

PART 8 – PRINCIPAL TRADING

8.1 Client-Principal Trading

- (1) A Participant that receives a client order for 50 standard trading units or less of a security with a value of \$100,000 or less may execute the client order against a principal order or non-client order at a better price provided the Participant has taken reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market at that time.
- (2) Subsection (1) does not apply if the client has directed or consented that the client order be:
 - (a) a Call Market Order;
 - (b) an Opening Order;
 - (c) a Market-on-Close Order;
 - (d) a Volume-Weighted Average Price Order;
 - (e) a Basis Order; or
 - (f) a Closing Price Order.
- (3) Subsection (1) does not apply if the client order has been entered directly by the client of the Participant on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display and the director, officer, partner, employee or agent of the Participant who enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order.

POLICY 8.1 – CLIENT PRINCIPAL TRADING

Part 1 - General Requirements

Rule 8.1 governs client-principal trades. It provides that, for trades of 50 standard trading units or less, a Participant trading with one of its clients as principal must give the client a better price than the client could obtain on a marketplace. A Participant must take reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market. If the security is traded on more than one marketplace, the client must receive, when the Participant is buying, a higher price than the best bid price, and, if the Participant is selling, the client must pay a lower price than the best ask price.

For client-principal trades greater than 50 standard trading units, the Participant may do the trade provided the client could not obtain a better price on a marketplace in accordance with the best execution obligations under Rules 5.1 and 5.2. The Participant must take reasonable steps to ensure that the best price is obtained and the price to the client is justified by the condition of the market.

Part 2 – Legal Aspects of the Client-Principal Relationship

A Participant owes a fiduciary duty to its clients. This duty and investors' trust in our Participants are fundamental to investor confidence in the integrity of the market. In the Market Regulator's view, this relationship of trust arises where there is reliance by the client on the Participant's expertise in securities matters. From the point of view of both the client and the Participant, the fiduciary responsibility exists regardless of the legal form of the transaction. In other words, an investor who relies on the expertise of a Participant expects the Participant to act in the investor's best interests regardless of whether the Participant is acting as agent or as principal. The legal framework underpinning client-principal trades was stated in the 1965 report of the Royal Commission on the Windfall Co. scandal:

An agent must conduct himself so that the interest of the person in whose behalf he is acting is not brought into conflict with his personal interest. An agent may not make for himself any deal which could have been made for his client within the scope of the client's instructions; if he does, he is assumed to have been acting on his client's behalf and the client is entitled to the benefit of the transaction. An agent must disclose to the client any fact known to the agent which would be likely to operate on the client's judgment. An agent may not, in connection with his client's business, make a secret profit for himself.

These restrictions flow from the recognition of the serious conflicts inseparable from the agency relationship, and from a corresponding recognition that every such conflict must be resolved in favour of the client. A principal trade may be subject to attack if it appears that the Participant did not act to the best advantage of its client even if the Participant complies with the technical requirements of the Rule. For example, if the principal account profited from the trade by unwinding the position again soon after the principal trade was made, or if the Registered Representative receives a higher commission than for agency transactions of a similar size involving similar securities, the Participant will find it more difficult to justify its actions. Participants should obtain their own legal advice as to the propriety of their client-principal trading practices. The following are considerations in any client-principal trade:

Consent — *At common law, the prior informed consent of the client must be obtained before the agent may act as principal. This is impractical in the context of trading securities on a marketplace, where at the time of receipt of the client's order the Participant will likely not know who will be on the other side. If the Participant, through the Registered Representative or other employee knows that the firm or a non-client of the firm will or probably will take the other side, the client's consent should be obtained. In particular, if the Registered Representative wishes to take the other side of the trade with their client, the client must be informed and consent to the trade in advance. Such consent must be specific to that trade and cannot be in a general consent to any future trades with the Registered Representative. As promptly as possible following the execution of a principal trade, the client should be advised that all or part of the securities taken or supplied were from an account in which the Participant or a non-client of the Participant has an interest. This advice would form part of the usual discussion that occurs when a Registered Representative confirms to the client that the client's order has been filled. In addition, the written confirmation must disclose that the order has been filled in a principal transaction.*

Nature of the Client — *Some clients are in greater need of protection from the potential conflict of interest in client-principal trades. The onus on the Participant usually will be reduced if the client is a fully informed institutional client with regard to the state of the market. Sophisticated institutional clients are able to judge whether a specific net price is appropriate in the context of the market. If there was no prior discussion with the client concerning executing the client's order in a client-principal trade, or if there are no standing instructions on handling of orders, the Participant must judge whether any steps need be taken, taking into account the size of the order and other circumstances, to ensure that a better price is not available. To a large degree this will depend on the depth of the market and normal liquidity of the security.*

Suitability — *Compliance with the client-principal trading rules does not relieve a Participant of its suitability and "know your client" obligations. As with any other trade, Participants must ensure that the trade is suitable for the client, even if the best possible price has been obtained.*

Facilitation Accounts — *The rules do not apply to a client-principal trade where the inventory account was used solely to facilitate the execution or confirmation of a client order (for example, an inventory accumulation account used to give an institutional client a single average-price confirmation). In these cases, the client is the beneficial owner of the position in the inventory account at all times.*

Refusal by Client — *Participants should ensure that procedures are in place to identify orders that should not be effected on a principal basis. This is necessary to deal with situations where clients notify a Participant that they do not consent to principal trading generally or to particular principal trades.*

Defined Terms: UMIR section 1.1 – “Basis Order”, “better price”, “Call Market Order”, “client order”, “Closing Price Order”, “consolidated market display”, “employee”, “Market-on-Close Order”, “marketplace”, “Market Regulator”, “non-client order”, “Opening Order”, “Participant”, “principal order”, “standard trading unit” and “Volume-Weighted Average Price Order”

UMIR section 1.2(2) – “trade”

Related Provision: UMIR section 1.2(3) - Interpretation

Regulatory History: Effective October 31, 2003, the applicable securities commissions approved an amendment to add subsection (3) of Rule 8.1.

