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Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

IIROC NOTICE

Rules Notice
Notice of Approval
UMIR and Dealer Member Rules

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Provisions Respecting Third-Party Electronic Access to Marketplaces

Executive Summary

On June 26, 2013, the applicable securities regulatory authorities approved amendments to UMIR and Dealer Member Rules (the "Amendments") respecting requirements for Participants providing third-party electronic access to marketplaces[1].

The Amendments, which are ***effective March 1, 2014***, build on amendments to UMIR respecting electronic trading ("UMIR ETR")[2] and:

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[1] Reference should be made to IIROC Notice 12-0315 - Rules Notice – Request for Comments – UMIR - *Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces* (October 25, 2012) and IIROC Notice 12-0316 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance Respecting Third-Party Electronic Access to Marketplaces* (October 25, 2012), which requested public comment on the proposed amendments to UMIR and the Dealer Member Rules ("Proposed Amendments") and related proposed guidance ("Proposed Guidance"). See Appendix C to this notice for the summary of comments received on the Proposed Amendments and the Proposed Guidance and the responses of IIROC.

[2] See section 1.1.2. of this Rules Notice for a discussion of the CSA and IIROC provisions respecting electronic trading.

- confirm that third-party electronic access to a marketplace is a "closed system" under which:
    - a Participant may provide a third party with electronic access to a marketplace by:
        - "direct electronic access",
        - a "routing arrangement", or
        - an "order execution service",
    - an Access Person may enter orders on a marketplace for its account or, if the Access Person is registered or exempted from registration as an adviser in accordance with applicable securities legislation, for the account of its client, and
    - a marketplace may permit orders to be entered or transmitted through a Participant or Access Person who has access to trading on that marketplace,

  each of which must be subject to appropriate oversight;
- incorporate requirements into UMIR for a Participant that provides direct electronic access or enters a routing arrangement that establish:
    - standards to manage the attendant risks,
    - the requirement for a written agreement between the Participant and the client, investment dealer or foreign dealer equivalent to which it will provide access,
    - appropriate supervisory and compliance procedures for orders entered electronically on a marketplace,
    - gatekeeper procedures for reporting to IIROC non-compliance by the client, investment dealer or foreign dealer equivalent with the standards or written agreement,
    - the assignment of a unique identifier to a client, investment dealer or foreign dealer equivalent that is granted electronic access to a marketplace, which must be contained on all orders entered electronically on a marketplace, and
    - an exemption from the suitability obligations whenever an order is accepted from a client or is transmitted for a client who has been provided with direct electronic access, subject to specific conditions;

- introduce gatekeeper obligations on a marketplace that provides access to a Participant or Access Person to report to IIROC non-compliance with any material provision of a Marketplace Rule or of a Participant's or Access Person's access agreement;
- prohibit a Dealer Member that offers order execution services from allowing its clients to use automated order systems or allowing its clients to manually send orders that exceed the threshold on the number of orders as may be set by IIROC from time to time;
- complement the requirements in National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* and its Companion Policy ("NI 23-103" or "CSA Access Rule") [3]; and
- make several editorial changes or consequential amendments to UMIR for clarity and consistency.

The Amendments do not affect the entry of orders on a marketplace that are intermediated by an individual registrant or trader of a Participant or by the Participant's inputs to an algorithm which it operates and offers for a client's use.

The most significant impacts of the Amendments on Participants and other investment dealers are:

- the expansion of the regulatory framework governing third-party electronic access to capture investment dealers (under the "routing arrangements" category), including the requirement to apply a unique identifier to this order flow; and
- the expansion of the types of entities that can access marketplaces through direct electronic access, including to Retail Customers[4] under certain conditions.

The following diagram[5] summarizes the order flow to marketplaces under the Amendments, and the relationship with UMIR ETR:

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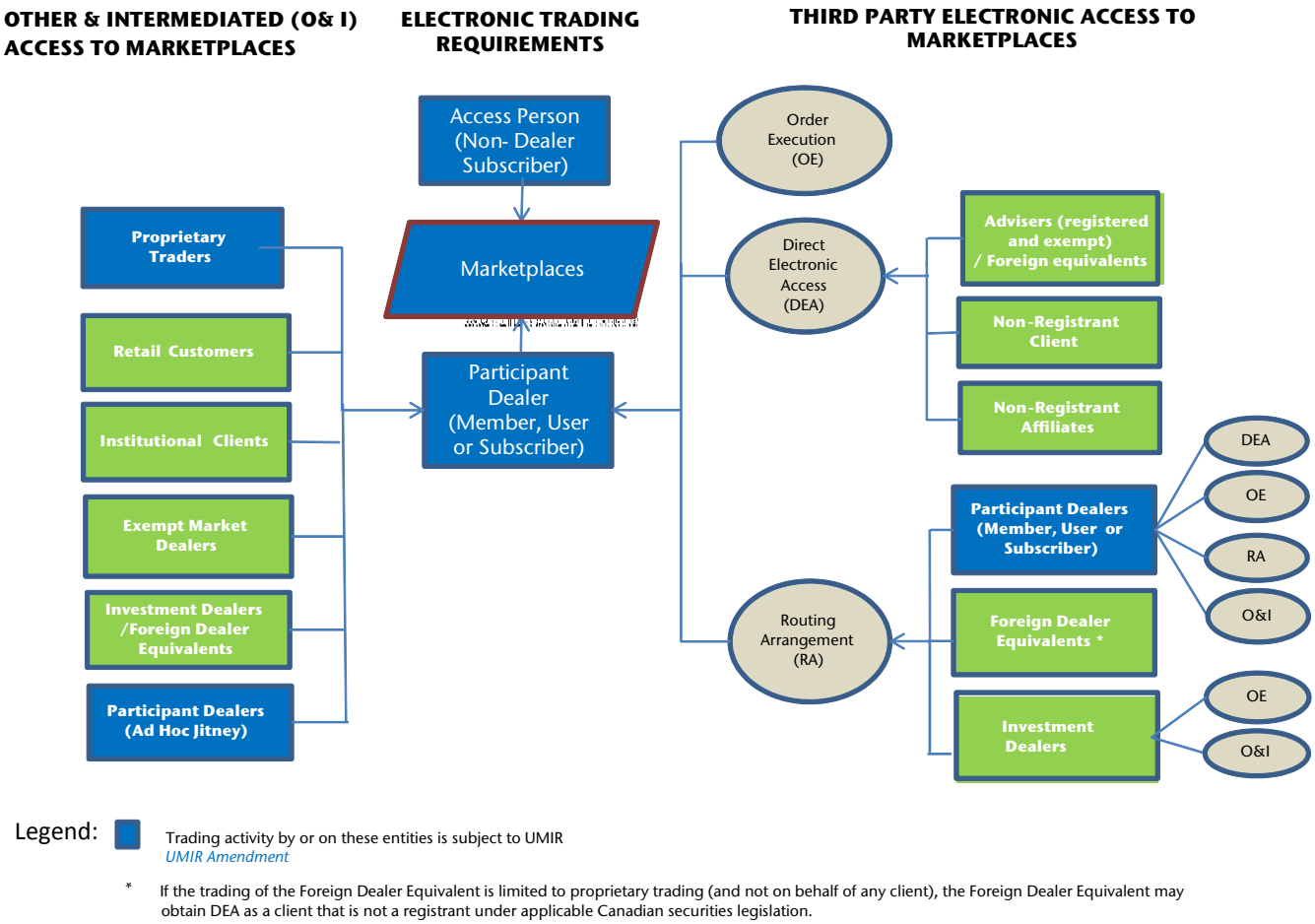
[3] See (2013) 36 OSCB 6893.

[4] Dealer Member Rule 1 defines "Retail Customer" as "a customer of a Dealer Member that is not an Institutional Customer".

