

# Market Integrity Notice

## Amendment Approval

May 16, 2008

No. 2008-008

### Suggested Routing

- Trading
- Legal and Compliance

### Key Topics

- Best Price Obligation
- Bypass Order
- Canadian Account
- Client-Principal Trading
- Designated Trade
- Disclosed Volume
- Foreign Currency Translation
- Foreign Organized Regulated Market
- Frontrunning
- Moving the Market
- Non-Canadian Account
- “Off-Marketplace” Trades
- Order Designations
- Pre-arranged Trade
- Protected Marketplace
- Recorded Price
- Regulatory Halts
- Short Sale
- Trading Increment

## PROVISIONS RESPECTING “OFF-MARKETPLACE” TRADES

### Summary

This Market Integrity Notice provides notice of the approval by the applicable securities regulatory authorities, effective May 16, 2008, of amendments to the Universal Market Integrity Rules to:

- clarify the ability of Participants and Access Persons in certain circumstances to conduct trades of listed or quoted securities other than by the entry of orders on a marketplace;
- clarify and modify the “best price” obligation to confirm that the obligation is to the “disclosed volume” of better-priced orders on certain marketplaces (defined as a “protected marketplace”) at the time of execution of an order;
- provide a mechanism to cap the obligation to fill better-priced orders in the case of certain pre-arranged trades or intentional crosses (defined as a “designated trade”) and modify the obligation to “move the market” when the trade would not qualify as a designated trade;
- provide for the introduction of an order marker (on a date to be determined by the Board of Directors of Market Regulation Services Inc.) to facilitate compliance with obligations owed to orders comprising part of the “disclosed volume”; and
- make a number of additional consequential changes to the Universal Market Integrity Rules including providing definitions of: “bypass order”; “Canadian account”; “designated trade”; “disclosed volume”;

“non-Canadian account”; “foreign organized regulated market”; “pre-arranged trade”; “protected marketplace” and “trading increment”.

The approved amendments have been revised from proposals contained in Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005).

### UMIR Provisions Referenced

- Rule 1.1 – Definitions
- Rule 2.1 – Just and Equitable Principles
- Rule 3.1 – Restrictions on Short Selling
- Rule 4.1 – Frontrunning
- Rule 5.1 – Best Execution of Client Orders
- Rule 5.2 – Best Price Obligation
- Rule 6.1 – Entry of Orders to a Marketplace
- Rule 6.2 – Designations and Identifiers
- Rule 6.4 – Trade to be on a Marketplace
- Rule 7.5 – Recorded Prices
- Rule 8.1 – Client-Principal Trading
- Rule 9.1 – Regulatory Halts, Delays and Suspensions of Trading

### Questions / Further Information

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### Market Integrity Notices Referenced

- Market Integrity Notice 2004-018 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (August 20, 2004)
- Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005)
- Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006)
- Market Integrity Notice 2007-002 – *Amendment Approval – Provisions Respecting Competitive Marketplaces* (February 26, 2007)
- 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  
– Proposed Amendments to National  
Instrument 21-101 Marketplace Operation  
and National Instrument 23-101 Trading  
Rules and Related Universal Market  
Integrity Rules (April 20, 2007)*

- *Market Integrity Notice 2007-008 – Request for Comments – Provisions Respecting Best Execution (April 20, 2007)*
- *Market Integrity Notice 2007-017 – Request for Comments – Provisions Respecting Short Sales and Failed Trades (September 7, 2007)*
- *Market Integrity Notice 2008-009 - Request for Comments – Provisions Respecting the “Best Price” Obligation (May 16, 2008)*

#### **Market Policy Notices Referenced**

*Market Policy Notice 2007-009 – General – Application for Approval of an Exemption from Aspects of the Best Price Obligation (December 20, 2007)*

## PROVISIONS RESPECTING “OFF-MARKETPLACE” TRADES

### Summary

This Market Integrity Notice provides notice of the approval by the applicable securities regulatory authorities<sup>1</sup>, effective May 16, 2008, of amendments (the “Amendments”) to the Universal Market Integrity Rules (“UMIR”) to:

- clarify the ability of Participants and Access Persons in certain circumstances to conduct trades of listed or quoted securities other than by the entry of orders on a marketplace;
- clarify and modify the “best price” obligation to confirm that the obligation is to the “disclosed volume” of better-priced orders on certain marketplaces (defined as a “protected marketplace”) at the time of execution of an order;
- provide a mechanism to cap the obligation to fill better-priced orders in the case of certain pre-arranged trades or intentional crosses (defined as a “designated trade”) and modify the obligation to “move the market” when the trade would not qualify as a designated trade;
- provide for the introduction of an order marker, on a date to be determined by the Board of Directors of Market Regulation Services Inc. (“RS”), to facilitate compliance with obligations owed to orders comprising part of the “disclosed volume”; and
- make a number of additional consequential changes to UMIR including providing definitions of: “bypass order”; “Canadian account”; “designated trade”; “disclosed volume”; “non-Canadian account”; “foreign organized regulated market”; “pre-arranged trade”; “protected marketplace” and “trading increment”.

The Amendments have been revised from the proposals contained in Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005) (the “Revised Off-Marketplace Proposal”).

### Background to the Amendments

UMIR requires dealers who have access to a Canadian marketplace to trade in securities only by means of the entry of an order on a Canadian marketplace unless the trade specifically is exempted from that requirement. When trading on behalf of a client, a dealer is not able to bypass “better-priced” orders on a marketplace in order to trade at an inferior price over-the-counter, on a foreign market or on another marketplace. A dealer is able to complete principal trades with a Canadian client account on an “foreign organized regulated market” outside of Canada provided the dealer has first met its obligation to the Canadian market by filling the “better-priced” orders on Canadian marketplaces as disclosed in a consolidated market display. While, for administrative purposes, RS has interpreted a number of the terms used in the

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<sup>1</sup> The Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, by the Autorité des marchés financiers (the “Recognizing Regulators”).

application of these requirements, the Amendments set out definitions of the relevant terms in UMIR to assist Participants and Access Persons in complying with their respective obligations.

Prior to the Amendments, a dealer when completing a pre-arranged trade or a wide distribution of significant blocks of stock had to deal with the uncertainties created over the amount of “interference” which the execution of the trade might encounter from “iceberg orders” (orders with an undisclosed volume) and possibly certain Special Terms Orders and other “specialty” orders<sup>2</sup> if the dealer must “move” the market for the security to facilitate the transaction on a marketplace. The “unknowns” surrounding the possible presence of iceberg orders or “interfering” orders distort pricing and fee arrangements.

In certain circumstances, a Participant may agree to take on a block of stock from a shareholder at a discount to the prevailing market. Ordinarily, this trade would be completed by the execution of an order on a marketplace, being a recognized exchange (an “Exchange”), a recognized quotation and trade reporting system (a “QTRS”) or an alternative trading system (an “ATS”) in Canada. However, if the person from whom the block of stock is acquired is:

- a “non-Canadian account”, the Participant can complete the trade outside of Canada (including in an over-the-counter transaction) provided “such trade is reported to a marketplace or to a stock exchange or organized regulated market that publicly disseminates details of trades in that market” as permitted by Rule 6.4(e) of UMIR; or
- a “Canadian account”, the Participant can execute the trade “on another exchange or organized regulated market that publicly disseminates details of trades in that market” as permitted by Rule 6.4(d) of UMIR.

If these trades are executed other than on a marketplace, the price at which such a trade may be executed will be governed by the requirements applicable in the jurisdiction of the exchange or market.

Proposals to clarify or amend the obligations of a Participant or Access Person when:

- “moving the market”;
- executing a “block trade” or “wide distribution”;
- dealing in a foreign market;
- trading in foreign currency; or
- executing a trade other than by the entry of an order on a marketplace

were originally published by RS in Market Integrity Notice 2004-018 – *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (August 20, 2004). Based on comments from the public and the applicable securities regulatory authorities, the Revised Off-Marketplace Proposal was published in April of 2005 that reflected a number of changes including consequential amendments arising from moving the relevant time to determine compliance with “best price” obligations from prior to execution of the order to the time of order execution. The change in the application of the “best price” obligation had initially been made to accommodate

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<sup>2</sup> UMIR defines a number of “specialty” type of orders such as: a Basis Order; a Call Market Order; a Market-on-Close Order; an Opening Order; a Special Terms Order; or a Volume-Weight Average Price Order.

the introduction of BlockBook as an alternative trading system in mid-2005<sup>3</sup> and was subsequently been incorporated into guidance issued by RS with respect to securities trading on multiple marketplaces.<sup>4</sup> The Amendments modified the Revised Off-Marketplace Proposal to reflect the guidance issued by RS.

## **Summary of the Amendments**

The Amendments are effective as of May 16, 2008. However, the amendment to Rule 6.2 to provide for a “bypass order” marker will not come into force until a date to be determined by the Board of Directors of RS. (For more details, see “Technological Implications and Implementation Plan” on pages 16 and 17.)

The following is a summary of the most significant aspects of the Amendments:

### ***Definition of “bypass order”***

In the Revised Off-Marketplace Proposal, RS had suggested that provision be made for a “bypass marker” under Rule 6.2 as a designation to be attached to an order on the entry of an order to a marketplace. In the Amendments, RS reformulated the provision to provide for a specific order type to be termed a “bypass order”. This reformulation will allow the concept to be used more broadly in the context of other provisions of UMIR. Under the Amendments, the term “bypass order” is defined to mean an order that is:

- part of a designated trade; or
- to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy (such as the obligation to fill “better-priced” orders in accordance with Rule 5.2)

and that is entered on a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order. The definition is intentionally broad thereby permitting the order to also qualify as one of the other order types defined by UMIR in addition to its status as a “bypass order”. (See “Definition of ‘disclosed volume’” on pages 7 and 8 for the particulars of the order types that will be “bypassed” on use of the “bypass order” marker.)

### ***Definition of “Canadian account” and a “non-Canadian account”***

The Amendments define a “non-Canadian account” as an account of a client of a Participant and the client is considered to be a non-resident of Canada for the purposes of the *Income Tax Act* (Canada). This definition is easily verifiable as a Participant must determine the tax status of each account for the purposes of establishing the obligation of the Participant to withhold

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<sup>3</sup> See Market Integrity Notice 2005-015 – *Guidance – Complying with “Best Price” Obligations* (May 12, 2005).

<sup>4</sup> Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006).

taxes from distributions of dividends and interest allocated by the Participant to each account. This definition also effectively adopts the interpretation which RS has provided for the term on an administrative basis.

