

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.
 - (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.

- (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.

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.

Defined Terms: 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”

Related Provisions: UMIR 6.4(d) and (e), UMIR 10.11(3)

Regulatory History: 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 remain subject to the approval by the applicable securities commissions. Reference should be made to Market Integrity Notice 2008-009 – Request for Comments – Provisions Respecting the "Best Price" Obligations (May 16, 2008) which included amendments to:

- 1 repeal subsection (3) of Rule 5.2; and
- 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.

Market Integrity Notice: 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.

Market Integrity Notice: 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.

Market Integrity Notice: *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.

Market Integrity Notice: 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 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.

Market Integrity Notice: 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 CNQ (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.

Market Integrity Notice: 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 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 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”.

Market Integrity Notice: 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:

- Market Integrity Notice 2008-008 – Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008); and
- 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:

- Market Integrity Notice 2008-008 – Amendment Approval – Provisions Respecting “Off-Marketplace” Trades (May 16, 2008) (the “Off-Marketplace” Amendments); and
- 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.¹ Depending upon the final form of this trade-through regime, conforming changes may be required to

¹ 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).

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.

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”

² 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).

³ 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).

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 ATSs and that each of the marketplaces qualify as a “protected marketplace”.²

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?

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.³

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 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).

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.