[5] A more detailed version of this diagram which contains summary references to the Amendments is set out later in this notice in section 4.3 – *Order Flow to Marketplaces*.



The Amendments are effective March 1, 2014. To the extent that a Participant has an existing agreement with a client, investment dealer or foreign dealer equivalent for electronic access to a marketplace, the Participant has a further 180 days to bring such agreements into compliance with the requirements of the Amendments.

Rules Notice - Table of Contents

1. Background to the Amendments 7
   - *1.1 Domestic and International Regulation 7*
     - *1.1.1 Framework for Regulation of Direct Electronic Access to Marketplaces 7*
     - *1.1.2 Relationship between the Amendments and the Framework for Regulation of Electronic Trading 9*
   - *1.2 Pre-existing UMIR Trading Supervision Requirements for Direct Access to Marketplaces 10*
2. Discussion of the Amendments 12
   - *2.1 Regulatory Framework for Third-Party Electronic Access to Marketplaces 12*
   - *2.2 Regulation of "Direct Electronic Access" and "Routing Arrangements" 16*
     - *2.2.1 Arrangements for Access between Participants and Clients, Investment Dealers and Foreign Dealer Equivalents 16*
     - *2.2.2 Minimum Standards and Written Agreement for DEA and Routing Arrangements 18*
     - *2.2.3 Client Trading - Sub-delegation of Third-party Electronic Access 20*
     - *2.2.4 Restriction on Order Transmission for DEA and Routing Arrangements 21*
     - *2.2.5 Annual Review and Confirmation 22*
     - *2.2.6 Notice to Market Regulator and Unique Identifier 22*
     - *2.2.7 Trading Supervision Obligations Applicable to Third-party Electronic Access 23*
   - *2.3 Order Execution Service 24*
     - *2.3.1 Requirements for Trading Through an Order Execution Service (OES) 24*
   - *2.4 Additional Amendments 25*
     - *2.4.1 Amendments Impacting Marketplaces 25*
     - *2.4.2 Amendments Impacting Participants 26*
     - *2.4.3 Amendments Impacting Access Persons 26*
3. Changes from the Proposed Amendments and Proposed Guidance 26
4. Summary of the Impact of the Amendments 29
   - *4.1 General Requirements Related to Third-Party Access to Marketplaces 29*
   - *4.2 Significant Changes to Existing Regulatory Requirements 29*
     - *4.2.1 Direct Electronic Access 30*
     - *4.2.2 Routing Arrangements 30*
     - *4.2.3 Order Execution Services 31*
   - *4.3 Order Flow to Marketplaces 31*
5. Technological Implications 32
6. Implementation Plan 33

Appendix A – Text of UMIR Amendments 34

Appendix B – Text of Dealer Member Rule Amendments 46

Appendix C – Comments Received in Response to Rules Notice 12-0315 - Rules Notice – Request for Comments – UMIR - *Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces* (October 25, 2012) 50
Appendix D – Text of Dealer Member Rules with blacklined Amendments 89

1. Background to the Amendments

1.1 Domestic and International Regulation

1.1.1 Framework for Regulation of Direct Electronic Access to Marketplaces

Requirements relating to the grant of direct access to a marketplace, previously generally known as "direct market access" or "DMA" were originally established under the rules of the exchanges and in the policies and contractual provisions of ATSs with their subscribers[6]. It was recognized, however, that a uniform regulatory framework for the provision of DMA was desirable and would appropriately reside with regulators of the marketplaces and Participants granting direct electronic access. In this regard, proposed amendments to the CSA Trading Rules were initially issued concurrent with proposed amendments to UMIR concerning "dealer-sponsored access", that were intended to clarify the obligations of Participants, Access Persons and marketplaces regarding direct access[7]. While these proposals were later withdrawn given a re-examination of the risks related to direct electronic access, this lead to the formulation of the CSA Access Rule and Amendments respecting third-party electronic access to marketplaces[8].

The CSA Access Rule and the Amendments create a new, more robust and comprehensive regulatory framework for third-party electronic access to marketplaces and take account of regulatory developments in other jurisdictions[9] concerning electronic trading and access to marketplaces. The framework is aligned with the principles expressed in the Final Report prepared by the International Organization of Securities Commissions ("IOSCO") entitled *Principles for Direct Electronic Access to Markets*, in August, 2010 (the "IOSCO DEA Report")[10].

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[6] For example TSX Rule Book Part 2 – Access to Trading, Division 5 – Connection of Eligible Clients of Participating Organizations, Rules 2-501, 2-502 and 2-503. Notably, IIROC Trading Conduct Compliance has engaged in direct market access reviews in part on behalf of TSX, to which the results are provided.

[7] See Market Integrity Notice 2007-009– Request for Comments – *Provisions Respecting Access to Marketplaces* (April 20, 2007).

[8] IIROC expects that marketplaces will be adapting their existing direct access rules and policies given the CSA Access Rule and Amendments, including removal of the concept of "eligible client" from marketplace rules, so that Participating Organizations, Members and Subscribers will not restrict their client base and to remove duplicative requirements, such as prescribed provisions in written agreements between a Participant and a client.

[9] See Securities and Exchange Commission (SEC) Rule 15c3-5 *Risk Management Controls for Brokers or Dealers with Market Access* published in November, 2010 at http://www.sec.gov/rules/final/2010/34-63241.pdf which effectively prohibits broker-dealers from providing unfiltered access to any marketplace; European Commission *Proposal for a Directive of the European Parliament and of the Council*, COM(2011) 656 final at http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm; the Australian Securities and Investments Commission (ASIC) Consultation Paper 184: Australian market structure - Draft market integrity rules and guidance on automated trading, at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/cp184-published-13-August-2012.pdf/$file/cp184-published-13-August-2012.pdf and Regulatory Guide 241 Electronic trading (November, 2012); and European Securities and Markets Authority (ESMA) *Guidelines - Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities*, published February 24, 2012 at www.esma.europa.eu/system/files/esma_2012_122_en.pdf.

[10] See http://www.iosco.org/library/pubdocs/pdf/IOSCOPD332.pdf. For the purposes of the IOSCO DEA Report, "direct electronic access" or "DEA" was defined as following three major pathways: (i) an arrangement where an intermediary, who is a market-member, permits its customers to transmit orders electronically routing through an intermediary's infrastructure, and the order is in turn

The IOSCO DEA Report principles adopted in the CSA Access Rule and the Amendments include:

- *Minimum DEA Customer Standards* that firms must maintain procedures to ensure clients have appropriate financial resources and are familiar with, and comply with, the rules of the market and have knowledge of and proficiency in the use of the order entry system;
- *Legally Binding Agreement* between the firm providing access and the DEA customer;
- *Intermediary's Responsibility for Trades* and for all orders under its authority, as well as for compliance with all regulatory requirements and market rules;
- *DEA Customer Identification* which firms must disclose to market authorities in order to facilitate market surveillance; and
- *Intermediaries* should use controls, including automated pre-trade controls, which can limit or prevent a DEA customer from placing an order that exceeds an intermediary's existing position or credit limits and have adequate operational and technical capabilities to appropriately manage the risks posed by DEA.

The CSA Access Rule also builds on the obligations outlined in Section 11.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103") under which a registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to:

- provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation; and
- manage the risks associated with its business in accordance with prudent business practices.

With the CSA Access Rule and the complementary Amendments, a common set of requirements applies across all marketplaces to govern Participants providing electronic access to marketplaces that have retained IIROC as their regulation services provider. The regulatory framework is designed to facilitate trading in a multiple marketplace environment and protect market integrity given the increased risks inherent in the use of complicated technology and strategies, including high frequency trading strategies, which may be associated with third-party electronic access to marketplaces.

