

7.5 Recorded Prices

- (1) No Participant acting as agent shall execute a transaction through a marketplace in which the price recorded on the marketplace is:
 - (a) in the case of a purchase by a client, higher than the net cost to the client; or
 - (b) in the case of a sale by a client, lower than the net proceeds to the client.

- (2) No Participant acting as principal shall execute a transaction through a marketplace in which the price recorded on the marketplace is:
 - (a) in the case of a sale to a client,
 - (i) higher than the net cost to the client, or
 - (ii) lower than the net cost to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size; and
 - (b) in the case of a purchase from a client,
 - (i) lower than the net proceeds to the client, or
 - (ii) higher than the net proceeds to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size.

POLICY 7.5 - RECORDED PRICES

If the price of:

- *an internal cross or intentional cross to be recorded on a marketplace; or*
- *a trade that has been executed outside of Canada that is to be reported to a marketplace in accordance with clause (e) of Rule 6.4,*

has been agreed to in a foreign currency and the trade is to be recorded or reported in Canadian currency, the price in foreign currency 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 at the time of the internal cross, intentional cross or execution of the trade outside of Canada. If the trade price converted into Canadian currency falls between two trading increments for the marketplace on which the cross is to be entered or the trade reported, the price shall be rounded to the nearest trading increment. A Participant shall maintain with the record of the order the exchange rate used for the purpose of entering the internal cross or intentional cross or reporting the foreign trade 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 Rule 10.11(3).

Defined Terms: NI 21 101 section 1.1 – “order”

UMIR section 1.1 – “foreign organized regulated market”, “intentional cross”, “internal cross”, “Market Regulator”, “marketplace”, “net cost”, “net proceeds”, “Participant” and “trading increment”

UMIR section 1.2(2) – “transaction”

Related Provisions: UMIR 6.4, 10.11(3)

Regulatory History: Effective May 16, 2008, the applicable securities commissions approved amendments to Rule 7.5 to:

1. replace subsection (2) or Rule 7.5 which, prior to that date, provided:
 - (1) No Participant acting as principal shall execute a transaction through a marketplace in which the price recorded on the marketplace is:
 - (a) in the case of a sale to a client, lower than the net cost to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size; and
 - (b) in the case of a purchase from a client, higher than the net proceeds to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size.
2. add Policy 7.5

Guidance: The following is the text of the Market Integrity Notice 2004-002 issued on January 28, 2004 under the heading “**Net Prices Trades**”.

Recently, the question has arisen as to how a Participant should treat a “net price trade” for the purposes of the Universal Market Integrity Rules (“UMIR”). In this case, a “net price trade” involves a Participant (the “Originating Participant”) who arranges with another Participant (the “Executing Participant”) to execute a client order on behalf of the Originating Participant in circumstances where the Executing Participant guarantees a price for the securities to the Originating Participant. An example of such a trade is set out below:

An Originating Participant instructs the Executing Participant to sell 1,000 shares. The Originating Participant at the request of its client intends to confirm the trade execution to their client as a net price. To facilitate this net price confirmation the Executing Participant would purchase the 1,000 shares into a principal inventory account at \$0.95 from the Originating Participant. The Executing Participant would then sell the 1,000 shares as principal into the marketplace at \$1.00.

If the client’s order is executed in the manner described above, the transaction is not a “jitney order” as the term is defined in UMIR. The Executing Participant, in guaranteeing a specific price for the purchase or sale of the security, is undertaking a principal “take-on” trade which should be executed on a marketplace in accordance with the provisions of Rule 6.4. The obligations established in both Rule 8.1 (Client-Principal Trading) and Rule 5.1 (Best Execution) will apply to this initial take-on trade. In addition to executing the take-on trade on a marketplace (“printing”), the Executing Participant is also obliged to print the “unwinding” trade on a marketplace, subject to being able to complete the trade “off-marketplace” in accordance with one of the enumerated exceptions set out in Rule 6.4 of UMIR.

In completing the transaction as a “net price trade”, the Executing Participant is reminded of the requirements under Rule 7.5 that no Participant acting as principal shall execute a transaction through a marketplace in which the price recorded on the marketplace is:

- (a) in the case of a sale to a client, lower than the net cost to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size; and
- (b) in the case of a purchase from a client, higher than the net proceeds to the client by more than the usual agency commission that would be charged by that Participant to that client for an order of the same size.

It should be noted that the transaction described above could be executed as a jitney transaction where the Executing Participant marks the order as a jitney order for the Originating Participant. However, in such a situation, the Executing Participant can not guarantee a price to the Originating Participant. Instead, the Executing Participant will be obliged to provide the Originating Participant with written confirmation of the trade in accordance with applicable securities legislation, including providing sufficient information to allow the Originating Participant to determine the commission charged by the Executing Participant.