Effective April 8, 2005, the applicable securities commissions approved an amendment to subsection (2) of Rule 8.1 to add clause (e).

Effective March 9, 2007, the applicable securities commissions approved an amendment to subsection (2) of Rule 8.1 to add clause (f).

Effective May 16, 2008, the applicable securities commissions approved an amendment to Part 1 of Policy 8.1 to add the last sentence of the first paragraph. Prior to that date, the last two sentences of the first paragraph provided:

If the security is inter-listed, the rule extends to all Canadian markets on which the security is listed. This means that if the Participant is buying, the client must receive a higher price than is bid on any Canadian marketplace, and, if the Participant is selling, the client must pay a lower price than the lowest offering.

In connection with the recognition of IROC and its adoption of UMIR, the applicable securities commissions approved an amendment to Part 1 of Policy 8.1 that came into force on June 1, 2008 to replace the phrase “of less” with “or less”.

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 5.2, 5.3 and 7.7:

A Participant may execute a principal order or non-client order against a client order for 50 standard trading units or less of a security with a value of \$100,000 or less if:

- the execution occurs at a “better price”; and
- the Participant has taken reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market at that time.

A “better price” is defined as a price lower than the best ask price, in the case of a purchase, and a price higher than the best bid price, in the case of a sale. A Participant must consider price information on orders in all marketplaces to which the Participant has access in determining whether the client is provided a “better price” or “best available price”.

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, 5.2, 5.3 and 7.7:

Rule 8.1 – Client-Principal Trading

A Participant may execute a principal order or non-client order against a client order for 50 standard trading units or less of a security with a value of \$100,000 or less if:

- the execution occurs at a “better price”; and
- the Participant has taken reasonable steps to ensure that the price is the best available price for the client taking into account the condition of the market at that time.

A “better price” is defined as a price lower than the best ask price, in the case of a purchase, and a price higher than the best bid price, in the case of a sale. A Participant must consider price information on orders from those marketplaces that would be taken into account for the purposes of complying with the best price obligation under Rule 5.2 when determining whether the client is provided a “better price” or “best available price” for the purposes of Rule 8.1.

Upon launch of operations, MATCH Now will operate a non-transparent marketplace that will execute trades in accordance with a pre-established formula at a price between the best ask price and the best bid price at the time of execution. Given the mechanism by which the trade price will be calculated on MATCH Now, IIROC is of the opinion that the trade price on TriAct will satisfy the requirements to be the “best available price” taking into account the condition of the market.

Disciplinary Proceedings: **In the Matter of Robert Bastianon (“Bastianon”) (October 30, 2002) OOS 2002-004**

Facts – On February 19, 2002, Bastianon, a trader, executed an order to sell shares of a listed security from his firm’s inventory account in a cross trade with a client. The trade was entered at price of \$28.00 at a time when the quotation for the listed security was \$27.80 bid and \$28.00 ask.

Disposition – Bastianon was required to provide the client with price improvement over the ask price to ensure that the client received a price that was better than the quoted market. Bastianon failed to provide the requisite price improvement to the client.

Requirements Considered – TSX Rule 4-502(2). Comparable UMIR Provision – Rule 8.1

Sanction - \$10,000 fine and costs of \$2,500

Disciplinary Proceedings: **In the Matter of Russell Marceniuk (“Marceniuk”) (December 12, 2002) OOS 2002-008**

Facts – On May 7, 2001, Marceniuk, a liability trader and registered representative, executed an order to sell shares of a company from his liability account (principal account) in a cross with a client. The trade was entered at \$68.68, at a time when the quotation for the stock was \$68.50 bid and \$68.68 ask.

Disposition – When a trader engages in a customer-principal trade, the trader is required to ensure that the client receives a price that is better than the quoted market. Marceniuk was required to provide the client with price improvement over the ask price.

Requirements Considered – TSX Rule 4-502. Comparable UMIR Provision – Rule 8.1

Sanction - \$10,000 fine and costs of \$1,500

Disciplinary Proceedings: **Rule 8.1 was considered In the Matter of Golden Capital Securities Ltd. (“Golden”), Jack Finkelstein (“Finkelstein”) and Jeff Rutledge (“Rutledge”) (November 23, 2007) DN 2007-004. See Disciplinary Proceeding under Rule 6.2.**

Proposed Amendments: *For information on the current proposed amendments to Rule 8.1 and Policy 8.1 of UMIR – Principal Trading, refer to Market Integrity Notice 2007-008 – Request for Comments - Provisions Respecting Best Execution (April 20, 2007) which includes the following proposed amendments:*

2. *Rule 8.1 is amended by deleting the phrase “taking into account the condition of the market at that time” and substituting the phrase “under prevailing market conditions”.*
3. *The following is added as Part 3 of Policy 8.1:*

Part 3 - Factors in Determining “Best Available Price”

The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as:

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

For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.

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