure” requirements under Rule 6.3 of UMIR as part of the notice provided to Participants (as set out in paragraph 2 above).

**Guidance:** The following is the relevant text of IROC Notice 2009-0108 issued on April 17, 2009 under the heading “**Guidance Note – Specific Questions Related To The ‘Best Price’ Obligation**”.

#### Summary

This Rules Notice provides guidance on specific questions regarding compliance with the “best price” obligations of the Universal Market Integrity Rules (“UMIR”) in an environment of multiple protected marketplaces. This guidance:

- reflects the approval of amendments to UMIR regarding the “best price” obligation that were effective as of May 16, 2008;<sup>6</sup> and
- supplements and reaffirms the guidance provided in Market Integrity Notice 2008-010 – Guidance – Complying with “Best Price” Obligations (May 16, 2008).<sup>7</sup>

Reference should also be made to IROC Notice 09-0105 - Rules Notice – Guidance – UMIR – Guidance on Aspects of “Locked” and “Crossed” Markets (April 9, 2009), which provides guidance on specific questions regarding the “best price” and “best execution” obligations of a Participant under UMIR as they relate to “locked” and “crossed” markets.

#### Current “Best Price” Provisions

Under the “best price” obligation of Rule 5.2, a Participant is required to make “reasonable efforts” to fill better-priced orders displayed on a “protected marketplace”<sup>8</sup> at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. A Participant’s “best price” obligation is owed to the “visible” portion of a “better-priced” order on a protected marketplace. If a marketplace permits the entry of an “iceberg” order for which only a portion of the volume is disclosed, no “best price” obligation is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under Rule 5.2.

The policies under Rule 5.2 provide that a Participant will be considered to have 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, a number of factors will be taken into account in determining whether a Participant has made “reasonable efforts” to obtain the best available prices on a marketplace. Among the specific factors is whether:

<sup>6</sup> See IROC Notice 09-107 - Rules Notice – Notice of Approval – UMIR – Provisions Respecting the “Best Price” Obligation (April 17, 2009) which sets out the approval of the applicable securities regulatory authorities of various amendments to UMIR that were effective on May 16, 2008 on the publication of Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008).

<sup>7</sup> Market Integrity Notice 2008-010 repealed and replaced, effective May 18, 2008, the guidance related to Rule 5.2 from the following notices:

- Market Integrity Notice 2007-021 – Guidance – Expectations Regarding “Best Price” Obligations (October 24, 2007);
- Market Integrity Notice 2007-015 – Guidance – Specific Questions Related to Trading on Multiple Marketplaces (August 10, 2007);
- Market Integrity Notice 2006-020 – Guidance – Compliance Requirements for Trading on Multiple Marketplaces (October 30, 2006); and
- Market Integrity Notice 2006-017 – Guidance – Securities Trading on Multiple Marketplaces (September 1, 2006).

<sup>8</sup> UMIR defines a “protected marketplace” as a marketplace that:

- disseminates order data in real-time and electronically through 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

- the protected marketplace recently launched operations;
- order information from the protected marketplace is available through a data vendor used by the Participant;
- the protected marketplace recently had a material malfunction or interruption of services; and
- the protected marketplace demonstrated an inordinate proportion of “inferior fills” with respect to tradeable orders routed to it.

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 on in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

#### **Questions and Answers**

The following are some of the most frequently asked questions regarding the “best price” obligation of a Participant and the response of IIROC to each question:

**1. What is a Participant expected to do with an “on-stop” order entered on a marketplace that, once triggered, trades through a better-priced order on another marketplace?**

An “on-stop” order entered by a Participant on a marketplace can only be “triggered” once the security that is the subject of the “on-stop” order trades at a specified price on a marketplace. One way for an “on-stop” to be triggered and immediately trade-through another marketplace is if the trade that triggered the “on-stop” was itself a trade-through (others include rapidly moving quotations, commonly known as “flickering quotes”, and instances of a marketplace experiencing technical difficulties). Insofar as reasonable efforts were made to execute a trade at the best available price, IIROC would not consider the resulting trade to be a contravention of the “best price” obligation.

Historically, marketplaces that operated an “on-stop” facility provided that an “on-stop” order, once triggered, would convert to a “limit” order at the trigger price. This handling ensures compliance with the “best price” obligation. A marketplace might employ an allocation methodology that provides the option of having a triggered “on-stop” order converted to a “market” order. One of the implications of this allocation methodology is that once the “on-stop” is triggered, the “market” order will trade exclusively with orders on that marketplace and would not take account of better-priced visible orders on other protected marketplaces. In light of this risk, IIROC expects that a Participant will have a clear understanding of the manner in which “on-stop” orders are handled on a particular marketplace and that the Participant will take appropriate steps to fulfill any “best price” obligations resulting from the use of an “on-stop” facility.