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automatically transmitted for execution to a market-maker under the intermediary's market-maker ID ("automated order routing"); (ii) an arrangement where an intermediary, who is a market-member, may permit its customers to use its member ID to transmit orders for execution directly to the market without using the intermediary's infrastructure ("sponsored access"); and (iii) a person, who is not registered as an intermediary, such as a hedge fund or proprietary trading group, becomes a market-member, and in that capacity, in the same way as members that are registered intermediaries, connects directly to the market's trade matching system using its own infrastructure and member ID ("direct access").

1.1.2 Relationship between the Amendments and the Framework for Regulation of Electronic Trading

The provisions of NI 23-103 and its Companion Policy (23-103 CP) related to electronic trading requirements (the "ETR")[11] were published in final form on September 20, 2012 and came into effect on March 1, 2013, together with the UMIR ETR that align with the requirements of the ETR[12].

The ETR govern the risk controls, policies and procedures that marketplace participants and marketplaces must implement in regard to electronic trading. The UMIR ETR introduced new provisions detailing the responsibilities of Participants and Access Persons with respect to the supervision of electronic trading. These provisions align UMIR with the requirements set out in the ETR applicable to "market participants" which includes both Participants and Access Persons under UMIR. In particular, the UMIR ETR:

- expand the existing supervisory requirements for trading to specifically include the establishment and maintenance of risk management and supervisory controls, policies and procedures related to access to one or more marketplaces and/or the use of an automated order system;
- permit, in certain circumstances, a Participant to authorize an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control policy or procedure to an investment dealer by a written agreement; and
- impose specific gatekeeper obligations on a Participant who has authorized an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control policy or procedure to an investment dealer.

The ETR and the UMIR ETR are consistent with the CSA Access Rule and Amendments in that Participants that provide third-party electronic access:

- must adopt risk management and supervisory controls, policies and procedures that are reasonably designed to ensure that all orders, including those that may be entered by third-party electronic access, are monitored prior to entry to a marketplace and post-trade;
- may authorize an investment dealer in a routing arrangement to perform on the Participant's behalf the setting or adjustment of a specific risk management or supervisory control, policy or procedure under certain circumstances; and

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[11] See (2012) 35 OSCB 8599.

[12] See IIROC Notice 12-0363 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Electronic Trading* and related guidance IIROC Notice 12-0364 – Rules Notice – Guidance Note - UMIR – *Guidance Respecting Electronic Trading* (December 7, 2012).

- must have an appropriate level of understanding, ongoing testing and appropriate monitoring of any automated order systems in use by a third party that is provided electronic access to a marketplace by a Participant.

These provisions effectively prohibit Participants from providing "naked" or unfiltered third-party access to a marketplace, preclude the authorization to set or adjust a Participant's controls to a third party with access except as permitted under a routing arrangement, and require that Participants act as gatekeepers to prevent orders entered by third-party electronic access from interfering with fair and orderly markets.

1.2 Pre-existing UMIR Trading Supervision Requirements for Direct Access to Marketplaces

Trading supervision requirements related to direct electronic access to marketplaces have been addressed in Rule 7.1 and Policy 7.1 of UMIR, in the context of marketplace requirements governing direct access. Currently, Rule 7.1 establishes trading supervision obligations which Participants must follow, including:

- adopting written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with UMIR and each Policy; and
- complying, prior to the entry of an order on a marketplace, with:
    - applicable regulatory standards with respect to the review, acceptance and approval of orders,
    - the policies and procedures adopted, and
    - all requirements of UMIR and each Policy.

Policy 7.1 elaborates on the responsibility of Participants for trading supervision and compliance, including for orders entered on a marketplace without the involvement of a trader as the client maintains a "systems interconnect arrangement", in accordance with marketplace requirements. Policy 7.1 directs that the obligation to supervise:

- applies to the Participant whatever the means with which an order is entered on a marketplace, including if entered directly by a client and routed to a marketplace through the trading system of the Participant; and

- requires adequate supervision policies and procedures to address the potential additional risk exposure with orders not directly handled by the Participant but which are the Participant's responsibility.

The supervision requirements in UMIR were supplemented by guidance concerning supervision of persons with "direct access"[13] which noted a Participant providing direct access was not relieved from any obligations under UMIR with respect to the supervision of trading activities by a "direct access client" and retained full responsibility for any order entered by a direct access client, even though that order would be electronically routed to the marketplace. The policies and procedures of a Participant were mandated to specifically address the additional risk exposure which the Participant had for orders not directly handled by the Participant prior to the entry on a marketplace.

Additional guidance[14] was issued setting out regulatory expectations concerning compliance and supervision obligations under Policy 7.1 of UMIR in regard to:

- order execution services provided to a client that is a Retail Customer (an "order execution client");
- dealer-sponsored access services or direct market access provided to a client, excluding order execution clients; and
- algorithmic trading.

The guidance provided to Participants was substantially similar for both order execution service and DMA client streams and emphasized that:

- the source of, or means with which, an order is entered does not relieve a Participant of responsibility for, and the supervision of, such orders including:
    - the detection of UMIR violations, and
    - implementation of systems reasonably designed to prevent the entry and execution of "unreasonable" orders and trades on a marketplace whether the Participant, or a DMA client of the Participant, is using an algorithmic trading system, and
- the Dealer Member Rules applicable to order execution services or institutional DMA clients[15] would not alter or relieve a Participant from any obligations under Policy 7.1.

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[13] Market Integrity Notice 2005-006 – *Guidance - Obligations of an "Access Person" and Supervision of Persons with "Direct Access"* (March 4, 2005).

[14] Market Integrity Notice 2007-010 – *Guidance - Compliance Requirements for Dealer Sponsored Access* (April 20, 2007); Market Integrity Notice 2007-011 – *Guidance - Compliance Requirements for Order Execution Services* (April 20, 2007); Market Integrity Notice 2008-003 – *Guidance – Supervision of Algorithmic Trading* (January 18, 2008); and IIROC Notice 09-0081– *Rules Notice – Guidance Note – Specific Questions Related to Supervision of Algorithmic Trading* (March 20, 2009).

Enforcement cases that have been taken by IIROC under Rule 7.1 and Policy 7.1 have reinforced the requirement of a Participant to properly supervise "DMA trading"[16], holding that Participants that provide DMA retain the ultimate responsibility for any order entered and to ensure that trading supervision obligations under UMIR are met.

2. Discussion of the Amendments

The following is a summary of the principal components of the Amendments which are set out in this notice at Appendix A with respect to UMIR amendments and Appendix B with respect to Dealer Member Rule amendments.

2.1 Regulatory Framework for Third-Party Electronic Access to Marketplaces

The CSA Access Rule established new terminology and a definition of electronic access to marketplaces called "direct electronic access" or "DEA", premised on the Participant as provider of, and primary gatekeeper to, direct electronic access. The third-party electronic access provisions in UMIR go beyond the provisions in the CSA Access Rule to address the other identified types of electronic access to marketplaces provided by a Participant to a third-party, namely "routing arrangements" [17] and "order execution services", given the similar risks they may bring to the Participant and the market. The CSA Access Rule's requirements respecting the provision of direct electronic access do not apply to Participants that comply with requirements established under the Amendments[18].

Consistent with the DEA definition in the CSA Access Rule, the Amendments adopt the following definition of the term in UMIR:

> **"direct electronic access"** means an arrangement between a Participant that is a member, user or subscriber and a client that permits the client to electronically transmit an order relating to a security containing the identifier of the Participant:

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[15] Previously, order execution services were regulated under Policy 4 and Policy 9 of the former Investment Dealers Association. Currently, DMR 3200 governs how Dealer Members qualify for suitability relief to provide order execution services. DMR 3200 refers to retail account supervision requirements outlined in DMR 2500, other than suitability. In addition, DMR 2700 currently governs Institutional Customer account opening, operation and supervision. Any account other than an Institutional Customer account governed by DMR 2700 is governed by DMR 2500.