The Amendments also defines a “Canadian account” in order to clarify that there are not more than two possible categories. If an account does not come within the definition of a “non-Canadian account”, the account is considered a “Canadian account”. As such, if there is any doubt as to the status of an account, it would be treated as a Canadian account (and the exemption for an off-marketplace trade involving a non-Canadian account provided in clause (e) of Rule 6.4 would not be available when trading with or on behalf of the account.)

### ***Definition of “designated trade”***

The Amendments define a “designated trade” as an intentional cross or a pre-arranged trade of security made at a price that:

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

Under the definition, there are no minimum volume or value requirements in order for an intentional cross or pre-arranged trade to qualify as a “designated trade”. However, an intentional cross or a pre-arranged trade that would be made at a price that falls outside the price parameters set out in the definition would be subject to “moving the market” requirements as set out in Part 2 of Policy 2.1. (See “Execution of a Pre-Arranged Trade or Intentional Cross” on pages 12 and 13.)

### ***Definition of “disclosed volume”***

The Amendments define “disclosed volume” as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;

- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

The definition of disclosed volume provides that only orders on a “protected marketplace” need to be included in the calculation. One of the requirements to be considered a “protected marketplace” is the dissemination of order data in real-time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument. (For a more detailed discussion of the requirements of a “protected marketplace”, see “Definition of ‘protected marketplace’” on pages 9 and 10.)

The definition of disclosed volume is applicable for determining the obligation to better-priced orders when entering:

- a designed trade under Policy 2.1; and
- an order to satisfy the “best price” obligation under Rule 5.2.

If the designated trade has been negotiated outside of the trading hours of a marketplace, the disclosed volume would be determined at the time the designated trade is executed on a marketplace in accordance with the requirements of Rule 6.4 requiring trades to be executed on a marketplace (as this would ensure that the disclosed volume reflected all “after hours” news regarding the market generally or the particular issuer whose securities were included in the designated trade).

### ***Definition of “foreign organized regulated market”***

The Amendments provide a definition of a “foreign organized regulated market” as a market outside of Canada:

- that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with an ordinary member of the International Organization of Securities Commissions;
- on which the entry of orders and the execution or reporting of trades is monitored for securities regulatory requirements at the time of entry and execution or reporting by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor its own market;
- that displays and provides timely information to information vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of at least the price, volume and security identifier of each trade at the time of execution or reporting of the trade on that market; and
- that excludes a facility of a market to which trades executed over-the-counter are reported unless:
  - the trade is required to be reported and is reported to the market forthwith following execution,



- at the time of the report, the trade is monitored for compliance with securities regulatory requirements, and
- at the time of the report, timely information respecting the trade is provided to information vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.

When a Participant is trading a listed security or quoted security outside of Canada, the trade should be conducted on a market that has substantially the same regulatory monitoring and dissemination of data to the public as would be present if the trade had been conducted on a marketplace in Canada. The definition of “foreign organized regulated market” under the Amendments excludes certain bulletin boards (in particular, the “Pink Sheets”) and reporting facilities (such as the Automated Confirmation Transaction Services (“ACT”) operated by Nasdaq and the Trade Reporting and Comparison Services (“TRACS”) operated by the National Association of Securities Dealers (“NASD”) for those members that participate in the Alternative Display Facility).

The OTC Bulletin Board is an automated trading system that permits dealers to voluntarily post quotes subject to NASD rules. The prices and quotes are available to the public, with a data feed available to information vendors. All trades must be reported to NASD within ninety seconds and information of each trade is printed, or if made after hours, the next trading day. If the trade is made after NASD hours, the trade is not printed nor is there “real time” surveillance of the trading activity. In this context, the OTC Bulletin Board would constitute a “foreign organized regulated market” under the Amendments during the period of operation when trades must be reported within ninety seconds. At all other times, the OTC Bulletin Board would not meet the requirements of the definition.

#### ***Definition of “pre-arranged trade”***

The Amendments introduce a definition of a “pre-arranged trade” as a trade for which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered. Orders which have been matched in the “upstairs market” would be considered to be a pre-arranged trade. Similarly, a Participant would be entering a “pre-arranged trade” if the Participant receives client instructions to “cross” with a particular order entered on a marketplace by that Participant or another Participant in circumstances where the clients have agreed to pursue the transaction.

#### ***Definition of “protected marketplace”***

In providing guidance on the obligations of a Participant when competitive marketplaces trade the same securities<sup>5</sup>, RS indicated that the “best price” obligation would be limited to orders entered on a marketplace that:

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<sup>5</sup> See Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006).

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

Effective March 9, 2007, these factors were specifically added to Policy 5.2 to qualify the “best price” obligation of a Participant.<sup>6</sup> The Amendments incorporated these factors directly into a definition of a “protected marketplace” which permits the concept to be used more broadly within UMIR such as in the definitions of “disclosed volume” and “bypass order” and in the requirements in Policy 2.1 governing the execution of a pre-arranged trade or intentional cross.

As at May 16, 2008, of the marketplaces which are regulated by RS, the Toronto Stock Exchange (“TSX”), TSX Venture Exchange (“TSXV”), Canadian Quotation and Trading System (“CNQ”), including the Pure Trading Facility of CNQ, Omega ATS (“Omega”) and Chi-X Canada ATS Limited (“Chi-X”) qualify as a “protected marketplace”. For a description of the basic features of each these marketplaces, see “Summary Comparison of Current Equity Marketplaces” available on the RS website: [www.rs.ca](http://www.rs.ca).

### ***Definition of “trading increment”***

The Amendments to the “moving the market” provisions in UMIR permit the immediate execution of orders that are not more than 10 trading increments below the best bid price or not more than 10 trading increments above the best ask price. Under the Amendments, the ability to undertake an immediate trade also depends on the percentage difference of the intended trade price from the best ask price and best bid price. The definition of a “trading increment” under the Amendments is the minimum difference in price at which orders may be entered on a marketplace in accordance with Rule 6.1 which sets out the minimum trading increment as one cent for orders with a price of \$0.50 or more and one-half cent for orders less than \$0.50.

The standardization of minimum trading increments permits the direct comparison of whether an order on a particular marketplace is a “better-priced” order and allows a Participant to determine whether a period of time to move the market is required in order to execute an intentional cross or pre-arranged trade.

### ***Best Price Obligation***

If on the entry of an order by a Participant on a marketplace, all or part of that order could be executed immediately against better-priced orders on a protected marketplace indicated in a consolidated market display, the “best price” obligation requires that the Participant make

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<sup>6</sup> See Market Integrity Notice 2007-002 – *Amendment Approval – Provisions Respecting Competitive Marketplaces* (February 26, 2007).

reasonable efforts to obtain the “best price”.<sup>7</sup> If the order is being executed as a pre-arranged trade or intentional cross that would qualify as a designated trade, the disclosed volume of any better-priced orders would have to be filled by the Participant as part of its obligations under Part 2 of Policy 2.1.

In particular, the Amendments changed the Rules and Policies regarding the “best price” obligation by:

- incorporating into Rule 5.2, the guidance previously given by RS that the “best price” obligation arises at the time of the execution of an order;<sup>8</sup>
- clarifying that the “best price” obligation applies on the execution of any order by a Participant whether on behalf of a client, non-client or principal account;
- eliminating the distinction between “active” and “passive” orders when determining which orders owe a “best price” obligation;
- moving the exemption provided when a Participant is handling an order for a non-Canadian account from the Policy to be a specifically enumerated exemption in Rule 5.2; and
- specifically providing in the Policy that 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 other protected marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume<sup>9</sup> on that protected marketplace.

In addition to the changes to the “best price” obligation made by the Amendments, RS has made or proposed to make further changes to the factors that are to be taken into account by

<sup>7</sup> For a discussion of the “best price” obligations prior to giving effect to the Amendments, reference should be made to the following Market Integrity Notices:

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

<sup>8</sup> Rule 5.2 previously provided that the Participant was to make reasonable efforts “prior to” the execution of an order but RS had issued guidance on the interpretation of this requirement. See Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006).

<sup>9</sup> The term “disclosed volume” is defined as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

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

RS in determining whether a Participant has made “reasonable efforts” to obtain the best available prices. (See “Related Amendments and Proposals” on pages 17 and 18.)

### ***Execution of a Pre-Arranged Trade or Intentional Cross***

The Amendments provide a sliding scale for determining when a Participant or Access Person must “move the market” in order to execute a pre-arranged trade or intentional cross. If the price would move the market the greater of 10 trade increments and either 5% above the best ask price or 5% below the best bid price, the Participant or Access Person 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 Amendments limit the obligation to a Participant or Access Person entering a pre-arranged trade or intentional cross (rather than “any” trade as had previously been the requirement). If the price at which an intended trade is to be made would require that the market price be moved over time, the prior consent of a Market Regulator is required to enter the order on a marketplace. If the price of the pre-arranged trade or intentional cross is within the 5% price threshold the trade would qualify as a “designated trade” and the prior consent of a Market Regulator is not required. As a designated trade, the trade may execute on a marketplace if:

- orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
- subject to any qualification of the “best price” obligation in accordance with Part 1 of Policy 5.2, the Participant enters orders on another marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that other marketplace concurrent with, or immediately following the execution of the designated trade.

If the designated trade could not then be executed on the originally intended marketplace (due to the trade allocation rules and protocols of that marketplace), the Participant would be entitled to complete the trade:

- on another marketplace (if that other marketplace is able to execute the trade at the appropriate price); or
- “off-marketplace” (if no marketplace is able to execute the trade at the appropriate price).

### ***Handling “Bypass Orders”***

Under the Amendments, the undisclosed portion of the volume of an iceberg order and the volume of other orders not included in the disclosed volume will be ignored or “bypassed” when an order is entered:

- as a “designated trade”; or
- to obtain the “best price” for a client order (Rule 5.2).

If a Participant or Access Person is “moving the market” to execute a trade, the undisclosed portion of an iceberg order which is at a better price will be executed in full before the Participant or Access Person will be able to execute the intentional cross or pre-arranged trade. On certain marketplaces, Special Terms Order or other types of “specialty orders” may also “migrate” from a “Terms Book” or special facility and participate in the trades as the market price is moved to the level of the intended trade.

Under the Original Proposal, the undisclosed volume of an iceberg order would only be bypassed on the execution of a “designated block trade”, which given the requirement that it have a value of \$25,000,000 or more meant that there would on average be approximately 3 or 4 trades per day (based on trading activity on marketplaces at the time of the Original Proposal). In these circumstances, it was thought that the handling of the execution of such orders could be manually undertaken by marketplaces in conjunction with RS.