**2. Does the “best price” obligation preclude the use of “All-or-None” Orders?**

No. The execution of an “All-or-None” Order is not exempt from the “best price” obligation, but this does not preclude a Participant or a marketplace from handling an “All-or-None” Order. An “All-or-None” Order is a Special Terms Order for the purposes of UMIR. If a marketplace supports “All-or-None” Orders, the functionality of the marketplace may provide that the “All-or-None” Order will migrate from the Terms Book if there is the sufficient volume on that marketplace at an appropriate price to completely fill the “All-or-None” Order. In this case, IIROC expects that the Participant will take appropriate steps to fulfill any “best price” obligations if the “All-or-None” Order has executed at an inferior price to better-priced orders on a protected marketplace. On the other hand, the marketplace may only execute the “All-or-None” Order if the volume on that marketplace is sufficient and there are no “better-priced” orders on other protected marketplaces.

If marketplaces do not offer the functionality to handle “All-or-None” Orders, a Participant would still be able to accept orders with such conditions and to handle the orders manually through a trader or through an order management system that would enter the order as a “fill or kill” order on a particular marketplace only when that marketplace had sufficient displayed volume to execute the order without avoiding “better-priced” orders on other protected marketplaces. The Participant will have to decide whether to accept “All-or-None” Orders in these circumstances.

**3. In the case of a “bid-through” or “offer-through” which order is the “active” order?**

With the amendments to the “best price” obligation that became effective May 16, 2008, the relevant time to determine compliance with the “best price” obligation was changed from the time of order entry to the time of order execution. As a result of this change, the concept of “active” and “passive” orders is no longer relevant to the determining compliance with the “best price” obligation.

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

No. The “best price” obligation applies to orders entered on a marketplace. Under UMIR, a “marketplace” includes an exchange, quotation and trade reporting system or alternative trading system that operates in Canada.

However, a Participant handling a client order may have an obligation to consider orders on a foreign organized regulated market as part of its “best execution” obligation. If a foreign market is considered in order to provide a client with “best execution”, the Participant would have an obligation to better-priced orders on protected marketplaces in Canada under the “best price” obligation.

**Guidance:** The following is the relevant text of IIROC Notice 09-0224 issued on July 30, 2009 under the heading “**Procedures For Handling Certain Designated Trades As Principal**”:

## Summary

This Rules Notice provides guidance on the procedures for the execution by a Participant as principal of certain pre-arranged trades or intentional crosses that qualify as a “designated trade”<sup>9</sup> under the Universal Market Integrity Rules (“UMIR”) and which involve a distribution to clients of a significant block of stock of a listed security.

## Background

Effective May 16, 2008, UMIR was amended to provide a mechanism to cap the obligation of a Participant, when acting as principal or agent, to fill better-priced orders in the case of designated trades<sup>10</sup> to those orders included in the “disclosed volume”.

<sup>11</sup> To ensure that the better-priced orders included in the disclosed value were protected, the amendments provided for the introduction of a “bypass order”<sup>12</sup> marker that would be attached to orders entered to meet best price obligations. The use of the bypass order marker would ensure that the order would not interact with hidden orders, undisclosed portions of iceberg orders or Special Terms Order or other specialty orders.<sup>13</sup> In order to provide marketplaces, Participants and service providers with time to amend their systems to accommodate the bypass order, implementation of this portion of the amendments was deferred until June 1, 2009.<sup>14</sup>

These amendments to UMIR eliminated the “uncertainties” surrounding the ability of a Participant to “move the market” amidst the presence of orders with partial or fully undisclosed volume. On July 18, 2008, the Toronto Stock Exchange (“TSX”) repealed its wide distribution rules<sup>15</sup> that permitted a dealer to “take-on” a principal trade “off-marketplace” in connection with “unwinding” trades to at least 25 separate client accounts. The wide distribution rules capped the amount of “interference” that the execution of the unwinding trades might encounter from “iceberg orders” and possibly certain Special Terms Orders and other “specialty” orders. The TSX noted that “...the wide distribution rules are no longer necessary as a result of the UMIR Amendments because the combination of bypass orders and designated trades essentially duplicates the functionality currently provided through the TSX wide distribution mechanism.”<sup>16</sup>