[16] IIROC Notice 11-0232 – Enforcement Notice – Decision - *In the Matter of Morgan Stanley Canada Limited - Settlement* (August 3, 2011) and IIROC Notice 11-0045 - Enforcement Notice – Decision - *In the Matter of Credit Suisse Securities (Canada) Inc. - Settlement* (February 2, 2011).

[17] See subsection 4.2(2) of NI 23-103 which does not permit the provision of DEA to a dealer.

[18] See s. 4.1 of NI 23-103. IIROC is not the regulation services provider to all marketplaces in Canada, such as the Montreal Exchange. The CSA Access Rule would apply to a member of a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101 but has not established similar requirements.

(a) through the systems of the Participant for automatic onward transmission to a marketplace; or

(b) directly to a marketplace without being electronically transmitted through the systems of the Participant.

The definition of direct electronic access uses the term "arrangement" to connote the set of obligations, standards and terms that a Participant must undertake and adopt under UMIR 7.13 and related Rules, consistent with the CSA Access Rule, as a condition for granting direct electronic access to a client. It also clarifies that electronic transmission by a client of an order containing the Participant's identifier to a marketplace is DEA whether or not the client's order is transmitted through the Participant's own technology systems infrastructure or through the technology systems of a service provider that has been retained by the Participant.

The Amendments provide a suitability exemption in Dealer Member Rule 1300.1 for certain Retail Customers who may be granted DEA in accordance with the principles expressed by the CSA in NI 23-103[19] and in Part 9 of Policy 7.1 of UMIR. While generally providing a greater scope of potential DEA clients, the requirements do not permit a Participant to grant DEA to a dealer under applicable securities legislation.

In addition, the "DEA-like" trading arrangements which enable an investment dealer[20] or client to send orders to a Participant electronically in a similar manner as a DEA client are defined as follows in the Amendments:

> **"routing arrangement"**, being an arrangement under which a Participant that is a member, user or subscriber permits an investment dealer or a foreign dealer equivalent[21] to electronically transmit an order relating to a security containing the identifier of the Participant:
>
> (a) through the systems of the Participant for automatic onward transmission to a marketplace; or

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[19] The CSA expressed the view in the Companion Policy to NI 23-103 that: "... in general, retail investors should not be using DEA and should be sending orders using order execution services. However, there are some circumstances in which individuals are sophisticated and have access to the necessary technology to use DEA (for example, former registered traders or floor brokers). In these circumstances, we expect that the participant dealer chooses to offer DEA to an individual, the participant dealer will set standards high enough to ensure that the participant dealer is not exposed to undue risk. It may be appropriate for these standards to be higher than those set for institutional investors. All requirements relating to risk management and supervisory controls, policies and procedures would apply when granting DEA to an individual."

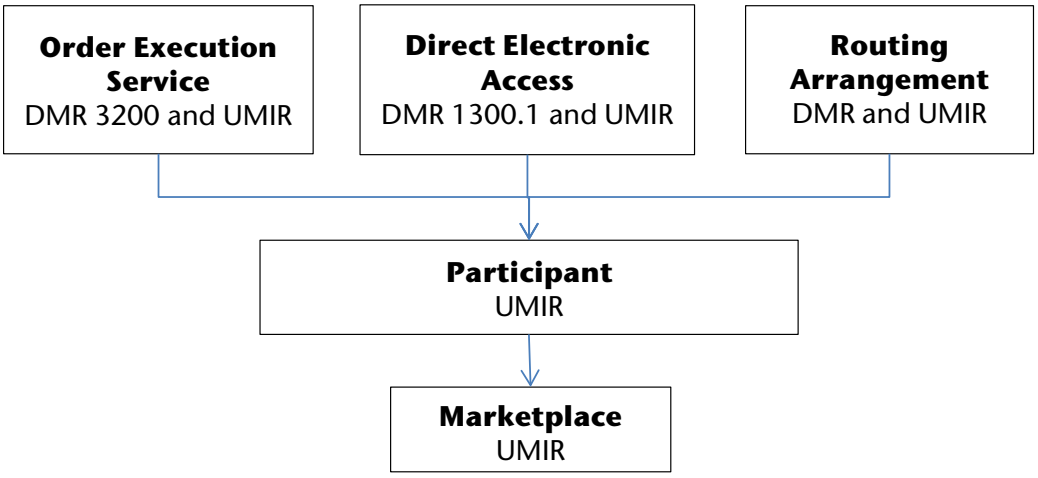
[20] "Investment Dealer" is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

[21] UMIR 1.1 defines a "foreign dealer equivalent" as a person in the business of trading securities in a foreign jurisdiction in a manner analogous to an investment dealer and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction.

(b) directly to a marketplace without being electronically transmitted through the systems of the Participant; and

"**order execution service**", being a service that meets the requirements, from time to time, under Dealer Member Rule 3200.

The following diagram outlines the regulatory framework, discussed below, for third-party electronic access to marketplaces:



In IIROC's view, routing arrangements and order execution services pose similar systemic risks to DEA. All three arrangements for access to a marketplace require the electronic transmission of orders directly to a marketplace. Accordingly, the intention of the Amendments is to ensure that each arrangement with a Participant for electronic access to a marketplace is appropriately supervised and regulated.

The Amendments provide for similar requirements to govern routing arrangements and DEA, in UMIR 7.13, supplemented by certain new requirements related to the provision of order execution services under Dealer Member Rule 3200[22].

As with the definition of direct electronic access, the definition of a routing arrangement connotes the set of obligations, standards and terms that a Participant must undertake and adopt as set out under UMIR 7.13 and related Rules, as a condition for entering into a routing arrangement. It also similarly provides that orders may be entered on a marketplace using the identifier of the Participant whether electronically transmitted through the technology systems

[22] See Dealer Member Rule Amendments in Appendix "B" to this Rules Notice. The Proposed Amendments had intended to restrict order execution services provided pursuant to Dealer Member Rule 3200 to Retail Customers and require a Participant offering order execution services to review, on an on-going basis, whether the account was appropriate to use such service and, on an annual basis, that the account is not using a third-party automated order system. Those proposals have not been brought forward with the Amendments. New amendments to the Dealer Member Rules may be proposed as part of a separate request for comments.

of the Participant or through the technology systems of a service provider retained by the Participant.

When an order is transmitted through a routing arrangement, the Participant retains responsibilities and obligations for the order under UMIR, and, in particular, the order will remain subject to the risk management and supervisory controls, policies and procedures that the Participant must adopt in accordance with the UMIR ETR.

In order to allow Participants to provide Retail Customers with direct electronic access if suitable, the Amendments have changed Dealer Member Rules 1300.1 and 3200 as follows:

- Dealer Member Rule 1300.1 allows a Dealer Member (Participant) to accept or transmit orders for a client who has been granted DEA, without being subject to the suitability obligations that would otherwise apply for acceptance of orders, as long as the Dealer Member:
    - first determines that DEA is suitable for the client;
    - complies with any UMIR provisions relating to the granting of DEA; and
    - does not provide any recommendations to the Retail Customer.
- Dealer Member Rule 3200 clarifies that a Dealer Member offering an order execution service must not allow its clients to:
    - use their own automated order system to generate orders to be sent to the Dealer Member or send orders to the Dealer Member on a pre-determined basis; or
    - manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by IIROC from time to time.

It should be noted that access to marketplaces may also be gained, indirectly, by those clients or registrants using an advisor or trader to enter transactions on their behalf for execution on a marketplace. Due to its structure, an advisory account would not be subject to these requirements. The general suitability assessment requirements, and related exemptions, are set out in Dealer Member Rule 1300.1. The manner by which suitability is assessed for Institutional Customers[23] is set out in Dealer Member Rule 2700.