With the changes proposed in the Revised Off-Marketplace Proposal for compliance with best price obligations together with an expanded definition of a designated trade, a need arose for a new order marker, applicable to those marketplaces which permit undisclosed order volume or the migration of Special Terms Orders and other specialty orders to trade with “regular” orders. The marker would systematically enforce the bypass of the undisclosed volume of an iceberg order and bypass trading with Special Terms Orders and other specialty orders when permitted by the UMIR requirements. The marker which would be added to a bypass order would be disclosed by the marketplace for display in a consolidated market display. Inclusion of the marker in the public display would provide notice to market participants as to why certain orders may have been bypassed. (For more details, see “Technological Implications and Implementation Plan” on pages 16 and 17.)

### ***Foreign Currency Translation when determining “better price”***

Previously, UMIR provided that prices on foreign markets are to be translated into 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. Under the Amendments, the formula is replaced with the exchange rate that would apply to a trade of a similar size on an organized market in the foreign jurisdiction. The same formula is introduced for converting the price of an internal cross or intentional cross that has been agreed to in a foreign currency for the purpose of reporting or executing the cross on a marketplace. The burden will be on the Participant to justify the foreign currency exchange rate which has been used and the Participant must maintain a record of that currency exchange rate with the information on the execution of the order.

Compliance will be assisted if there is a single foreign exchange formula to be used for various requirements under UMIR. While the formula is less specific than the previous formula, in fact the Participant has less choice in picking the rate to be used as it must relate to the exchange rate used by the Participant in similar transactions undertaken in proximity in value and time.

### ***Consequential and Administrative Amendments***

Based on the changes described above, the Amendments make a number of consequential or administrative amendments including:

- clarifying that any short sale undertaken by a Participant to fill an order imposed on a Participant or Access Person by any Rule or Policy is exempt from the restriction that the sale price not be less than the last sale price (and would include any order entered to facilitate the execution of a pre-arranged trade or intentional cross under Part 2 of Policy 2.1 or the “best price” obligation under Rule 5.2)<sup>10</sup>;
- clarifying that a trade may be made off-marketplace in a security that has been halted, delayed or suspended by an Exchange or QTRS for “business reasons” if such security is not listed, quoted or traded on another marketplace;
- providing that a Market Integrity Official may direct that a trade that has executed without complying with the “best price” obligation must fill orders included in the disclosed volume at the time the offending order was executed (rather than the limitation of such obligation to the size of the offending order);
- conforming references throughout the Rules and Policies to newly-defined terms and provisions; and
- clarifying that any trade undertaken “off-marketplace” in accordance with an exemption in Rule 6.4 remains subject to a number of order handling provisions in UMIR including:
  - Rule 2.1 requiring a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace,
  - Rule 4.1 prohibiting a Participant from frontrunning certain client orders,
  - Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order,
  - Rule 8.1 governing client-principal trading, and
  - Rule 9.1 governing regulatory halts, delays and suspensions of trading.

### **Summary of the Changes from the Revised Off-Marketplace Proposal**

Based on comments received in response to the Request for Comments on the Revised Off-Marketplace Proposal, the Revised Off-Marketplace Proposal was revised prior to the approval of the Amendments. The changes to the Revised Off-Marketplace Proposal are highlighted in Appendix “B” and include:

- transforming the proposed “bypass marker” into an order type;

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<sup>10</sup> RS has proposed the repeal of price restrictions on short sales. The Amendment to subsection (2) of Rule 3.1 will remain in effect pending the outcome of the repeal. Reference is made to Market Integrity Notice 2007-017 – *Request for Comments – Provisions Respecting Short Sales and Failed Trades* (September 7, 2007).

- changing the definition of a “designated trade” to allow the concept to be applicable to securities other than a listed security or quoted security (such as a foreign exchange-traded security);
- changing the definition of “disclosed volume” to allow the concept to be applicable to securities traded on a “protected marketplace” other than a listed security or quoted security and to specifically exclude any Special Terms Order from the disclosed volume;
- introducing the concept of a “protected marketplace” (based on the marketplaces to which a “best price” obligation is owed under Rule 5.2);
- clarifying, in accordance with guidance issued by RS, that the “best price” obligation requires reasonable efforts be taken to execute with orders included in the “displayed volume” at the time of the execution of an order at an inferior price rather than prior to the execution of an order at an inferior price;
- providing that a Market Integrity Official may direct that a trade that has executed without complying with the “best price” obligation must fill orders included in the disclosed volume at the time the offending order was executed (rather than limiting such obligation to the size of the offending order);
- clarifying the requirements respecting recorded prices to confirm that a Participant can not provide a “negative commission” in respect of a principal transaction in order to bring a trade within the prevailing market;
- clarifying that the “best price obligation” applies on the execution of any order by a Participant whether on behalf of a client, non-client or principal account;
- clarifying that obligation to “better-priced” orders on the execution of a “designated trade” is subject to the qualifications on the “best price” obligation under Part 1 of Policy 5.2; and
- making a number of consequential changes arising from changes to the “best price obligation” and “best execution obligation” requirements made in certain amendments to the Policies under Rule 5.1 and Rule 5.2 that became effective on March 9, 2007 following the publication of Market Integrity Notice 2007-002 – *Amendment Approval – Provisions Respecting Competitive Marketplaces* (February 26, 2007).

### **Summary of the Impact of the Amendments**

The principal impacts of the Amendments are to:

- address the “uncertainties” surrounding the ability of a Participant to “move the market” as a result of the presence of iceberg orders by providing a “cap” on the displacement obligation when undertaking certain pre-arranged trades or intentional crosses (defined in the proposal as a “designated trade”) such that there would be no obligation to fill the undisclosed volume of an iceberg order;
- eliminate the need for “wide distributions” as provided for in the rules of the TSX or similar provisions of other marketplaces;

- specifically incorporate in the text of UMIR definitions of various phrases including:
  - “Canadian account”,
  - “designated trade”,
  - “disclosed volume”,
  - “non-Canadian account”,
  - “foreign organized regulated market”,
  - “pre-arranged trade”, and
  - “trading increment”;
- amend the formula to be used to determine when a “better price” exists on a foreign market and for reporting trades agreed to in a foreign currency; and
- provide that Special Terms Orders and other “specialty” orders together with the undisclosed portion of the volume of an iceberg order will be ignored in trade allocations when an order is entered:
  - as a “designated trade”, or
  - to satisfy an obligation to fill an order on a protected marketplace with a better price in accordance with the requirements respecting “best price” for an order (Rule 5.2).

### **Technological Implications and Implementation Plan**

The Amendments introduce a “bypass order” marker which indicates that the order is either a “designated trade” or an order entered on a marketplace to satisfy an obligation to an order with a better price in accordance with the requirements of any Rule or Policy. Presently, an obligation to a “better priced” order is required under the provisions of Rule 5.2 and the Policies under that Rule. Orders with a bypass marker would trade only with orders that are included in the “disclosed volume” and would not trade with the undisclosed volume of an iceberg order and with “specialty orders” and Special Terms Orders.<sup>11</sup>

In order to provide Participants, marketplaces and service providers with an opportunity to make changes to their programming to accommodate the introduction of this marker, implementation of the required marker is deferred for a period of not less than 90 days following the date of this Market Integrity Notice and will come into force on a date to be determined by the Board. It would be the intention of RS to issue a Market Integrity Notice announcing the date this provision will be implemented at least 30 days in advance of the implementation date determined by the Board.

Implementation of a “cap” on the displacement obligation with respect to trading a “designated trade” and orders entered to satisfy displacement obligations arising from the execution of a

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<sup>11</sup> See “Definition of ‘disclosed volume’” on pages 7 and 8 for a more detailed explanation of the types of orders included in the definition of “disclosed volume”.



trade on another marketplace may require each marketplace that permits iceberg orders, Special Terms Orders or certain types of specialty orders to undertake programming changes to their respective trading system or to have the ability to override trade allocations to permit the trades to be allocated and executed at the time and prices indicated in the suggested execution procedure. Under the Amendments, a “bypass order” may execute:

- at any time during the trading day of a marketplace;
- without the requirement to halt trading on marketplaces to complete the transactions (though a temporary order inhibition may be required on certain marketplaces to facilitate the handling of the “displacement” trades);
- in a transparent manner (as a result of the disclosure of the order marker); and
- to establish the “last sale price” for the purposes of UMIR.

Until marketplaces have been able to modify their systems to accommodate changes to their trading allocation algorithms to bypass undisclosed volume in certain circumstances, the obligation on a Participant or Access Person would be quantified by the applicable “disclosed volume” but upon entry to the marketplace these orders would be allocated in accordance with the allocation algorithms then in place. Marketplaces that permit iceberg orders or the “migration” of Special Terms Orders to trade with “regular” orders would be expected to have modified their trading systems concurrent with the introduction of the “bypass” marker.

## **Related Amendments and Proposals**

The Amendments provided for a number of changes to Rule 5.2 and Policy 5.2. (See “Summary of Amendments – Best Price Obligation” on pages 10 and 11.) RS has made or proposed to make further changes to the interpretation or application of the “best price” obligation including:

### ***Interim Amendments Regarding the “Best Price” Obligation***

Concurrent with the publication of this Market Integrity Notice, RS has published Market Integrity Notice 2008-009 - *Request for Comments – Provisions Respecting the “Best Price” Obligation* (May 16, 2008) regarding certain amendments to Policy 5.2 to expand on the factors that are to be taken into account by RS in determining whether a Participant has made “reasonable efforts” to obtain the best available prices. The amendments to the factors (the “Interim Amendments”) are effective as of the date of this Market Integrity Notice but may be varied or repealed following public comment and review by the Recognizing Regulators.

The Interim Amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

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

If a Participant uses another means to enter an order on a marketplace, the Interim Amendments expand the factors that may be taken into account by RS in determining whether a Participant has made “reasonable efforts” to obtain the best available prices on a “protected marketplace” to include whether:

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

The Interim Amendments also remove transaction costs as a factor in determining the “best price” obligation and clarify that “reasonable efforts” do not necessarily require a Participant to maintain a connection to each protected marketplace.

Each Participant must adopt policies and procedures to ensure compliance with its “best price” obligation, which will include the relevant factors upon which it is relying in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

RS considers these to be “interim” amendments because the Canadian Securities Administrators (“CSA”) are developing a trade-through proposal.<sup>12</sup> Depending upon the final form of this trade-through regime, conforming changes may be required to UMIR, in particular the “best price” obligation under Rule 5.2 as modified by the Interim Amendments. RS expects that the Interim Amendments will be in effect from the date of this Market Integrity Notice until changes implementing the final form of the CSA’s trade-through regime become effective.