Guidance: The following is the relevant text of Market Integrity Notice 2005-034 issued on October 28, 2005 under the heading “**Guidance – Risk-Bid Tenders – Trading a Portfolio of Securities as Principal**”.

Summary

This Market Integrity Notice provides guidance on the price restrictions imposed by the Universal Market Integrity Rules (“UMIR”) on a Participant when executing and printing trades resulting from a risk-bid tender. In particular, guidance is provided on:

- the obligation to move the prevailing market prices if the transactions can not be executed within the applicable price restrictions; and
- the interpretation of “usual agency commission” in the context of a risk-bid tender.

Definition of a “Risk-Bid Tender”

A risk-bid tender occurs when a Participant, acting as principal, is asked by a client to provide a set price for the purchase or sale of a portfolio of securities. One or more Participants may be asked to bid as principal on the transaction. The securities which are included in the portfolio trade may be fully disclosed or the request may be for a bid on a “blind” basis. In some cases, the Participant will be asked to provide a price for each security in the portfolio.

For the purposes of a risk-bid tender, a “portfolio trade” is a trade involving the simultaneous purchase and sale of at least 10 listed or quoted securities, provided that no single security comprises more than 20% of the total value of the transaction. Under Rule 11.1 of UMIR, the Investment Industry Regulatory Organization of Canada (“IIROC”) may grant an exemption for a particular transaction that fails to meet the requirements for the minimum number of securities or the maximum percentage of value to be considered a “portfolio trade” if IIROC believes that such a determination is not prejudicial to the public interest or to the maintenance of a fair and orderly market. For example, IIROC may grant an exemption if the risk-bid tender involves less than 10 securities but no security comprises more than 20% of the total value of the transaction or if the risk-bid tender involves 10 or more securities but one of the securities comprises slightly more than 20% of the total value of the transaction.

Restrictions on Recorded Prices

Rule 7.5(2) of UMIR provides that a Participant may not execute a principal trade on a marketplace if the recorded price is:

- in the case of a sale to a client, lower than net cost to the client by more than the usual agency commission for a client order of that size, or
- in the case of a purchase from a client, higher than the net proceeds to the client by more than the usual agency commission for a client order of that size.

UMIR defines “net cost” as the amount by which the sum of the total cost of the trade on the purchase of securities based on the purchase price on the marketplace and any commission charged to the client by the Participant exceeds the amount of any allowance, discount, rebate and any other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person.

The term “net proceeds” is defined as the amount by which the sum of the total proceeds of the trade on the sale of securities based on the sale price on the marketplace and the amount of any allowance, discount, rebate and other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person exceeds any commission charged to the client by the Participant.

Usual Agency Commission in a Risk-Bid Tender

The Investment Industry Regulatory Organization of Canada (“IIROC”) expects that the amount of the “commission” that would be charged by a Participant in a risk-bid tender will be greater than the “usual agency commission for an order of the same size” due to the additional risk assumed by the Participant in agreeing to act as principal in relation to the transaction (the “risk-bid premium”). If a risk-bid portfolio is presented to the Participant as a blind portfolio, IIROC expects the applicable risk-bid premium to be greater than the risk-bid premium for a fully-disclosed portfolio.

Overall, in complying with Rule 7.5(2) of UMIR in the context of a portfolio trade in a risk-bid tender, the Participant can not provide for a “negative commission”. A Participant who undertakes a “risk-bid” transaction must execute:

- the sales to the client at an aggregate net cost to the client which is not greater than the aggregate recorded prices of the portfolio by more than the aggregate usual agency commission for orders of the same size (including an appropriate risk-bid premium); or
- the purchases from the client for aggregate net proceeds to the client which are not less than the aggregate recorded prices of the portfolio by more than the aggregate usual agency commission for orders of the same size (including an appropriate risk-bid premium).

In the context of a risk-bid tender, if the parties agreed upon a single price for the portfolio the Participant must calculate the aggregate net cost or net proceeds for the entire portfolio. The Participant must then compare the aggregate net cost or net proceeds of the portfolio to the aggregate recorded price for the execution of the portfolio. The difference must not be greater than the aggregate usual agency commission for orders of the same size, with an allowance made for an appropriate risk-bid premium. If the bid is structured such that there is a price agreed upon for each security comprising the portfolio, the Participant must calculate the net cost or net proceeds for each particular security included in the portfolio. The Participant must then compare the net cost or net proceeds of each security to the price for each security as recorded on the marketplace. The difference must not be greater than the usual agency commission that would be charged in relation to that individual security if that security was traded on its own outside of the portfolio (with an allowance made for an appropriate risk-bid premium).