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[23] Dealer Member Rule 1 defines "Institutional Customer" as:
(1) An Acceptable Counterparty (as defined in Form 1);
(2) An Acceptable Institution (as defined in Form 1);
(3) A Regulated Entity (as defined in Form 1);
(4) A Registrant (other than an individual registrant) under securities legislation; or
(5) A non-individual with total securities under administration or management exceeding $10 million.

2.2 Regulation of "Direct Electronic Access" and "Routing Arrangements"

2.2.1 Arrangements for Access between Participants and Clients, Investment Dealers and Foreign Dealer Equivalents

The Amendments add Rule 7.13 to address the requirements for a Participant that is a member, user or subscriber to provide DEA to a client or enter into a routing arrangement with an investment dealer or foreign dealer equivalent. As with the CSA Access Rule, Rule 7.13 does not prescribe an "eligible client list" of types of clients able to have DEA. This approach is different from that under marketplace rules and policies governing DMA (which generally included various foreign and domestic institutions or registrants as well as clients trading through an order execution service). Rather, the Rule sets minimum standards for provision of DEA, consistent with other jurisdictions, and allows for a wider scope of potential DEA clients.

However, Rule 7.13 prohibits Participants from providing DEA to clients acting and registered as dealers (consistent with the CSA Access Rule) and instead permits a Participant to enter into a routing arrangement with an investment dealer or a foreign dealer equivalent, subject to the same minimum standards as for direct electronic access. This restriction is intended to prevent regulatory arbitrage with respect to trading and encourage dealers that are not investment dealers wishing to have direct electronic access to a marketplace to become a member of IIROC (and be subject to the Dealer Member Rules and, in certain cases, UMIR). Foreign dealer equivalents that are also registered as exempt market dealers ("EMD") are permitted to enter a routing arrangement with respect to order flow that it handles only in its capacity as a foreign dealer equivalent.

While sharing similar risks and having similar requirements under Rule 7.13, a distinction between a Participant's provision of DEA to a client and a Participant's routing arrangement with an investment dealer or foreign dealer equivalent was made in order to segregate Dealer Member firms with agency order flow over which IIROC has jurisdiction or firms with an equivalent business in a foreign jurisdiction, from non-dealer clients with direct access and non-registrant foreign dealer equivalents when trading proprietarily (who would generally not be subject to IIROC's jurisdiction, unless the DEA client is also a subscriber to an ATS and therefore an Access Person for the purposes of UMIR).

In addition, UMIR had not previously specifically addressed the risks of electronic access granted to an investment dealer. The routing arrangement definition formally establishes a new category of electronic access to marketplaces and recognizes the existing grants of electronic access to a marketplace from Participants to:

- other Participants[24];
- investment dealers that are not a member of an Exchange, user of a QTRS or subscriber to an ATS[25]; and
- foreign dealer equivalents.

DEA and routing arrangements both rely on the Participant providing access to act as gatekeeper, according to prescribed minimum standards in UMIR, for the provision of access. The regulatory framework is accordingly consistent with marketplace DMA rules and policies to the extent that the Participant is responsible for compliance with the requirements respecting the entry and execution of orders transmitted electronically by DEA or a routing arrangement to the marketplace.

Under the Amendments, the new suitability exemption provided in Rule 1300.1 applies for orders accepted from or transmitted for any client with DEA as long as, among other things, the Dealer Member has determined that providing DEA to the client is suitable for that client.

There are two additional conditions a Dealer Member must meet in order to be exempt from the suitability requirements applicable to orders; namely the Dealer Member must:

- not provide any recommendation to any Retail Customers that have been provided with direct electronic access; and
- comply with the rules in UMIR applicable to the direct electronic access service offering and the requirements of NI 23-103.

The prohibition against providing recommendations to Retail Customers is meant as an additional safeguard to mitigate the risk that the Dealer Member may be able to provide recommendations to the Retail Customer and then allow the Retail Customer to use its direct electronic access systems to process the recommended transaction. Without this condition, the exemption provided would allow a Dealer Member or Registered Representative to make recommendations without being responsible for the suitability of those recommendations, a gap that does not exist under the current regime. A similar exemption is not introduced for

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[24] In the case of a routing arrangement between Participants, any order entered on a marketplace by a Participant on behalf of the other Participant is defined as a "jitney order" under Rule 1.1 of UMIR and must be marked accordingly. Rule 6.2(1)(a) mandates that each jitney order entered on a marketplace shall contain the identifier of the Participant for or on behalf of whom the order is entered, and Rule 6.2(1)(b)(xii) requires that each jitney order entered on a marketplace contain the jitney designation.

[25] Currently, those investment dealers that are not a member, user or subscriber are not subject to UMIR except to the extent that a related entity to a Participant is party to the routing arrangement. Rule 10.4 provides that a related entity of a Participant and a director, officer, partner or employee of the Participant or a related entity of the Participant shall: (a) comply with the provisions of UMIR and any Policies with respect to just and equitable principles of trade, manipulative and deceptive activities, short sales and frontrunning as if references to "Participant" in Rules 2.1, 2.2, 2.3, 3.1 and 4.1 included reference to such person; and (b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to penalties and remedies set out in this Part.

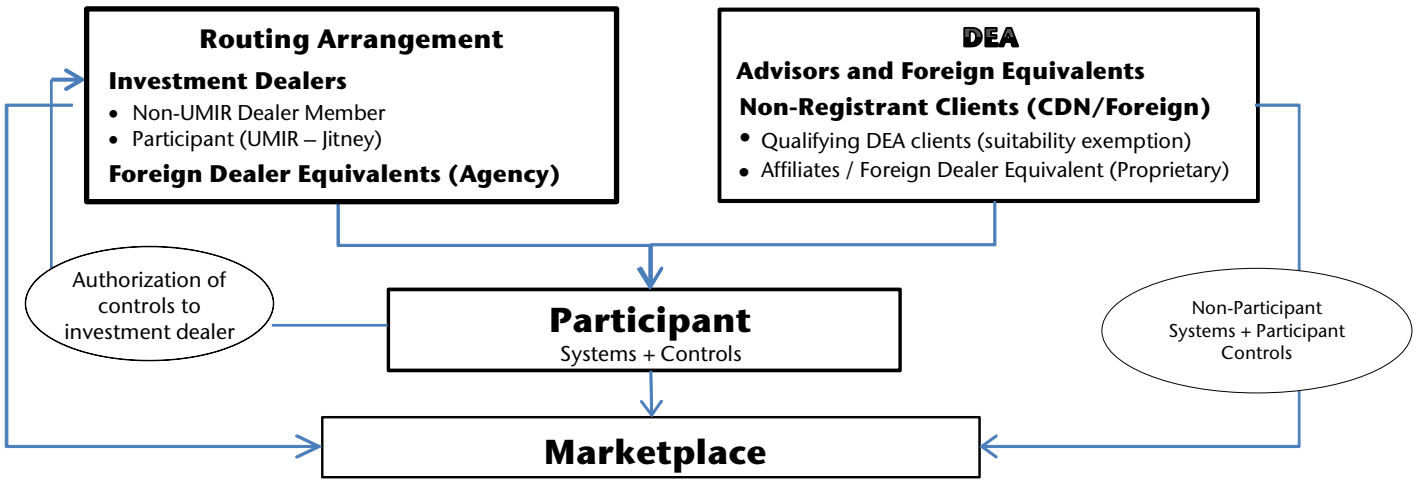
Institutional Customers as IIROC recognizes that when dealing with Institutional Customers, Dealer Members often provide trade recommendations which are acceptable as long as the Dealer Member meets its sophistication assessment suitability obligations with respect to recommendations provided to an Institutional Customer.