Reference should be made to Market Integrity Notice 2008-009 for more details on the Interim Amendments and the procedures for submitting a comment on the Interim Amendments.

### ***Application for Approval of an Exemption from Aspects of the Best Price Obligation***

With the publication of Market Policy Notice 2007-009 – *General – Application for Approval of an Exemption from Aspects of the Best Price Obligation* (December 20, 2007), RS provided notice of an application to the Recognizing Regulators for their approval to grant an exemption to the “best price” obligation under Rule 5.2 of UMIR such that a Participant would have an obligation to a better-priced order on a protected marketplace only if the Participant was a member, user or subscriber to that protected marketplace. RS has withdrawn this application for approval of an exemption as a result of the implementation of the Interim Amendments which become effective on the date of this Market Integrity Notice.

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<sup>12</sup> See Market Integrity Notice 2007-007 – *Request for Comments – Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* (April 20, 2007).

## Appendices

- Appendix “A” sets out the text of the Amendments to the Rules and Policies respecting “off-marketplace” trades; and
- Appendix “B” sets out a summary of the comment letters received in response to the Request for Comments on the Revised Off-Marketplace Proposal contained in Market Integrity Notice 2005-012 - *Request for Comments – Provisions Respecting “Off-Marketplace” Trades* (April 29, 2005). Appendix “B” also sets out the response of RS to the comments received and provides additional commentary on the differences between the Amendments and the Revised Off-Marketplace Proposal. Appendix “B” also contains the text of the relevant provisions of the Rules and Policies as they read on the adoption of the Amendments. The text has been marked to indicate changes from the Revised Off-Marketplace Proposal.

## Questions / Further Information

For further information or questions concerning this notice contact:

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## **Appendix “A”**

### **Provisions Respecting “Off-Marketplace” Trades**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by adding the following definitions of “bypass order”, “Canadian account”, “designated trade”, “disclosed volume”, “foreign organized regulated market”, “pre-arranged trade”, “protected marketplace”, “non-Canadian account” and “trading increment”:

**“bypass order”** means an order that is:

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

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

**“Canadian account”** means an account other than a non-Canadian account.

**“designated trade”** means an intentional cross or a pre-arranged trade of a security that would be made at a price that:

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

**“disclosed volume”** means the aggregate of the number of units of a security relating to each order for that security entered on a protected marketplace and displayed in a consolidated market display that is offered at a price below the intended price of a trade in the case of a purchase or that is bid at a price above

the intended price of a trade in the case of a sale, but does not include the volume of:

- (a) a Basis Order;
- (b) a Call Market Order;
- (c) a Market-on-Close Order;
- (d) an Opening Order;
- (e) a Special Terms Order; or
- (f) a Volume-Weighted Average Price Order.

**“non-Canadian account”** means an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the *Income Tax Act* (Canada).

**“foreign organized regulated market”** means a market outside of Canada:

- (a) that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with a securities regulatory authority that is an ordinary member of the International Organization of Securities Commissions;
- (b) on which the entry of orders and the execution or reporting of trades is monitored for compliance with regulatory requirements at the time of entry and execution or reporting by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor the entry of orders and the execution or reporting of trades on that market for compliance with regulatory requirements; and
- (c) that displays and provides timely information to information vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of at least the price, volume and security identifier of each trade at the time of execution or reporting of the trade on that market,

but, for greater certainty, does not include a facility of a market to which trades executed over-the-counter are reported unless:

- (d) the trade is required to be reported and is reported to the market forthwith following execution;

- (e) at the time of the report, the trade is monitored for compliance with securities regulatory requirements; and
- (f) at the time of the report, timely information respecting the trade is provided to information vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.

**“pre-arranged trade”** means a trade in respect of which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered.

**“protected marketplace”** means a marketplace that:

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

**“trading increment”** means the minimum difference in price at which orders may be entered in accordance with Rule 6.1.

2. Subsection (2) of Rule 3.1 is amended by:

- (a) deleting the word “or” at the end of clause (f);
- (b) inserting the phrase “; or” at the end of clause (g); and
- (c) adding the following as clause (h):
  - (h) made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy.

3. Rule 4.1 is amended by deleting in clause (a) of subsection (1) the phrase “stock exchange or market” and substituting “foreign organized regulated market or other market”.

4. Rule 5.2 is amended by:
- (a) deleting subsection (1) and substituting the following:
    - (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.
  - (b) deleting in subsection (2) the word “or” at the end of clause (b);
  - (c) inserting in subsection (2) the phrase “; or” at the end of clause (c); and
  - (d) adding in subsection (2) the following as clause (d):
    - (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.
5. Rule 6.2 is amended by inserting the following as subclause (v.3) in clause (b) of subsection (1):
- (v.3) a bypass order,
6. Rule 6.4 is amended by:
- (a) deleting clause (d) and substituting the following:
    - (d) **On a Foreign Organized Regulated Market** - executed on a foreign organized regulated market.
  - (b) deleting clause (e) and substituting the following:
    - (e) **Outside of Canada** - executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a foreign organized regulated market in accordance with the reporting requirements of the marketplace or foreign organized regulated market.
  - (c) inserting the following as clause (i):

- (i) **Non-Regulatory Halt, Delay or Suspension** – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.
7. Rule 7.5 is amended by deleting subsection (2) and substituting the following:
- (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.
8. Clause (a) of subsection (4) of Rule 7.7 is amended by deleting the phrase “an organized regulated market outside of Canada that publicly disseminates details of trades executed on that market” and substituting “a foreign organized regulated market”.
9. Subsection (4) of Rule 9.1 is amended by deleting the phrase “an exchange or foreign organized regulated market that publicly disseminates details of trades in that market” and substituting “a foreign organized regulated market”.
10. Clause (g) of subsection (1) of Rule 10.9 is amended by deleting the phrase “volume of the trade which” and substituting “disclosed volume if the trade”.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:



1. Part 1 of Policy 2.1 is amended by deleting the opening of the last paragraph and substituting the following:

Without limiting the generality of the Rule, the following are examples of activities that would be considered to be in violation of requirements to conduct business openly and fairly or in accordance with just and equitable principles of trade:

2. Part 2 of Policy 2.1 is repealed and the following substituted:

### **Part 2 – Executing a Pre-arranged Trade or Intentional Cross**

A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps, in accordance with the “best price” obligations under Rule 5.2, prior to or on the execution of the pre-arranged trade or intentional cross to ensure that any “better-priced” order on any protected marketplace is filled. In filling the “better-priced” orders, the Participant or Access Person is expected to move the market in an orderly manner to the price which will permit the trade to be executed on a marketplace. The prior approval of a Market Regulator is required if a Participant or Access Person wants to undertake a pre-arranged trade or intentional cross at a price that:

- will be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; or
- will be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments.

As a condition for granting approval of the trade, the Market Regulator may require the Participant or Access Person to enter a series of orders on one or more protected marketplaces over a period of time considered reasonable by the Market Regulator in order to move the market price to the price at which the pre-arranged trade or intentional cross will occur. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is 10% or more.

If the price at which the pre-arranged trade or the intentional cross is to be made:

- will **not** be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and
- will **not** be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,

the orders will be considered to be part of a “designated trade” and on entry may be marked as a “bypass order”. As a designated trade, the trade may execute on a marketplace if:

- orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
- subject to any qualification of the “best price” obligation in accordance with Part 1 of Policy 5.2, the Participant enters orders on each protected marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade.

If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an “off-marketplace” trade and to report the trade to a marketplace.

The prior approval of the Market Regulator is not required for the entry of a “designated trade”.

3. Part 2 of Policy 5.1 is amended by deleting the phrase “organized regulated markets outside of Canada” and substituting “foreign organized regulated markets”.

4. Part 2 of Policy 5.2 is repealed and the following substituted:

#### **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.

5. Part 3 of Policy 5.2 is deleted and the following substituted:

**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.

6. Policy 6.4 is deleted and the following substituted:

**Part 1 – Trades Outside of Marketplace Hours**

In accordance with section 6.1 of the Trading Rules, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise when a Participant may wish to make an agreement to trade as principal with a Canadian account, or to arrange a trade between a Canadian account and a non-Canadian account, outside of the trading hours of any marketplace that trades the particular security.

Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on a foreign organized regulated market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.

A Participant may make an agreement to trade in a listed security or a quoted security with a Canadian account as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on a foreign organized regulated market. There is no trade until such time as there is an execution on a marketplace or a foreign organized regulated market or the trade is otherwise completed in accordance with one of the exemptions set out in Rule 6.4. The

trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. A Participant may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace or foreign organized regulated market cannot be met, the agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.

## **Part 2 – Application to Foreign Affiliates and Others**

The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.

Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.

## **Part 3 – Non-Canadian Accounts**

Clause (e) of Rule 6.4 permits a Participant to trade off of a marketplace either as principal with a non-Canadian account or as agent for the purchaser and seller both of whom are non-Canadian accounts. A "non-Canadian account" is defined as an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the *Income Tax Act* (Canada). There may be certain situations arising where a Participant is uncertain whether a particular account is a "non-Canadian account" for the purpose of this exemption. In these situations the account should be treated as a "Canadian account". The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account's status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.

For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.

#### **Part 4 – Reporting Foreign Trades**

Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade in a listed security or a quoted security that is made as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts, unless the trade is reported to a foreign organized regulated market. If such an “outside Canada” trade has not been reported to a foreign organized regulated market, a Participant shall report such trade to a marketplace no later than the close of business on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.

#### **Part 5 – Application of UMIR to Orders Not Entered on a Marketplace**

Under Rule 6.4, a Participant, when acting as principal or agent, may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace except in accordance with an exemption specifically enumerated within Rule 6.4. For the purposes of UMIR, a “marketplace” is defined as an Exchange, QTRS or an ATS and a “Participant” is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. If a person is a Participant, certain provisions of UMIR will apply to every order handled by that Participant even if the order is entered or executed on a marketplace that has not adopted UMIR as its market integrity rules or if the order is executed over-the-counter. In particular, the following provisions of UMIR will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:

- Rule 2.1 requires a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace;
- Rule 4.1 prohibits a Participant from frontrunning certain client orders;
- Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;
- Rule 8.1 governing client-principal trading; and
- Rule 9.1 governing regulatory halts, delays and suspensions of trading.