Under the wide distribution rules of the TSX, a dealer could make, subject to specific conditions, a pre-arranged trade<sup>17</sup> of a significant block of stock whereby the Participant would execute the “take-on” principal trade “off-marketplace” with the understanding that the Participant would immediately “distribute” the block of stock to its clients by means of an “on-marketplace” principal-client trade (with specific client allocations conducted by journal entry). While the amendments to UMIR made various aspects of the wide distribution rules of the TSX redundant (particularly those provisions that capped “interference” from certain types of orders) other aspects, namely the provisions that provided for the principal take-on trade to occur “off-marketplace” and the mechanism for the facilitation of “distribution” of large blocks of stock, were not addressed. As such, the following guidance

<sup>9</sup> A “designated trade” is defined as an intentional cross or pre-arranged trade of a security made at a price that:

- would not be less than the lesser of:
  - 95% of the best bid price, and
  - 10 trading increments less than the best bid price; and
- would not be more than the greater of:
  - 105% of the best ask price, and
  - 10 trading increments more than the best ask price.

The definition does not impose any minimum volume or value requirements in order for an intentional cross of pre-arranged trade to qualify as a “designated trade”.

<sup>10</sup> For details of the various amendments to UMIR, see Market Integrity Notice 2008-008 – *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008).

<sup>11</sup> The term “disclosed volume” is defined as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

<sup>12</sup> Bypass Order means an order that is:

- part of a designated trade; or
- to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy

and that is entered on a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order.

<sup>13</sup> UMIR defines a number of “specialty” types of orders such as: a Basis Order; a Call Market Order; a Market-on-Close Order; an Opening Order; a Special Terms Order; or a Volume-Weight Average Price Order.

<sup>14</sup> IIROC Notice 09-0034, Rules Notice – Guidance Note – UMIR – *Implementation Date for the Marking of Bypass Orders* (February 3, 2009).

<sup>15</sup> TSX Rule Book, Rule 4-103 – Wide Distributions.

<sup>16</sup> TMX Group Notice to Participating Organizations and Members 2008-030 (July 18, 2008).

<sup>17</sup> A “pre-arranged trade” is defined as a trade for which the terms of the trade were agreed upon prior to the entry of either the order to purchase or to sell on a marketplace by the persons entering the orders or by the persons on whose behalf the orders are entered.

sets out the expectations of IIROC with respect to the procedures for the execution of certain designated trades that involve a Participant acting as principal. It is important to note that while the wide distribution rules were applicable to the TSX, the procedures described in this Guidance Note are applicable for the conduct of an unwinding trade on any Canadian marketplace.

#### Questions and Answers

The following are specific questions respecting the procedures for the execution of certain designated trades by a Participant and the response of IIROC to each question:

**1. With the elimination of the wide distribution rules of the TSX, is a Participant still able to undertake, as principal, the “distribution” to its clients of a significant block of a listed security?**

- Yes. In certain circumstances, a Participant may agree to take on a significant block of stock from a shareholder of a listed issuer at a discount to the prevailing market price with the intention of immediately attempting to sell the stock to its clients.

The wide distribution procedures of the TSX were designed to facilitate the sale of a large block of stock by a Participant to its clients in an efficient manner.<sup>18</sup> IIROC is of the view that the efficient distribution of large blocks of stock continues to be a laudable goal. As such, IIROC may provide an exemption from Rule 6.4 of UMIR to allow a Participant to complete a principal take-on trade “off-marketplace” if the trade is made in furtherance of a “distribution” to clients. Unlike the wide distribution rules of the TSX, IIROC does not require a minimum volume or value for a transaction to qualify for an “off-marketplace” exemption in accordance with Rule 6.4 of UMIR. In the view of IIROC, an “off-marketplace” exemption is warranted if the Participant, acting as principal, assumes the “economic risk” of the transaction with the “intent to distribute” the stock to its clients.

Under the wide distribution rules of the TSX, the practice developed that wide distributions were generally undertaken at the close or the opening of trading. The introduction of the amendments to UMIR regarding “designated trades” permits these types of distributions to be undertaken at any time during the trading day on any marketplace.