DEA is not, however, intended to be widely applicable to Retail Customers. Rather, the expectation that Retail Customers will generally not qualify for DEA (and thus not be able to avail themselves of the suitability exemption) is set out in Part 9 of Policy 7.1 of UMIR. The policy also recognizes exceptional circumstances when DEA could be provided to non-institutional investors, including:

- sophisticated former traders and floor brokers; and
- a person or company having assets under administration with a value approaching that of an Institutional Customer that has access to and knowledge regarding the necessary technology to use DEA.

In these circumstances, the Participant must set higher standards than for Institutional Customers to mitigate exposure to undue and higher risk associated with a Retail Customer employing DEA.

The following diagram illustrates a Participant's potential routing arrangement and DEA client relationships:



2.2.2 Minimum Standards and Written Agreement for DEA and Routing Arrangements

The minimum standards to be established by a Participant providing DEA to a client or in a routing arrangement with an investment dealer or foreign dealer equivalent are included in

Rule 7.13 and are comparable to the requirements in the CSA Access Rule. The standards require that the DEA client, investment dealer or foreign dealer equivalent must:

- have sufficient resources to meet any financial obligations that may result from the use of DEA or the routing arrangement;
- have reasonable knowledge and proficiency to use the order entry system;
- have reasonable knowledge of and ability to comply with all applicable Requirements[26], including order marking as required by Rule 6.2 of UMIR;
- have reasonable arrangements in place to monitor the entry of orders transmitted using DEA or the routing arrangement;
- take all reasonable steps to ensure that the use of automated order system[27] by itself or any client, does not interfere with fair and orderly markets; and
- ensure that each automated order system used by itself or any client is tested in accordance with prudent business practices.

These minimum standards are considered necessary by the CSA and IIROC to ensure that the Participant properly manages its risks. In this manner, the Participant establishes, maintains and applies reasonable standards for DEA and a routing arrangement, including evaluating its risks in providing third-party access. Each potential DEA client, or investment dealer and foreign dealer equivalent in a routing arrangement, is expected to be vetted independently by the Participant to assess the risks the order flow may present to its business before establishing the standards.

Adherence to the minimum prescribed standards and any more stringent requirements which may be imposed by the Participant, must, among other things, be included in the terms of a written agreement to be entered into by the Participant with the DEA client, investment dealer or foreign dealer equivalent, as a precondition to the provision of the third-party electronic access.

The written agreement between the Participant and the client, investment dealer or foreign dealer equivalent must contain a number of provisions, including:

- the ability of the Participant, without prior notice, to:
    - reject any order,

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[26] "Requirements" are defined collectively in UMIR 1.1 as: (a) UMIR; (b) the Policies; (c) the Trading Rules; (d) the Marketplace Rules; (e) any direction, order or decision of the Market Regulator or a Market Integrity Official; and (f) securities legislation, as amended, supplemented and in effect from time to time.

[27] See ETR which defines the term "automated order system" as "a system used to automatically generate or electronically transmit orders that are made on a pre-determined basis".

- vary or correct any order entered on a marketplace to comply with Requirements,
- cancel any order entered on a marketplace, or
- discontinue accepting orders

from the client, investment dealer or foreign dealer equivalent;

- a requirement that the client, investment dealer or foreign dealer equivalent immediately inform the Participant if the client fails or expects not to meet the standards set by the Participant; and
- a requirement that the trading activity of client, investment dealer or foreign dealer equivalent will comply with:
  - all Requirements, and
  - with the product limits or credit or other financial limits specified by the Participant.

In the case of an agreement specific to the provision of direct electronic access, a Participant must include a term that it will provide the DEA client with all relevant amendments or changes to applicable Requirements and the standards established by the Participant. In addition, the DEA agreement must include a term requiring the client to provide the Participant with the names of its personnel that are authorized to enter an order using DEA.

IIROC is permitting Participants a further 180 days following the implementation of the Amendments to replace or amend existing electronic access agreements with clients, investment dealers, and foreign dealer equivalents to comply with the requirements for written DEA and routing agreements.

2.2.3 Client Trading - Sub-delegation of Third-party Electronic Access

The CSA Access Rule does not permit a DEA client to "sub-delegate" its access and, in turn, provide DEA to its clients except for certain limited circumstances under which certain DEA clients may trade for their client accounts. The Amendments are consistent with this principle.

In respect of DEA, a client may only trade for the account of another client if the DEA client is registered or exempt from registration as an adviser under securities legislation or is a foreign equivalent to an adviser that is subject to the regulatory jurisdiction of a signatory to IOSCO's

Multilateral Memorandum of Understanding in that foreign jurisdiction[28]. Control over sub-delegation in this manner is required to mitigate against the risk of providing market access to those who have little or no incentive or obligation to comply with the regulatory requirements or financial, credit or position limits imposed upon them. The terms of the written agreement with a DEA client must prohibit sub-delegation except as permitted for the prescribed types of DEA clients.

In distinction, investment dealers and foreign dealer equivalents in a routing arrangement are by definition trading for the accounts of their clients. The Amendments require equally, however, for clients, investment dealers or foreign dealer equivalents, that they must agree not to permit any person to transmit an order using direct electronic access or a routing arrangement other than the personnel authorized by the client, investment dealer or foreign dealer equivalent.

In the case of permitted trading for the accounts of other persons, a DEA client, investment dealer or foreign dealer equivalent must ensure that the orders for the other person flow through the systems of the DEA client, or for routing arrangements through the systems of a Participant or investment dealer or foreign dealer equivalent before being entered on a marketplace. This allows the DEA client to impose the necessary controls to manage its risks given its knowledge of its client, and allows the Participant in a routing arrangement to monitor the order flow of the investment dealer or foreign dealer equivalent. The DEA client is also mandated as a term of the DEA agreement to ensure that orders for its clients are subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the DEA client. The Participant is responsible to ensure, in turn, that the DEA client has adequate controls in place to monitor the orders entering the DEA client's system, in addition to the Participant maintaining its own controls to manage its risks.

2.2.4 Restriction on Order Transmission for DEA and Routing Arrangements

The Participant that is a member, user or subscriber and has granted DEA or entered into a routing arrangement must ensure that no order is transmitted by the client using DEA or by an investment dealer or foreign dealer equivalent under a routing arrangement unless:

- the Participant:
    - maintains and applies the established standards,

[28] As a result of this restriction, a foreign dealer equivalent may be a DEA client in respect of its own proprietary trading. A foreign dealer equivalent that enters orders electronically directly on a marketplace for any other person would have to do so through a routing arrangement. Foreign registrants that are acting on behalf of clients but are not the equivalent of an investment dealer or adviser would not be entitled to obtain third-party electronic access to marketplaces but would have to use intermediated access through a Participant in respect of their client order flow.

- is satisfied that the client, investment dealer or foreign dealer equivalent meets the established standards, and
- is satisfied the client, investment dealer or foreign dealer is in compliance with the written agreement entered into; and

- the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a marketplace pursuant to the UMIR ETR.

The result is that no "naked access" is permitted for a DEA client, investment dealer or foreign dealer equivalent. The UMIR ETR (as the ETR) only permit a Participant to authorize an investment dealer to set or adjust specific risk or supervisory controls, policies and procedures in respect of "client" trading by the investment dealer when the investment dealer "has better access to information relating to the ultimate client"[29]. Notwithstanding that a Participant may have authorized an investment dealer to set or adjust the specific risk management or supervisory controls, policies or procedures in respect of client orders from that investment dealer, the Participant remains responsible under UMIR in respect of such orders.

2.2.5 Annual Review and Confirmation

The Participant must review and confirm at least annually that the established standards are adequate, maintained and consistently applied and that the written agreement with the prescribed terms has been complied with by the DEA client, investment dealer or foreign dealer equivalent and Participant.

2.2.6 Notice to Market Regulator and Unique Identifier

The Amendments require a Participant upon entry into a written agreement with a DEA client, investment dealer or foreign dealer equivalent to immediately notify IIROC of the name of the client, investment dealer or foreign dealer equivalent and thereafter any change to this information.