In accordance with Rule 11.9, UMIR will not apply to an order that is entered or executed on a marketplace in accordance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules or if the order is entered and executed on a marketplace or otherwise in accordance with the rules of an applicable regulation services provider or in accordance with the terms of an exemption from the application of the Trading Rules.

7. The following is added as Policy 7.5:

**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).

8. Part 1 of Policy 8.1 is amended by deleting the last two sentences of the first paragraph and substituting the following:

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.

**Appendix “B”**  
**Comments Received in Response to**  
**Market Integrity Notice 2005-012 – Request for Comments -**  
**Provisions Respecting “Off-Marketplace” Trades**

On April 29, 2005, RS issued Market Integrity Notice 2005-012 requesting comments on proposed amendments to UMIR respecting the ability of Participants and Access Persons to conduct trades of listed or quoted securities other than by the entry of orders on a marketplace (the “Revised Off-Marketplace Proposal”). In response to that Market Integrity Notice, RS received comments from the following persons:

- CIBC World Markets (“CIBC”)
- Scotia Capital Inc. (“Scotia”)
- Shorcan Brokers Limited (“Shorcan”)
- TD Newcrest (“TD”)
- TriAct Canada Marketplace LP (“Triact”)
- TSX Markets (“TSX”)

The following table presents a summary of the comments received together with the response of RS to those comments. Column 1 of the table highlights the revisions to the Revised Off-Marketplace Proposal made by RS in the Amendments in response to these comments and the comments of the Recognizing Regulators.

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p><b>1.1 Definitions</b></p> <p><u>“bypass order” means an order that is:</u></p> <p><u>(a) part of a designated trade; or</u></p> <p><u>(b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy</u></p> <p><u>and that is entered on a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order.</u></p>		<p>In the Revised Off-Marketplace Proposal, RS had suggested that provision be made for a “bypass market” under Rule 6.2. In the Amendments, RS reformulated the provision to provide for a specific order type to be termed a “bypass order”. This reformulation will allow the concept to be used more broadly in the context of other provisions of UMIR.</p>
<p>“Canadian account” means an account other than a non-Canadian account.</p>		

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p><b>“designated trade”</b> means an intentional cross or a pre-arranged trade of a <del>listed security or quoted</del> security that would be made at a price that:</p> <p>(a) would not be less than the lesser of:</p> <ul style="list-style-type: none"> <li>(i) 95% of the best bid price; and</li> <li>(ii) 10 trading increments less than the best bid price; and</li> </ul> <p>(b) would not be more than the greater of:</p> <ul style="list-style-type: none"> <li>(i) 105% of the best ask price, and</li> <li>(ii) 10 trading increments more than the best ask price.</li> </ul>	<p><b>CIBC</b> – Believes that the 5% threshold around the best ask and best bid price may restrict the ability to undertake an intentional cross of some junior market securities.</p>	<p>The definition recognizes the problems associated with “penny securities”. For example, if the best bid price on a particular security was \$0.15, an intentional cross could be made as a designated trade if the price was not less than the lesser of:</p> <ul style="list-style-type: none"> <li>• 95% of the best bid price or \$0.14; and</li> <li>• 10 trading increments less than the best bid price or (10 times the one-half cent increments for securities trading at less than \$0.50) \$0.10.</li> </ul> <p>In the Amendments, RS changed the Revised Off-Marketplace Proposal by deleting the requirement that the intentional cross or pre-arranged trade involve a listed security or quoted security. With this change, the provisions would apply to a “foreign exchange-traded security” that may trade on one or more ATSS.</p>
<p><b>“disclosed volume”</b> means the aggregate of the number of units of a <del>listed security or quoted</del> security relating to each order for that security entered on a <del>protected</del> marketplace and displayed in a consolidated market display that is offered at a price below the intended price of a trade in the case of a purchase or bid at a price above the intended price of a trade in the case of a sale, but does not include the volume of:</p> <p><del>(a) a Special Terms Order unless the order could be executed in whole, according to the terms of the order;</del></p> <p><del>(ab)</del> a Basis Order;</p> <p><del>(bc)</del> a Call Market Order;</p> <p><del>(cd)</del> a Market-on-Close Order;</p> <p><del>(de)</del> an Opening Order; <del>or</del></p> <p><del>(ef)</del> a Special Terms Order; or</p> <p>(f) a Volume-Weighted Average Price Order; <del>or</del>.</p>	<p><b>Scotia</b> – adoption of the definition will result in little incentive to continue to use iceberg orders with the negative effect of decreasing price discovery and liquidity. Believes that National Instrument 23-101 should be amended to impose upon marketplaces the obligation to maintain an electronic connection or consolidated data-feed to every other marketplace trading the same security. In these circumstances, the “bypass” marker would not required.</p>	<p>As a practical matter persons who intend to execute an intentional cross or prearranged trade need to be able to quantify their obligations. The “iceberg” portion of orders on transparent marketplaces and all orders on non-transparent marketplaces would be treated the same. The introduction of a “consolidated data-feed” by an amendment to National Instrument 21-101 would only incorporate, and thereby protect, visible orders.</p> <p>In the Amendments, RS changed the Revised Off-Marketplace Proposal by deleting the requirement that the intentional cross or pre-arranged trade involve a listed security or quoted security. With this change, the provisions would apply to a “foreign exchange-traded security” trading on one or more ATSS. In addition, RS simplified the determination of “disclosed volume” by excluding all Special Terms Orders from the calculation.</p>
	<p><b>Shorcan and TD</b> – Supports the new definition of a “designated trade”.</p>	<p><b>Shorcan</b> – Undisclosed orders should not interfere with the ability of a broker-dealer to cross a block of stock. Orders for inter-listed securities are often split between dealers based on their ability to access a particular market and “it would be counter-productive to require that the broker working the TSX part be</p>



Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
	obligated to ensure that it was not trading through a "better price" on the NYSE.	
<p><b>"non-Canadian account"</b> means an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the <i>Income Tax Act</i> (Canada).</p>		
<p><b>"foreign organized regulated market"</b> means a market outside of Canada:</p> <ul style="list-style-type: none"> <li>(a) that is an exchange, quotation or trade reporting system, alternative trading system or similar facility recognized by or registered with a securities regulatory authority that is an ordinary member of the International Organization of Securities Commissions;</li> <li>(b) on which the entry of orders and the execution <u>or reporting</u> of trades is monitored for compliance with regulatory requirements at the time of entry and execution <u>or reporting</u> by a self-regulatory organization recognized by the securities regulatory authority or by the market if the market has been empowered by the securities regulatory authority to monitor the entry of orders and the execution <u>or reporting</u> of trades on that market for compliance with regulatory requirements; and</li> <li>(c) that displays and provides timely information to <u>information data</u>-vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market of <del>at least the price, volume and security identifier of each order at the time of entry of the order on that market and</del> at least the price, volume and security identifier of each trade at the time of execution or reporting of the trade on that market,</li> </ul> <p>but, for greater certainty, does not include a facility of a market to which trades executed over-the-counter are reported unless:</p> <ul style="list-style-type: none"> <li>(d) the trade is required to be reported and is reported to the market forthwith following execution;</li> <li>(e) at the time of the report, the trade is monitored for compliance with securities regulatory requirements; and</li> <li>(f) at the time of the report, timely information respecting the trade is provided to <u>information data</u>-vendors, information processors or persons providing similar functions respecting the dissemination of data to market participants for that market.</li> </ul>		<p>The Amendments changed the Revised Off-Marketplace Proposal by adding the word "foreign" as part of the definition to clearly indicate that such markets must be outside Canada. The Amendments also varied the Revised Off-Marketplace Proposal by recognizing that a market without transparency of orders could qualify as a "foreign organized regulated market" and clarifying that a trade reporting system specifically qualifies under the definition. There is no requirement under the Marketplace Operation Instrument that a "marketplace" in Canada provide order transparency.</p>

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>“pre-arranged trade” means a trade in respect of which the terms of the trade were agreed upon, prior to the entry of either the order to purchase or to sell on a marketplace, by the persons entering the orders or by the persons on whose behalf the orders are entered.</p>		
<p>“protected marketplace” means a marketplace that:</p> <p>(a) disseminates order data in real-time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;</p> <p>(b) permits dealers to have access to trading in the capacity as agent;</p> <p>(c) provides fully-automated electronic order entry; and</p> <p>(d) provides fully-automated order matching and trade execution.</p>		<p>In Market Integrity Notice 2006-017 – <i>Guidance – Securities Trading on Multiple Marketplaces</i> (September 1, 2006), RS set out these four criteria when indicating which marketplaces a Participant would have to take into consideration for the purposes of complying with the “best price” obligation in a multiple marketplace environment. The criteria were incorporated into Policy 5.2 as limitations on the “best price” obligation. (See Market Integrity Notice 2007-002 - <i>Amendment Approval – Provisions Respecting Competitive Marketplaces</i> (February 26, 2007).) The change to the Revised Off-Marketplace Proposal incorporates the criteria directly into the rules with the adoption of a definition of “protected marketplace”. The term “protected marketplace” is used in determining the “disclosed volume” to be taken into account when moving the market or complying with “best price” obligations.</p>
<p>“trading increment” means the minimum difference in price at which orders may be entered in accordance with Rule 6.1.</p>		
<p><b>3.1 Restrictions on Short Selling</b></p> <p>(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:</p> <p>...</p> <p>(f) the result of:</p> <p>(i) a Call Market Order,</p> <p>(ii) a Market-on-Close Order,</p> <p>(iii) a Volume-Weighted Average Price Order,</p> <p>(iv) a Basis Order, or</p> <p>(v) a Closing Price Order; <del>or</del></p> <p>(g) a trade in an Exchange-traded Fund; <u>or</u></p> <p>(h) made to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy.</p>		<p>RS has proposed the repeal of price restrictions on short sales. The Amendment to subsection (2) of Rule 3.1 to add clause (h) as an exception for orders entered pursuant to an obligation imposed by a Rule or Policy to fill an order on a marketplace will remain in effect pending the outcome of the repeal. Reference is made to Market Integrity Notice 2007-017 – <i>Request for Comments – Provisions Respecting Short Sales and Failed Trades</i> (September 7, 2007).</p>