“Moving the Market” to Execute a Risk-Bid Tender

If the agreed aggregate value of the portfolio differs from the aggregate value of the portfolio recorded by the marketplace by more than the aggregate amount of the usual agency commissions for orders of the same size (including the risk-bid premium), then the Participant, in the course of executing the trades on a marketplace, must move the market prices of one or more of the securities comprising the portfolio in an orderly manner. The Participant must move the market such that the difference between the agreed upon aggregate value of the portfolio and the aggregate value of the portfolio as recorded on the marketplace does not exceed the aggregate usual agency commission that would be charged on such trades (including the risk-bid premium).

A Participant is entitled to utilize its discretion in determining:

- the particular securities comprising the portfolio for which the market price will be moved; and
- the amount of price movement for any individual security comprising the portfolio.

All executions must be made at prices which are in compliance with UMIR requirements. In moving the price of any security, the Participant must be aware of the provisions of Part 2 of Policy 2.1, which currently sets out guidelines relating to moving the market to execute a trade. This Part provides that any Participant or Access Person desiring to move the market for a security more than the prescribed amount (more than \$1 for a security selling below \$20 or more than \$2 for a security selling for \$20 or more) must obtain the prior approval of a Market Regulator and must move the prevailing market prices in an orderly manner in accordance with directions from a Market Integrity Official.

One of the proposed amendments to UMIR described in Market Integrity Notice 2005-012 – Request for Comments – Provisions Respecting “Off-Marketplace” Trades (April 29, 2005) would replace the current dollar thresholds for determining the obligation to move the market with a sliding scale. If the price would move the market the greater of 10 price increments and either 5% above the best ask price or 5% below the best bid price, the Participant would be required to enter orders over a period of not less than 5 minutes in order to move the market in an orderly fashion. In keeping with the notion of a sliding scale, a period of not less than 10 minutes to “move the market” would be required if the price movement is more than 10%. The proposed amendments would also limit the obligation to a Participant or Access Person entering a pre-arranged trade or intentional cross (rather than “any” trade as is currently the requirement).

Example

The following example is provided only for guidance on the interpretation of the application of the UMIR provisions to a risk-bid tender.

If a client asked a Participant to purchase the portfolio of securities outlined in the following table, the aggregate of the “printed” or recorded price can not be more than \$2,645 higher than the agreed price paid to the client. In this example, \$2,645 is the sum of the aggregate “usual commission” that the Participant would charge for the individual trades (taking into consideration the risk-bid premium). If the prevailing markets were such that the portfolio could not be printed at an aggregate value at or between \$835,000 (the aggregate agreed price) and \$837,645 (the aggregate agreed price plus the aggregate usual agency commission including the risk-bid premium), the Participant would be obligated to move the market price for one or more of the securities such that the aggregate of the recorded prices for the portfolio would fall within the acceptable range.

Security	Order Size in Portfolio	Per Share			Total		
		Agreed Price	Recorded Marketplace Price	Usual Agency Commission (including Risk-Bid Premium)	Agreed Price	Recorded Marketplace Price	Usual Agency Commission (including Risk-Bid Premium)
ABC	10,000	\$10.00	\$10.05	\$0.03	\$100,000	\$100,500	\$300
DEF	500	\$20.00	\$19.90	\$0.10	\$10,000	\$9,950	\$50
GHI	7,000	\$15.00	\$15.01	\$0.04	\$105,000	\$105,070	\$280
JKL	3,000	\$10.00	\$10.00	\$0.05	\$30,000	\$30,000	\$150
MNO	5,000	\$5.00	\$5.05	\$0.05	\$25,000	\$25,250	\$250
PQR	10,000	\$15.00	\$15.05	\$0.03	\$150,000	\$150,500	\$300
STU	12,500	\$10.00	\$9.99	\$0.03	\$125,000	\$124,875	\$375
VWX	10,000	\$15.00	\$14.98	\$0.03	\$150,000	\$149,800	\$300
YZA	8,000	\$5.00	\$5.00	\$0.03	\$40,000	\$40,000	\$240
BCD	20,000	\$5.00	\$5.05	\$0.02	\$100,000	\$101,000	\$400
Aggregate for Portfolio					\$835,000	\$836,945	\$2,645

Guidance: The following is the relevant text of Market Integrity Notice 2006-005 issued on February 10, 2006 under the heading “Guidance – Guarantee by a Participant of a Trade Price”.

Summary

This Market Integrity Notice provides guidance on the procedures to be followed by a Participant who wishes to:

- guarantee as principal at the time of the acceptance of a client order, the execution of that client order at a trade price that will be determined by reference to an event later that trading day; and/or
- enter into a profit sharing arrangement with the client if the Participant, as a result of hedging activities, “outperforms” the guaranteed price.