Under Rule 10.18, a Participant has a "gatekeeper obligation" to immediately notify IIROC if the Participant terminates the client's DEA access or a routing arrangement, or knows or has reason to believe that the client, investment dealer or foreign dealer equivalent has or may have breached a material provision of any standard established by the Participant or the written agreement for third-party electronic access.

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[29] See IIROC Notice 12-0364 - *Provisions Respecting Electronic Trading*, *op. cit.*, with reference to Rule 7.1(7),(8).

Following the initial notification that a Participant has granted DEA to a client or entered into a routing arrangement, a unique identifier must be assigned to the DEA client, investment dealer (other than a Participant) or foreign dealer equivalent under Rule 10.15 of UMIR. Pursuant to Rule 6.2 of UMIR, the identifier of the DEA client, investment dealer or foreign dealer equivalent is required to be contained on each order entered on a marketplace through DEA or a routing arrangement.

2.2.7 Trading Supervision Obligations Applicable to Third-party Electronic Access

Policy 7.1 of UMIR addresses aspects of supervision related to third-party electronic access to marketplaces. Part 9 of Policy 7.1 in particular, supplements the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8 of Policy 7.1 to specifically set out regulatory expectations related to DEA and routing arrangements regarding:

- the provision of DEA to a Retail Customer;[30]
- the Participant's obligations to ensure that any modification to a previously approved automated order system in use by a client, investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards;
- the requirement to monitor orders entered by the client, investment dealer or foreign dealer equivalent to identify any breaches of established standards or the agreement, unauthorized trading, improper sub-delegation of access, or failure to transmit orders through the systems of a DEA client, or Participant, investment dealer or foreign dealer equivalent trading on behalf of other persons;
- the establishment of sufficiently stringent standards by the Participant for each client, investment dealer or foreign dealer equivalent to ensure the Participant is not exposed to undue risk;
- the Participant's responsibility to properly identify a DEA client and an originating investment dealer or foreign dealer equivalent and to maintain policies and procedures to appropriately mark and identify each order that is ultimately transmitted through DEA or the routing arrangement; and
- the requirement that the Participant monitor orders entered by third-party electronic access to identify any breaches of established standards or agreement.

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[30] See previous discussion at section 2.2.1 - *Arrangements for Access between Participants and Clients, Investment Dealers and Foreign Dealer Equivalents*.

2.3 Order Execution Service

2.3.1 Requirements for Trading Through an Order Execution Service (OES)

The Amendments define "order execution service" as a service that meets the requirements, from time to time, under Dealer Member Rule 3200 governing suitability relief for trades not recommended by a Dealer Member, commonly known as "discount brokerage". The definition is adopted in UMIR to reflect the reference to OES in UMIR 6.1 as a form of third-party electronic access which is part of a "closed system". Currently, OES may be offered by Participants directly to clients or by non-Participant investment dealers that transmit their OES order flow to a Participant for execution on a marketplace.

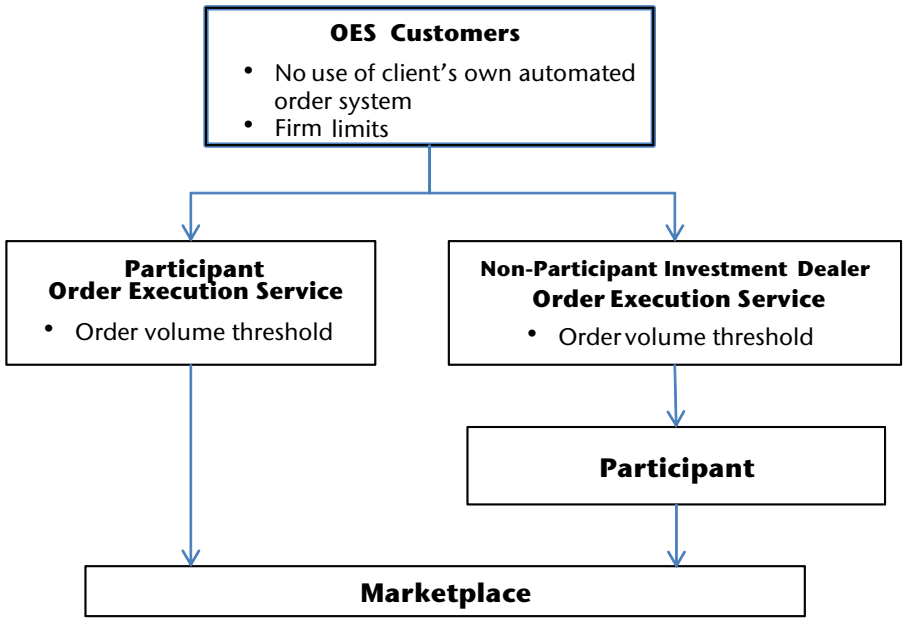
The use of OES may present similar market integrity risks as DEA or routing arrangements when automated order systems that are not provided as part of the order execution service are used by clients to transmit orders, or when a large number of orders are transmitted through an OES. Changes to the Dealer Member Rules related to OES are included in the Amendments and have been integrated into the framework for regulation of third-party electronic access to marketplaces in order to address these risks.

Dealer Member Rule 3200 now clarifies the limitations on the manner of conducting trading activity through OES, so as to preclude provision of DEA through an OES. In particular, Dealer Member Rule 3200 imposes an obligation on a Dealer Member providing an OES to prohibit an OES client from:

- using its own automated order system to transmit or generate orders for transmission to the dealer providing the OES; or
- manually sending or generating orders to the Dealer Member that exceed the threshold on the number of orders as set by IIROC from time to time.

IIIROC is not setting a threshold on the number of orders for OES at this time; however, IIROC has reserved the authority to do so in the event order volumes associated with OES may pose risks to market integrity. Nonetheless, IIROC would expect that firms offering an OES would impose thresholds for client trading so that the dealer is not exposed to undue risk and the risk to market integrity is mitigated.

The following diagram illustrates the client and dealer relationships with respect to OES, with the changes adopted to Dealer Member Rule 3200:



2.4 Additional Amendments

2.4.1 Amendments Impacting Marketplaces

The Amendments include obligations on marketplaces. Under Rule 6.1, a marketplace cannot allow an order to be entered on the marketplace unless the order had been:

- entered by or transmitted through a Participant that is a member, user or subscriber of that marketplace or an Access Person with access to trading on that marketplace and the order contains the unique identifier of the Participant or Access Person assigned to it by the Market Regulator; or
- generated automatically by the marketplace for a person with Marketplace Trading Obligations to meet their obligations.

New Rule 10.18 of UMIR imposes a "gatekeeper obligation" on marketplaces. A marketplace will be required to report to IIROC if the marketplace:

- terminates the access of a Participant or Access Person; or
- knows or has reason to believe that the Participant or Access Person has or may have breached a material provision of a Marketplace Rule or access agreement.

2.4.2 Amendments Impacting Participants

Under Rule 6.1, a Participant cannot allow an order to be entered on a marketplace containing the identifier of the Participant unless the order has been:

- received, processed and entered by an employee of the Participant; or
- entered on or transmitted to a marketplace through:
  - direct electronic access,
  - a routing arrangement, or
  - an order execution service.

This Amendment confirms that access by a Participant to a marketplace is a "closed system" and that each means of having an order entered on, or transmitted to, a marketplace by or on behalf of the Participant must be subject to appropriate regulatory oversight.

2.4.3 Amendments Impacting Access Persons

Under Rule 6.1, an Access Person cannot allow an order to be entered on a marketplace containing the identifier of the Access Person unless the order is:

- for the account of the Access Person; or
- entered by an Access Person who is registered or exempted from registration as an adviser in accordance with applicable securities legislation and the order is for or on behalf of a client of the Access Person acting in the capacity of adviser for that client.