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p><b>4.1 Frontrunning</b></p> <p>(1) A Participant with knowledge of a client order that on entry could reasonably be expected to affect the market price of a security, shall not, prior to the entry of such client order:</p> <p>(a) enter a principal order or a non-client order on a marketplace, <u>foreign</u> organized regulated market or other market, including any over-the-counter market, for the purchase or sale of the security or any related security;</p> <p>...</p>		<p>This change to the Revised Off-Marketplace Proposal is consequential to the change in the defined term “organized regulated market” to include the word “foreign”.</p>
<p><b>5.2 Best Price Obligation</b></p> <p>(1) A Participant shall make reasonable efforts <u>prior to at the time of</u> the execution of an <u>an client</u> order to ensure that:</p> <p>(a) in the case of an offer <u>by the client</u>, the order is executed at the best bid price; and</p> <p>(b) in the case of a bid <u>by the client</u>, the order is executed at the best ask price.</p>		<p>The Amendment clarifies that the relevant time to determine compliance with “best price” obligations is changed from the time of order entry to the time of order execution. Essentially, the Amendment adopts the guidance on the application of the “best price” obligation given by RS initially in Market Integrity Notice 2005-015 – <i>Guidance – Complying with “Best Price” Obligations</i> (May 12, 2005) in connection with the launch of BlockBook and repeated in Market Integrity Notice 2006-017 – <i>Guidance – Securities Trading on Multiple Marketplaces</i> (September 1, 2006).</p> <p>The Amendments also vary from the Revised Off-Marketplace Proposal by clarifying that the best price obligation applies on the execution of any order and not just client orders. Previously, the Rule referred to “client orders” but the Policy extended the application of the best price obligation to other types of orders.</p>
<p><b>5.2 Best Price Obligation</b></p> <p>(2) Subsection (1) does not apply to the execution of an order which is:</p> <p>(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;</p> <p>(b) a Special Terms Order unless:</p> <p>(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</p> <p>(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; <u>or</u></p>	<p><b>CIBC</b> – Attention to “best price” may be inconsistent with obtaining other regulatory requirements including “best execution.</p> <p>Consideration should be given to allowing a default “best-market” based on such factors as liquidity.</p>	<p>The “best price” obligation is not absolute. First, in order to comply with the requirement a Participant must undertake “reasonable efforts”. Second, the obligation is further qualified by a number of factors as set out in Part 1 of Policy 5.2.</p> <p>If a Participant is handling a “market” order that order should be directed to the marketplace which displays the “best price”. Similarly, a “limit” order that would be immediately executable on a particular marketplace based on displayed orders should be directed to that marketplace. Limit orders which are not immediately executable may be directed to any marketplace which trades that security and this direction may be made on a “default” basis.</p> <p>The change to the Revised Off-Marketplace Proposal made by the</p>

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>(c) directed or consented to by the holder of the account to be entered on a marketplace as:</p> <ul style="list-style-type: none"> <li>(i) a Call Market Order,</li> <li>(ii) a Volume-Weighted Average Price Order,</li> <li>(iii) a Market-on-Close Order,</li> <li>(iv) an Opening Order,</li> <li>(v) a Basis Order, or</li> <li>(vi) a Closing Price Order; <u>or</u></li> </ul> <p><u>(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.</u></p>		<p>Amendments incorporates directly into the Rule the exception in the handling of an order on behalf of non-Canadian accounts which had been set out in the Policies.</p> <p>The Amendments also vary from the Revised Off-Marketplace Proposal by clarifying that the best price obligation applies on the execution of any order and not just client orders. Previously, the Rule referred to “client orders” but the Policy extended the application of the best price obligation to other types of orders.</p>
<p><del><b>6.1 Entry of Orders to a Marketplace</b></del></p> <p><del>(1) No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of cent other than an increment of one half of one cent in respect of an order with a price of less than \$0.50.</del></p>		<p>An amendment to Rule 6.1 consistent with the Revised Off-Marketplace Proposal was adopted as part of the package of amendments related to “Competitive Marketplaces”. See Market Integrity Notice 2007-002 - <i>Amendment Approval – Provisions Respecting Competitive Marketplaces</i> (February 26, 2007).</p>
<p><b>6.2 Designations and Identifiers</b></p> <p>(1) Each order entered on a marketplace shall contain:</p> <p>...</p> <p>(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:</p> <p>...</p> <p>(v.3) <u>a bypass order part of a designated trade or entered on a marketplace to satisfy an obligation to fill an order imposed on a Participant or Access Person by any Rule or Policy,</u></p>		<p>In the Revised Off-Marketplace Proposal, RS had suggested that provision be made for a “bypass marker” under Rule 6.2. In the Amendments, RS reformulated the provision to provide for a specific order type to be termed a “bypass order” which becomes a defined term under Rule 1.1. This reformulation will allow the concept to be used more broadly in the context of other provisions of UMIR.</p>
<p><b>6.4 Trades to be on a Marketplace</b></p> <p>A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace unless the trade is:</p>		<p>This change to the Revised Off-Marketplace Proposal is consequential to the change in the defined term “organized regulated market” to include the word “foreign”.</p>

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>...</p> <p>(d) <b>On a Foreign Organized Regulated Market</b> - executed on a <u>foreign</u> organized regulated market;</p> <p>(e) <b>Outside of Canada</b> - executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a <u>foreign</u> organized regulated market in accordance with the reporting requirements of the marketplace or <u>foreign</u> organized regulated market;</p> <p>...</p> <p>(i) <b>Non-Regulatory Halt, Delay or Suspension</b> – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(i) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.</p>		
<p><b>7.5 Recorded Prices</b></p> <p>(2) No Participant acting as principal shall execute a transaction through a marketplace in which the price recorded on the marketplace is:</p> <p>(a) in the case of a sale to a client,</p> <p><u>(i) higher than the net cost to the client, or</u></p> <p><u>(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</u></p> <p>(b) in the case of a purchase from a client,</p> <p><u>(i) lower than the net proceeds to the client, or</u></p> <p><u>(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.</u></p>		<p>The position of RS has always been that a Participant can not provide a “negative commission” in respect of a principal transaction in order bring a trade within the prevailing market. This change to the Revised Off-Marketplace Proposal clarifies the application of that interpretation.</p>
<p><b>7.7 Trading During Certain Securities Transactions</b></p> <p>(4) <b>Exemptions</b> - Subsection (1) does not apply to a dealer-restricted person in connection with:</p>		<p>This change is consequential to the adoption of the definition of “foreign organized regulated market”.</p>

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<p>(a) market stabilization or market balancing activities where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security provided that the bid or purchase is at a price which does not exceed the lesser of:</p> <p>(i) in the case of an offered security:</p> <p>(A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined, and</p> <p>(B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,</p> <p>(ii) in the case of a connected security:</p> <p>(A) the last independent sale price at the commencement of the restricted period, and</p> <p>(B) the last independent sale price at the time of the entry on a marketplace of the order to purchase,</p> <p>provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on an <u>foreign</u> organized regulated market <del>outside of Canada that publicly disseminates details of trades executed on that market</del> other than a trade that the dealer-restricted person knows or ought reasonably to know has been entered by or on behalf of a person that is a dealer-restricted person or an issuer-restricted person;</p> <p>...</p>		
<p><b>9.1 Regulatory Halts, Delays and Suspensions of Trading</b></p> <p>(4) <b>Trading Outside Canada During Regulatory Halts, Delays and Suspensions</b> – If trading in a security has been prohibited on a marketplace in accordance with clauses (1)(b), (c) or (d) or subsection (2), a Participant may execute a trade in the security, if permitted by applicable securities legislation, outside of Canada on an <u>foreign</u> organized regulated market.</p>		<p>This change to the Revised Off-Marketplace Proposal is consequential to the change in the defined term “organized regulated market” to include the word “foreign”.</p>

Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p><b>10.9 Power of Market Integrity Officials</b></p> <p>(1) A Market Integrity Official may, in governing trading in securities on the marketplace:</p> <p>...</p> <p>(g) require the Participant to satisfy the better bid or offer up to the <del>volume of the trade which disclosed volume if the trade</del> failed to comply with the requirements of Part 5;</p> <p>...</p>		<p>This change to the Revised Off-Marketplace Proposal is consequential to the adoption of the requirement that a Participant owes an obligation to the disclosed volume at a better price when executing a trade at an inferior price on another marketplace or foreign organized regulated market. In turn, the change in the quantification of the obligation is consequential on the change of the time for complying with the “best price” obligation from before execution to at the time of execution of a trade at an inferior price.</p>
<p><b>Policy 2.1 – Just and Equitable Principles</b></p> <p><b>Part 1 – Examples of Unacceptable Activity</b></p> <p>Rule 2.1 provides that a Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities that are eligible to be traded on a marketplace. The Rule also provides that an Access Person shall transact business openly and fairly. As such, the Rule operates as a general anti-avoidance provision.</p> <p>Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is contrary to the requirements to conduct business openly and fairly. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who “uses” another person to make a trade off of a marketplace (in circumstances where an “off-market exemption” is not available) to be violating just and equitable principles of trade.</p> <p>Certain patterns of activity that can be undertaken that affect the marketplace but do not reach the level of manipulative and deceptive trading practices are nonetheless unavailable to Participant and Access Persons. For example, Rule 4.1 dealing with frontrunning is specifically tied to misuse of information when a Participant knows a client order will be entered. Somewhere between the Participant who acts on certain knowledge of a client order and the Participant who acts despite a single, uncertain expression of interest are the Participants that repeatedly take advantage of expressions of interest in particular securities. Such Participants are not conducting business openly and fairly and in accordance with just and equitable principles of trade. The “just and equitable principles” clause and the requirement transact business openly and fairly prevent such activity.</p>		

<b>Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)</b>	<b>Commentator and Summary of Comment</b>	<b>RS Response to Comment and Additional RS Commentary</b>
<p>Without limiting the generality of the Rule, the following are examples of activities that would be considered to be in violation of the obligation to conduct business openly and fairly or in accordance with just and equitable principles of trade:</p> <ul style="list-style-type: none"> <li>(a) without the specific consent of the client, entering client and principal orders in such a manner as to attempt to obtain execution of a principal order in priority to the client order; (See Part 2 of Policy 5.3 – Client Priority for examples of the prohibition on “intentional trading ahead”.)</li> <li>(b) without the specific consent of the client, to vary the instructions of the client to indicate that securities held by the client are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the client for the dividend in cash;</li> <li>(c) without the specific consent of the lender of securities, to vary the arrangements in respect of securities borrowed by the Participant to indicate that the borrowed securities are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the lender for the dividend in cash; and</li> <li>(d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:             <ul style="list-style-type: none"> <li>(i) execute with one or more of the orders, or</li> <li>(ii) purchase at a higher price or sell at a lower price with one or more of the orders</li> </ul>             in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.           </li> </ul>		
<p><b>Policy 2.1 – Just and Equitable Principles</b></p> <p><b>Part 2 – Executing a Pre-Arranged Trade or Intentional Cross</b></p> <p>A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps <u>in accordance with the “best price” obligations under Rule 5.2</u>, prior to <u>or on the execution of</u> the pre-</p>	<p><b>TD</b> – Supports the limitation of the displacement obligation to the disclosed volume. Suggests that the obligation be limited to the size of the trade at the inferior price.</p> <p>Suggests that the appropriate time for</p>	<p>Prior to the Amendments, clause (g) of Rule 10.9(1) of UMIR provided RS with the power “to require the Participant to satisfy the better bid or offer up to the volume of the trade which failed to comply with the requirements of Part 5” of UMIR which includes the “best price obligation”. The Amendments extend the obligation to the “disclosed volume”.</p>