**2. What steps must a Participant take to facilitate an “off-marketplace” take-on trade in a listed security in furtherance of a “distribution” to clients?**

Before a Participant agrees to the “take-on” trade, the Participant must apply to IIROC in writing for an exemption under Rule 6.4(b) of UMIR.<sup>19</sup> In the normal course, IIROC will provide an exemption to allow the principal “take-on” leg of the “distribution” to be executed “off-marketplace” if:

- the size of the “take-on” trade is such that the trade could not be completed on a marketplace without being disruptive of the market;
- the price of the “take-on” trade varies from the intended price of the “distribution” (or the highest price in a range of possible distribution prices if the price of the distribution has not been finally determined) by an amount that is not more than the usual agency commission that would be charged by that Participant to that client for an order of the same size;<sup>20</sup>
- the Participant intends to “distribute” the block of shares to its clients and does not already hold client orders for a significant proportion of the block; and

<sup>18</sup> Prior to their repeal, the wide distribution rules of the TSX required that a transaction meet several additional conditions, including:

- timely public announcement of the wide distribution;
- a minimum transaction value of at least \$25,000,000;
- distribution to 25 or more clients, with no one client’s allocation being more than 50% of the total allocation; and
- completion of the wide distribution by the end of the fourth trading session following the announcement of the wide distribution.

<sup>19</sup> For a general description of the procedures to be followed and the information to be provided in order to obtain an exemption pursuant to Rule 6.4(b), see Market Integrity Notice 2005-020 – *Guidance – Obtaining a Trading Exemption or Rule Interpretation* (June 13, 2005). In addition to the information set out in Market Integrity Notice 2005-020, a Participant seeking an exemption for an “off-marketplace” trade related to a “distribution”, should submit to IIROC the following information:

- the price at which the “take-on” trade will be executed (or the price range if the take-on price has not been determined);
- the intended price of the “distribution” (or the highest price in a range of possible distribution prices if the price of the distribution has not been determined);
- a description of the “marketing efforts” that the Participant has undertaken;
- the number of client accounts that have been solicited or which the Participant intends to solicit to purchase the securities;
- the number and volume of solicited client orders the Participant holds at the time of the proposed “take-on” trade; and
- the name of the counterparty to the “take-on” trade.

Counsel in Market Regulation Policy may be contacted by telephone or in writing as follows:

- Tim Ryan – 416-646-7266 or by email at [tryan@iiroc.ca](mailto:tryan@iiroc.ca); or
- Naomi Solomon – 416—646-7280 or by email at [nsolomon@iiroc.ca](mailto:nsolomon@iiroc.ca); or
- Kevin McCoy – 943-4659 or by email at [kmccoy@iiroc.ca](mailto:kmccoy@iiroc.ca).

<sup>20</sup> In essence, this condition ensures that the request for an exemption to execute the trade on a marketplace is not an attempt to avoid the application of Rule 7.5 of UMIR dealing with recorded prices.

- the Participant agrees that to the extent that the distribution price is more than the greater of 5% or 10 trading increments lower than the prevailing market price at the time the distribution trades are to be executed, the Participant will move the market in accordance with the requirements set out in Part 2 of Policy 2.1 of UMIR to within 5% or 10 trading increments of the distribution price before executing the designated trade.

Any exemption granted by IIROC applies only to the transaction described in the application for exemption.

**3. Are there any circumstances under which IIROC would not provide an “off-marketplace” to facilitate a “distribution” of a block of securities?**

Yes. IIROC generally will not grant an “off-marketplace” exemption if, at the time of the proposed take-on trade, the Participant already holds client orders for a significant proportion<sup>21</sup> of the block. In these circumstances, IIROC believes that it is more appropriate for the transaction to be completed “on-marketplace” with the Participant acting as agent for both vendor and purchasers. However, it is acceptable for a Participant to have received “indications of interest” from clients to participate in the distribution.

**4. How is a Participant expected to execute the “unwinding” trade?**

After the negotiation of the take-on trade, the Participant would market the “distribution” of the block to its clients. The unwinding trade may be executed concurrent with or following the completion of the take-on trade. Unless IIROC otherwise agrees, IIROC expects the unwinding trade to be executed on a marketplace later that trading day. IIROC will permit the unwinding trades to be recorded on a marketplace in a single principal-client trade for the entire block of stock at the distribution price. The single trade will be permitted even in circumstances where the Participant has not received client orders for the full amount of the block. After the unwinding trade has been “printed”, the Participant may allocate the securities to clients by means of journal entry for the balance of that trading day.<sup>22</sup>

**5. What is a Participant expected to do if not all of the unwinding trade is allocated to clients by the end of the trading day?**

If a Participant has not allocated all the securities that were subject of the unwinding trade to clients by the end of the trading day, IIROC expects that the Participant will take the unallocated securities into its inventory account and file with IIROC a “Regulatory Marker Correction Form” setting out, among other things, the number of securities marked as a trade to a client which have been taken into inventory.<sup>23</sup> To the extent that a Participant has taken unallocated securities into inventory, any future sales of the securities must be completed “on-marketplace” as a principal trade that is subject to all of the provisions of UMIR, including Rule 5.2 (best price).