Restrictions on Recorded Prices

Rule 7.5(2) of the Universal Market Integrity Rules ("UMIR") provides that a Participant may not execute a principal trade on a marketplace if the recorded price is in the case of a:

- sale to a client, lower than net cost to the client by more than the usual agency commission for a client order of that size; or
- purchase from a client, higher than the net proceeds to the client by more than the usual agency commission for a client order of that size.

Rule 1.1 of UMIR defines "net cost" as the amount by which the sum of the total cost of the trade on the purchase of securities based on the purchase price on the marketplace and any commission charged to the client by the Participant exceeds the amount of any allowance, discount, rebate and any other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person.

The term "net proceeds" is defined as the amount by which the sum of the total proceeds of the trade on the sale of securities based on the sale price on the marketplace and the amount of any allowance, discount, rebate and other benefit with a monetary value that is allowed to the client on the trade by the Participant or any other person exceeds any commission charged to the client by the Participant.

In no event, may a Participant provide a "negative commission" to a client. A negative commission would occur if:

- in the case of a client buy order, the recorded price is higher than the net cost to the client; and
- in the case of client sell order, the recorded price is lower than the net proceeds to the client

Guaranteeing the Price of a Trade

Participants may, throughout a trading day, be asked by a client to accept as principal an order from a client to trade later on that trading day at a guaranteed price that will be determined by a future event. The Participant may be asked to guarantee a trade later on that trading day at:

- the closing price of a security on a particular marketplace;
- a volume weighted average price ("VWAP") calculated for a specified period during a trading day on one or more identified marketplaces; and
- any other benchmark price which has been approved of by the Investment Industry Regulatory Organization of Canada ("IIROC") prior to the Participant agreeing to guarantee the trade price.

In executing the trade on a marketplace, the price which is guaranteed by the Participant may vary from the price which is recorded on that marketplace provided that in the case of a:

- sale to a client, the recorded price is not lower than net cost to the client by more than the usual agency commission for a client order of that size; or
- purchase from a client, the recorded price is not higher than the net proceeds to the client by more than the usual agency commission for a client order of that size.

If the guaranteed price would vary from the price that would be recorded on a marketplace by more than the amount permitted by Rule 7.5, the Participant has the obligation to move the market to a price that will comply with Rule 7.5 in order to complete the trade.

Profit Sharing

If a Participant agrees to guarantee a trade price to a client, the Participant would ordinarily then go into the market and, throughout the trading day, attempt to hedge its principal position. In undertaking this hedge activity, the average price achieved by the Participant may be better than the price guaranteed to the client. IIROC is of the view that a Participant may agree to share any resulting profit to the extent that the average price of:

- purchases by the Participant to hedge its position are less than the price guaranteed to the client on the client's purchase from the Participant; and
- sales by the Participant to hedge its position are more than the price guaranteed to the client on the client's sale to the Participant.

Provided such profit sharing arrangement is reasonable, IIROC is prepared to accept that the amount of the profit shared with the client is within "the usual agency commission of a client order of that size". IIROC is prepared to accept that a sharing of up to 50% of any profit will be reasonable and would not constitute an attempt by the Participant to provide a "negative commission" or to otherwise avoid the application of Rule 7.5(2). The profit sharing arrangement can not be designed in such a fashion as to be an attempt to achieve a trade price with the client that would not otherwise be permitted by the Rule 7.5 in accordance with the guidance set out in this Market Integrity Notice.

Notification to IIROC

Immediately upon a Participant agreeing to guarantee the price of a trade to a client, the Participant must provide written notice to IIROC. If a VWAP is to be guaranteed, the calculation period may not commence earlier than the time that the notice is provided to IIROC. If any types of trades are to be excluded from the calculation of the VWAP, those must be identified in the notice provided to IIROC.

The written notice must indicate:

- *the security;*
- *whether the trade will be a purchase or sale by the Participant;*
- *the volume of the trade;*
- *the method of determining the price which the Participant will be guaranteeing (for example:*
 - *the closing price of a security on a particular marketplace,*
 - *a VWAP calculated for a specified period during a trading day on one or more identified marketplaces and excluding specified types of trades, and*
 - *any other benchmark price agreed to between the Participant and client);*
- *the details of any profit sharing arrangement to be entered into between the Participant and the client with respect to the trade; and*
- *the time and the marketplace on which the trade will be executed.*

The written notice should be sent to IIROC at:

Market Regulation, Eastern Region by e-mail addressed to surveillance@iroc.ca or by fax to 416.646.7261; or

Market Regulation, Western Region by e-mail addressed to surveillancewest@iroc.ca or by fax to 604.602.6986.

Prior Approval of IIROC

If the Participant and client intend to:

- *use a benchmark price other than the closing price or a VWAP; or*
- *have a profit sharing arrangement under which more than 50% of any profit will be shared with the client,*

IIROC must approve of the use of the benchmark price or the profit sharing arrangement PRIOR to the Participant and the client agreeing to the trade.