Text of Provisions Following Adoption of the Amendments (Changes from the Revised Off-Marketplace Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
<p>arranged trade or intentional cross to ensure that any <u>“better- priced”</u> order <u>on any protected marketplace</u> s filled . In filling the “better-priced” orders, the Participant or Access Person is expected to move the market in an orderly manner to the price which will permit the trade to be executed on a marketplace. The prior approval of a Market Regulator is required if a Participant or Access Person wants to undertake a pre-arranged trade or intentional cross at a price that:</p> <ul style="list-style-type: none"> <li>• will be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; or</li> <li>• will be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments.</li> </ul> <p>As a condition for granting approval of the trade, the Market Regulator may require the Participant or Access Person to enter a series of orders on one or more <u>protected</u> marketplaces over a period of time considered reasonable by the Market Regulator in order to move the market price to the price at which the pre-arranged trade or intentional cross will occur. As a general guideline, the time period will generally not be less than 5 minutes if the price variation from the best ask price or best bid price, as applicable, is more than 5% but less than 10% and not less than 10 minutes if the price variation is 10% or more.</p> <p>If the price at which the pre-arranged trade or the intentional cross is to be made:</p> <ul style="list-style-type: none"> <li>• will not be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and</li> <li>• will not be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,</li> </ul> <p>the orders <u>will be considered to be part of a “designated trade” and</u> on entry may be marked as a <u>“bypass order”</u> <del>“designated trade”</del>. As a designated trade, the trade may execute on a marketplace if:</p> <ul style="list-style-type: none"> <li>• orders included in the disclosed volume on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and</li> <li>• <u>subject to any qualification of the “best price” obligation in accordance with Part 1 of Policy 5.2,</u> the Participant enters orders on <del>another each</del> <u>protected</u> marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that <del>other protected</del> marketplace concurrent with, or immediately following the execution of the</li> </ul>	<p>measuring the displacement obligation is when the order was “completed” (ie. agreed to and awaiting cross on the marketplace).</p> <p>Concerned that crosses made at prices outside the band of 5% or 10 trading increments are subject to the full displacement obligation. While recognizing that securities should be displaced in an orderly fashion, the additional time requirement would allow for the entry of iceberg orders from persons intending to benefit from the displacement obligation.</p>	<p>UMIR is clear that a trade is no “executed” until it is recorded on a marketplace unless the transaction has been completed other than by the entry of an order on a marketplace in accordance with the exceptions enumerated in Rule 6.4.</p> <p>As part of its Review of Frontrunning and Client Priority during 2004, RS did not find any evidence of systemic frontrunning including no evidence that iceberg orders were being entered on a market with knowledge of an impending block trade. Entry of such orders may constitute a violation of Rule 2.1 requirements to conduct business openly and fairly which is imposed on both Participants and Access Persons. However, RS is aware of the concern and the issue will be considered in a review of frontrunning provisions.</p> <p>The Amendments changed the Revised Off-Marketplace Proposal by making references to “protected” marketplaces (as contemplated in the guidance provided in Market Integrity Notice 2006-017). The Amendments also recognize the change to define a “bypass order” as including a designated trade.</p>

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<p>designated trade.</p> <p>If the designated trade could not then be executed on a marketplace, the Participant would be entitled to complete the trade as an “off-marketplace” trade and to report the trade to a marketplace.</p> <p>The prior approval of the Market Regulator is not required for the entry of a “designated trade”.</p>		
<p><b>Policy 5.1 – Best Execution of Client Orders</b></p> <p><b>Part 2 – Factors to be Considered</b></p> <p>In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:</p> <ul style="list-style-type: none"> <li>• any specific client instructions regarding the timeliness of the execution of the order;</li> <li>• whether <u>foreign</u> organized regulated markets <del>outside of Canada</del> have been considered (particularly if the principal market for the security is outside of Canada);</li> <li>• whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order; and</li> <li>• whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if: <ul style="list-style-type: none"> <li>o the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and</li> <li>o the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.</li> </ul> </li> </ul>		<p>This amendment is consequential to the adoption of the definition of a “foreign organized regulated market”. With the publication of Market Integrity Notice 2007-008 – Request for Comments – Provisions Respecting Best Execution (April 20, 2007), RS has proposed to amend Policy 5.1. This amendment will remain in effect pending the disposition of the proposed amendments respecting best execution.</p> <p>With the approval of the amendments respecting “Off-Marketplace” Trades, a consequential change will have to be made to the proposed amendments respecting best execution as highlighted below:</p> <p><b>Part 3 – Consideration of <u>Foreign</u> Organized Regulated Markets</b></p> <p>In determining whether to consider the execution of a client order on a <u>foreign</u> organized regulated market <del>outside of Canada</del>, the Participant may consider, in addition to the factors set out in Parts 1 and 2:</p> <ul style="list-style-type: none"> <li>• available liquidity displayed on a marketplace relative to the size of the client order;</li> <li>• the extent of trading in the particular security on the <u>foreign</u> organized regulated market relative to the volume of trading on marketplaces;</li> <li>• the extent of exposure to settlement risk in a foreign jurisdiction; and</li> <li>• the extent of exposure to fluctuations in foreign currency exchange.</li> </ul>

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<p><b>Policy 5.2 – Best Price Obligation</b></p> <p><b>Part 2 – Orders on Other Marketplaces</b></p> <p>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 <u>protected</u> marketplace by making a trade at an inferior price (either one-sided or a cross) on another marketplace or on an <u>foreign</u> organized regulated market. This Policy applies even if the holder of the account consents to the trade on the other marketplace or the <u>foreign</u> organized regulated market at the inferior price. <del>Participants may make the trade on that other marketplace or organized regulated 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 marketplace or organized regulated market.</del></p> <p><del>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 a marketplace or an organized regulated market at a price that is inferior to the bid or ask price on another 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.</del></p> <p>A Participant will be considered to have taken reasonable efforts to obtain the best price <del>for a client</del> if, at the time of the <u>execution entry</u> of the <u>client</u> order on a particular marketplace or <u>foreign</u> organized regulated market, the Participant enters orders on behalf of the client, <u>non-client or principal account</u> on each <u>other-protected</u> marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume on that marketplace. <del>If following the entry of the client order on the particular marketplace or organized regulated market, the client order does not immediately execute in full, the Participant shall monitor the “best bid price” and “best ask price” displayed in a consolidated market display to determine if the unfilled portion of the client order should be entered on another marketplace.</del></p>	<p><b>Scotia</b> – Seeks clarification of “marketplaces to which a Participant (or Access Person) has access”. Does it extend to foreign “marketplaces”?</p>	<p>The “best price” obligation in Rule 5.2 is qualified by a series of factors which are outlined in Part 1 of Policy 5.2. “Access” was removed as a factor with amendments to UMIR as set out in Market Integrity Notice 2007-002 - <i>Amendment Approval – Provisions Respecting Competitive Marketplaces</i> (February 26, 2007). However, the Amendments adopted the concept of a “protected marketplace” which incorporated the guidance set out in Market Integrity Notice 2006-017 – <i>Guidance – Securities Trading on Multiple Marketplaces</i> (September 1, 2006) regarding the four criteria to be taken into account when determining which marketplaces a Participant would have to take into consideration for the purposes of complying with the “best price” obligation in a multiple marketplace environment.</p> <p>The Amendment to the Policy also conforms to a change to the Rule that clarified that the relevant time to determine compliance with “best price” obligations is changed from the time of order entry to the time of order execution. Essentially, the Amendment adopts the guidance on the application of the “best price” obligation given by RS initially in Market Integrity Notice 2005-015 – <i>Guidance – Complying with “Best Price” Obligations</i> (May 12, 2005) in connection with the launch of BlockBook and repeated in Market Integrity Notice 2006-017 – <i>Guidance – Securities Trading on Multiple Marketplaces</i> (September 1, 2006). If the time for determination is moved from order entry to the time of execution, the concepts of “active” and “passive” orders is no longer relevant to the determination of the obligation.</p> <p>The term “marketplace” is defined as an exchange, QTRS or ATS in Canada. UMIR does not impose an obligation to access foreign organized regulated markets outside of Canada for the purposes of the “best price” obligation. However, such foreign markets may need to be considered when discharging the “best execution” obligation particularly if the principal market for the security is outside of Canada.</p> <p>The Amendments also vary from the Revised Off-Marketplace Proposal by clarifying that the best price obligation applies on the execution of any order and not just client orders. Previously, the Rule referred to “client orders” but the Policy extended the application of the best price obligation to other types of orders.</p>

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	<p><b>Shorcan</b> – Believes that “best price” obligations are part of a broker/client relationship and should not apply to dealers trading as principal.</p> <p>Believes that it is not appropriate to use a “trade-through” prohibition as a means of inhibiting access to marketplaces that could otherwise be accessed on a principle of best execution.</p> <p>“Best price” and “best execution” are not necessarily equivalent concepts as illustrated when an institutional investors asks a dealer to give them a principal bid or offer on a block of stock. Now that equity markets are evolving to encompass more principal trading to meet specialized investor needs, regulators must re-evaluate the rules that inhibit natural competition to service these niches more effectively.</p>	<p>The “best price” obligation is not absolute but is qualified by the requirement to undertake “reasonable efforts”. Part 1 of Policy 5.2 specifically sets out factors which will be taken into account in determining whether a Participant has made “reasonable efforts”</p> <p>UMIR recognizes that “best execution” is a distinct concept from best price. In negotiating the price of a principal transaction, one of the factors which a Participant must take into account is the obligation to fill “better priced” orders as displayed on the marketplace on which the principal trade will be executed together with “better-priced” orders on other marketplaces.</p> <p>The Amendments also clarify that the relevant time to determine compliance with “best price” obligations is changed from the time of order entry to the time of order execution.</p>
<p><b>Policy 5.2 – Best Price Obligation</b></p> <p><b>Part 3 – Foreign Currency Translation</b></p> <p>If a trade is to be executed on <u>or reported to</u> a foreign <u>organized regulated</u> market, the Participant shall determine whether there is in fact a better price on a <u>protected</u> 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 <u>foreign</u> organized regulated market in that foreign jurisdiction. A better price on a <u>protected</u> marketplace must be “taken out” if there is more than a marginal difference between the price on the <u>protected</u> marketplace and the price on <u>or reported to</u> the <del>other stock exchange</del> <u>or foreign</u> organized <u>regulated</u> 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 <u>protected</u> 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.</p>		<p>The changes from the Revised Off-Marketplace Proposal for Part 3 of Policy 5.2 are editorial and reflect the introduction of the concept of a “protected marketplace” and the standardization of terminology surrounding a “foreign organized regulated market”.</p>