**6. Is the unwinding trade subject to the “best price” obligation under Rule 5.2 of UMIR?**

Yes. The execution of the unwinding trade is subject to the Participant making reasonable efforts to trade with better-priced orders disclosed in a consolidated market display. In order to limit interference from better-priced orders not included in the “disclosed volume” on the marketplace on which the unwinding trade is to be executed, the Participant would mark the unwinding trade with the “bypass order” marker. However, if the Participant had not “fully allocated” the unwinding trade at the time of its execution, the Participant may wish to interact with the undisclosed volume and Special Terms Orders in order to reduce the amount of stock that the Participant might potentially have to take into inventory and, in these circumstances, the Participant may decide not to mark the unwinding trade as a “bypass order”.

**7. Is a Participant required to mark any orders entered on other marketplaces for “displacement” purposes as “bypass”?**

No, but IIROC recommends the use of the bypass marker on orders sent to displace better-priced orders on other protected marketplaces to avoid interference from “undisclosed” liquidity. For example, if a Participant sends an order to a protected marketplace<sup>24</sup> to trade with the “disclosed volume” on that marketplace in compliance with the “best price” obligation under Rule 5.2 of UMIR and does not mark the order “bypass”, the Participant takes on the risk that the order

<sup>21</sup> The determination of what constitutes a “significant proportion” is a fact specific analysis that takes into account various factors, including, but not limited to, the liquidity profile of the security and recent trading patterns in the security. While IIROC retains sole discretion in determining what constitutes a “significant proportion” for the purposes of Rule 6.4(b), IIROC will generally consider client orders that account for more than 25% of the volume of the distribution to be a “significant proportion”.

<sup>22</sup> For this purpose, IIROC considers the end of the “trading day” to be the close of trading on the last of the marketplaces on which the security trades and which provides pre-trade transparency. In the context of designated trade distribution to clients, IIROC will also take into account the liquidity and volatility profile of the particular securities when determining whether the “take-on” price satisfies this requirement.

<sup>23</sup> Reference should be made to IIROC Rules Notice 08-0033 – Guidance Note – *New Procedures For Order Marker Corrections* (July 30, 2008) for guidance on the procedures for reporting order marker corrections and the use of the web-based “Regulatory Marker Correction Form” that is available on the IIROC website at [www.iroc.ca](http://www.iroc.ca). Permitting the unwinding trade to be marked “principal-client” combined with the submission of a Regulatory Marker Correction Form via a secure web-based system to the extent that the unwinding trade has not been fully-allocated to clients, prevents information leakage on how much of the block of securities was taken into inventory by the Participant.

<sup>24</sup> Presently, the TSX, TSX Venture Exchange, CNSX, Pure, Alpha, Chi-X and Omega are considered to be a “protected marketplace”. Reference is made to the definition of a “protected marketplace” in Rule 1.1 of UMIR.

will interact with the undisclosed volume, including hidden orders and the undisclosed portion of iceberg orders and Special Terms Orders. To the extent that not all of the orders included in the “disclosed volume” are filled, the Participant continues to have a displacement obligation. For greater certainty, notwithstanding that a Participant enters an order on a particular protected marketplace that is of a sufficient volume and is at price that will fill the disclosed volume, to the extent that the order is not marked “bypass” and the order encounters “interference” from undisclosed orders on the marketplace, the Participant will not have met its obligations under Rule 5.2.

**Guidance:** *The following is the relevant text of IIRO. 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>25</sup> and “best price”<sup>26</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>27</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>25</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>26</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>27</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:** Rule 5.2 was considered ***In the Matter of Gerald Douglas Phillips ("Phillips") (February 26, 2004) SA 2004-002***. See Disciplinary Proceedings under 2.1

**Proposed Amendments:** *For information on the current proposed amendments for Rule 5.2, refer to IIROC Notice 09-0328 – Request for Comments – UMIR – Provisions Respecting Implementation of the Order Protection Rule (November 13, 2009) which includes amendments proposing to repeal Rule 5.2 and Policy 5.2. These amendments remain subject to the approval by the applicable securities commissions.*