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<p><b>Policy 6.1 – Entry of Orders to a Marketplace</b></p> <p><del>Notwithstanding that all orders for a security at a price of \$0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Call Market Order or a Volume-Weighted Average Price Order may execute and be reported in an increment of one-half of one cent in accordance with the method of calculation of the trade price established by the marketplace on which the order has traded.</del></p>	<p><b>TriAct</b> – Systems limitations on the accuracy of public trade price displays should not govern the rules respecting trade price increments for certain “specialty trades” given that such trades are not used to establish the “last sale price” benchmark.</p>	<p>An amendment to Policy 6.1 consistent with the comment of TriAct was adopted as part of the package of amendments related to “Competitive Marketplaces”. See Market Integrity Notice 2007-002 - <i>Amendment Approval – Provisions Respecting Competitive Marketplaces</i> (February 26, 2007).</p>
<p><b>Policy 6.4 – Trades to be on a Marketplace</b></p> <p><b>Part 1 – Trades Outside of Marketplace Hours</b></p> <p>In accordance with section 6.1 of <del>the Trading Rules National Instrument 23-401</del>, each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. Occasions may arise when a Participant may wish to make an agreement to trade as principal with a Canadian account, or to arrange a trade between a Canadian account and a non-Canadian account, outside of the trading hours of any marketplace that trades the particular security.</p> <p>Rule 6.4 states that all trades must be executed on a marketplace unless otherwise exempted from this requirement. Participants are reminded of the exemption in clause (d) of Rule 6.4 that permits a trade on a <del>an</del> <b>foreign</b> organized regulated market. Participants are also reminded of the exemption in clause (e) of Rule 6.4 that permits them to trade as principal with non-Canadian accounts off of a marketplace provided that any unwinding trade with a Canadian account is made in accordance with Rule 6.4.</p> <p>A Participant may make an agreement to trade in a listed security or a quoted security with a Canadian account as principal or as agent outside of the trading hours of marketplaces, however, such agreements must be made conditional on execution of the trade on a marketplace or on a <del>an</del> <b>foreign</b> organized regulated market. There is no trade until such time as there is an execution on a marketplace or a <del>an</del> <b>foreign</b> organized regulated market or the trade is otherwise completed in accordance with one of the exemptions set out in Rule 6.4. The trade on a marketplace is to be done at or immediately following the opening of the marketplace on which the order is entered. A Participant may cross the trade at the agreed-upon price provided that the normal Requirements on order displacement are followed. If the Participant determines that the condition of recording the agreement to trade on a marketplace or <del>foreign</del> <b>foreign</b> organized regulated market cannot be met, the</p>		<p>The changes from the Revised Off-Marketplace Proposal for Part 1 of Policy 6.4 from the Revised Off-Marketplace Proposal are editorial and reflect the adoption of the term “foreign organized regulated market” and use of defined terms.</p>

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<p>agreement to trade shall be cancelled. Use of an error account to preserve the transaction is prohibited.</p>		
<p><b>Policy 6.4 – Trades to be on a Marketplace</b></p> <p><b>Part 2 – Application to Foreign Affiliates and Others</b></p> <p>The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.</p> <p>Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.</p>		
<p><b>Policy 6.4 – Trades to be on a Marketplace</b></p> <p><b>Part 3 – Non-Canadian Accounts</b></p> <p>Clause (e) of Rule 6.4 permits a Participant to trade “off” of a marketplace either as principal with a non-Canadian account or as agent for the purchaser and seller both of whom are non-Canadian accounts. A “non-Canadian account” is defined as an account of a client of the Participant or a client of an affiliated entity of the Participant held by a Participant or an affiliated entity of a Participant and the client is considered to be a non-resident for the purposes of the <i>Income Tax Act</i> (Canada). There may be certain situations arising where a Participant is uncertain whether a particular account is a “non-Canadian account” for the purpose of this exemption. In these situations the account should be treated as a “Canadian account”. The fact that an individual may be located temporarily outside of Canada, that a foreign location is used to place the order or as the address for settlement or confirmation of the trade does not alter the account’s status as a Canadian account. Trades made by or on behalf of bona fide foreign subsidiaries of Canadian institutions are considered to be non-Canadian accounts, if the order is placed by the foreign subsidiary.</p> <p>For the purpose of this Policy, the relevant client of the Participant is the person to whom the order is confirmed.</p>		

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<p><b>Policy 6.4 – Trades to be on a Marketplace</b></p> <p><b>Part 4 – Reporting Foreign Trades</b></p> <p>Clause (e) of Rule 6.4 requires a Participant to report to a marketplace any trade in a listed security or a quoted security that is made as principal with a non-Canadian account or as agent if both the purchaser and seller are non-Canadian accounts, unless the trade is reported to a <b>foreign</b> organized regulated market. If such an “outside Canada” trade has not been reported to a <b>foreign</b> organized regulated market, a Participant shall report such trade to a marketplace no later than the close of business on the next trading day. The report shall identify the security, volume, price (in the currency of the trade and in Canadian dollars) and time of the trade.</p>		<p>The revisions to Part 4 of Policy 6.4 from the Revised Off-Marketplace Proposal are editorial and reflect the adoption of the term “foreign organized regulated market”</p>
<p><b>Policy 6.4 – Trades to be on a Marketplace</b></p> <p><b>Part 5 – Application of UMIR to Orders Not Entered on a Marketplace</b></p> <p>Under Rule 6.4, a Participant, when acting as principal or agent, may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace except in accordance with an exemption specifically enumerated within Rule 6.4. For the purposes of UMIR, a “marketplace” is defined as an Exchange, QTRS or an ATS and a “Participant” is defined essentially as a dealer registered in accordance with securities legislation of any jurisdiction and who is a member of an Exchange, a user of a QTRS or a subscriber to an ATS. If a person is a Participant, certain provisions of UMIR will apply to every order handled by that Participant even if the order is entered or executed on a marketplace or market that has not adopted UMIR as its market integrity rules or if the order is executed over-the-counter. In particular, the following provisions of UMIR will apply to an order handled by a Participant notwithstanding that the order is not entered on a marketplace that has adopted UMIR:</p> <ul style="list-style-type: none"> <li>• Rule 2.1 requires a Participant to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities which are eligible to be traded on a marketplace;</li> <li>• Rule 4.1 prohibits a Participant from frontrunning certain client orders;</li> <li>• Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order;</li> <li>• Rule 8.1 governing client-principal trading; and</li> </ul>		

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<ul style="list-style-type: none"> <li>• Rule 9.1 governing regulatory halts, delays and suspensions of trading.</li> </ul> <p>In accordance with Rule 11.9, UMIR will not apply to an order that is entered or executed on a marketplace in accordance with the Marketplace Rules of that marketplace as adopted in accordance with Part 7 of the Trading Rules or if the order is entered and executed on a marketplace or otherwise in accordance with the rules of an applicable regulation services provider or in accordance with the terms of an exemption from the application of the Trading Rules.</p>		
<p><b>Policy 7.5 – Recorded Prices</b></p> <p>If the price of:</p> <ul style="list-style-type: none"> <li>• an internal cross or intentional cross to be recorded on a marketplace; or</li> <li>• 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,</li> </ul> <p>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 <a href="#">foreign</a> 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).</p>	<p><b>CIBC</b> – As the spreads used by firms may vary, it creates an inconsistency from firm to firm.</p>	<p>The current rule provides for the use of 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. In the view of RS, this test provided for more “latitude” than required. RS recognizes that exchange rates will not be same for all firms or all orders within a firm. The onus is on the firm to demonstrate that the exchange rate used for the transaction was reasonable and that an exchange rate has not been selected solely for the purpose of allowing the trade to avoid “best price” obligations.</p> <p>The revisions from the Revised Off-Marketplace Proposal are editorial reflecting the adoption of the definition of “foreign organized regulated market”.</p>
<p><b>Policy 8.1 – Client-Principal Trading</b></p> <p><b>Part 1 - General Requirements</b></p> <p>Rule 8.1 governs client-principal trades. It provides that, for trades of 50 standard trading units of 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,</p>		



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<p>and, if the Participant is selling, the client must pay a lower price than the best ask price.</p> <p>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.</p>		
<p><b>General or Other Comments</b></p>	<p><b>Scotia</b> – As a general principal all persons directly accessing the Canadian equity markets should be bound by the same set of regulatory obligations and standards of conduct.</p>	<p>The issue of “trade-through” obligations will be addressed by the Canadian Securities Administrators in proposals following consideration of comments received in response to current concept proposals regarding trade-through protection. Reference should be made to Market Integrity Notice 2007-007 – <i>Request for Comments - Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces – Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules and Related Universal Market Integrity Rules</i> (April 20, 2007). RS intends to undertake any consequential amendments to UMIR that may be required as a result of changes to Marketplace Operation Instrument or Trading Rules.</p>
	<p><b>TSX</b> – Notes that the introduction of the proposed “bypass” marker will require significant programming changes and not less than 90 days prior notice to access vendors. Unlikely that the TSX would be in a position to accept the new marker within 90 days after approval of the amendments.</p>	<p>The Amendments have two aspects, namely: limiting the obligation of a Participant to the amount of the “disclosed volume” on other protected marketplaces and the ability of the marketplace to ensure that orders entered to fulfill an obligation to better prices are not allocated to “undisclosed” volume. The Amendments recognize the potential delays that may be experienced by a marketplace in programming for a “bypass order” marker and provide a mechanism for a Participant or Access Person to comply if the marker is not available on a particular marketplace (in that if the trade can not be executed on a particular marketplace because of restrictions on allocations by the trading system of that marketplace, the trade may be executed “off-marketplace” and then reported to a marketplace.)</p>