This Amendment confirms that access by an Access Person to a marketplace is part of a "closed system" and that the Access Person cannot delegate the access to a marketplace or conduct business similar to a dealer.

3. Changes from the Proposed Amendments and Proposed Guidance

The Amendments as approved vary from the Proposed Amendments in a number of areas. To address comments received in response to specific questions raised in the request for comments:

- the proposed prohibition on Institutional Customers having OES accounts has been removed (thus, the Amendments do not prevent Dealer Members from offering OES accounts to Institutional Customers);

- the definition of "Participant" in UMIR has not been expanded, as it was determined that extending this definition for anti-avoidance purposes was not required because UMIR ETR and the Amendments clearly prohibit a Participant from providing "naked access";
- a structural change was made to eliminate duplicative rule requirements such that the Rules and Policy relating to DEA and routing arrangements have been combined into Rule 7.13 and Part 9 of Policy 7.1; and
- the monitoring requirements related to the use of automated order systems in OES accounts have been removed.

To address comments requesting consistency between IIROC rules and the CSA Access Rule, the Amendments:

- conform with changes in the CSA Access Rule referencing DEA clients that are "registered or exempt from registration as an adviser" in place of clients "registered as a portfolio manager or restricted portfolio manager";
- conform with a change to the CSA Access Rule referencing the prohibition on granting DEA to a "client acting and registered as a dealer in accordance with securities legislation", rather than the previous prohibition in respect of a "registrant other than a portfolio manager or restricted portfolio manager";
- conform with the CSA Access Rule by adding a requirement in the agreement for co-operation with the Participant by the client, investment dealer or foreign dealer equivalent in connection with any investigation or proceeding by any marketplace or the Market Regulator with respect to trading conducted pursuant to direct electronic access or a routing arrangement;
- conform with the CSA Access Rule and qualify the requirement for a term in the agreement to permit the variation or correction of orders by the Participant granting access, by the phrase "to comply with Requirements" to account for circumstances when such action may be necessary to comply with regulatory requirements such as the Order Protection Rule or instruction of a Market Integrity Official under UMIR[31]; and
- change the notification requirement respecting names of authorized personnel of a DEA client to conform with the CSA Access Rule, so that the names are to be provided by the DEA client to the Participant, rather than to the Market Regulator.

[31] Please refer to UMIR 10.9 respecting the power of a Market Integrity Official.

To provide clarity and ensure consistency within UMIR, the Amendments:

- amend the definition of "routing arrangement" to conform with wording in the UMIR DEA definition by eliminating reference to "direct or indirect access by a Participant to a foreign organized regulated market", thereby alleviating any unintended extension of jurisdiction; and
- add a provision to Part 9 of Policy 7.1 to clarify that, similar to a routing arrangement, the Participant has an obligation to maintain policies and procedures to assure that orders routed by a DEA client to the executing Participant containing the Participant's identifier are marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.

To ensure consistency between Dealer Member Rule 1300 and Dealer Member Rule 3200, editorial modifications have been made. A blackline identifying all of the Dealer Member Rule Amendments is provided at Appendix "D".

The guidance respecting third-party electronic access to marketplaces ("Guidance")[32] varies from the Proposed Guidance by the addition of clarifications in response to questions received from industry representatives during the comment period. These changes are reflected in the Guidance which confirms that:

- "naked access" is not permitted;
- DEA and routing arrangement requirements do not apply to client order flow that is intermediated by a Participant's algorithm; and
- a foreign dealer equivalent that is also registered as an exempt market dealer is permitted to use electronic access, but is not eligible to use electronic access when acting in its capacity as an exempt market dealer for Canadian clients.
- Editorial changes were also made to the Proposed Guidance to conform with changes that have been made to the Proposed Amendments. A blackline of the Guidance, identifying revisions made to the Proposed Guidance, is provided at the back of Appendix "C".

[32] IIROC Notice 13-0185 - Rules Notice – Guidance Note – UMIR – *Guidance Respecting Third-Party Electronic Access to Marketplaces* (July 4, 2013).

4. Summary of the Impact of the Amendments

4.1 General Requirements Related to Third-Party Access to Marketplaces

The following is a summary of the most significant impacts of the adoption of the Amendments. In particular:

- Participants who provide direct electronic access or a routing arrangement must:
  - establish standards to manage the attendant risks,
  - enter into written agreements with each client, investment dealer or foreign dealer equivalent to which the Participant will provide access,
  - ensure that orders contain the identifier of the client, investment dealer or foreign dealer equivalent,
  - establish and apply appropriate supervisory and compliance procedures for orders entered under direct electronic access or a routing arrangement,
  - at least annually review the standards and compliance of each client, investment dealer or foreign dealer equivalent with the standards and written agreement, and
  - establish procedures for reporting to IIROC non-compliance by a client, investment dealer or foreign dealer equivalent with the standards or written agreement, and any termination of the access arrangement; and
- marketplaces will have to review their policies and procedures to ensure that:
  - orders entered on the marketplace are from a Participant that is a member, user or subscriber of that marketplace or an Access Person with access to trading on that marketplace, and
  - the marketplace reports to IIROC any termination of access of a Participant or Access Person to the marketplace, potential material breach of any Marketplace Rule or agreement pursuant to which access was granted to a marketplace.

4.2 Significant Changes to Existing Regulatory Requirements

While the Amendments and the CSA Access Rule introduce a new and more comprehensive framework for third-party electronic access to marketplaces, many of the components of these requirements build on: existing marketplace requirements for direct market access; regulatory requirements and guidance on trade supervision and compliance; and established industry practices. As such, many of the Amendments either formalize or clarify existing

requirements or practices. There are, however, a number of changes to the existing regulatory requirements with respect to third-party electronic access to marketplaces.

4.2.1 Direct Electronic Access

Unlike the current marketplace rules and contractual provisions for "direct market access", the Amendments and the CSA Access Rule:

- eliminate the concept of an "eligible client list" and provide that DEA may be provided to clients (provided that DEA may not be granted to a client acting and registered as a dealer under applicable securities legislation);
- require the Participant to establish standards and review the standards annually;
- eliminate the requirement for pre-approval of the systems of the Participant or the form of the agreement to be executed with each client provided DEA;
- require the Participant to annually review compliance by each client with the standards and the written agreement;
- provide for a gatekeeper obligation for reporting to IIROC non-compliance with the standard and written agreement; and
- limit the sub-delegation of access by a client.

With the repeal of marketplace direct market access rules and the elimination of the concept of an "eligible client list", a Participant will be able to offer DEA to a broader range of clients but the Participant must ensure that DEA is suitable for the client. A Participant is exempt from "suitability" requirements for orders entered through DEA by a client but the Participant is unable to provide recommendations to a client with DEA.

4.2.2 Routing Arrangements

Historically, Participants and investment dealers have had a number of "introducing broker-carrying broker" arrangements. The Amendments address only those relationships in which the Participant provides third-party electronic access to marketplaces without the order flow being intermediated by an employee of the Participant. While National Instrument 31-103 sets out broad requirements for a firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision to "manage the risks associated with its business in accordance with prudent business practices", the Amendments require that the standards established by the Participant address a number of specific factors including that the investment dealer or foreign dealer equivalent has reasonable knowledge of and the ability to

comply with all Requirements, including the marking of each order with the designation and identifiers required by Rule 6.2. With the adoption of the Amendments, a unique identifier of the introducing broker or foreign dealer equivalent will have to be included on each order. The standards established by the Participant would also require the introducing broker to "take all reasonable steps" to ensure that its or its clients' use of an automated order system does not interfere with fair and orderly markets and that each automated order system used by itself or its clients is tested before the initial use or introduction of a significant modification and at least annually thereafter.

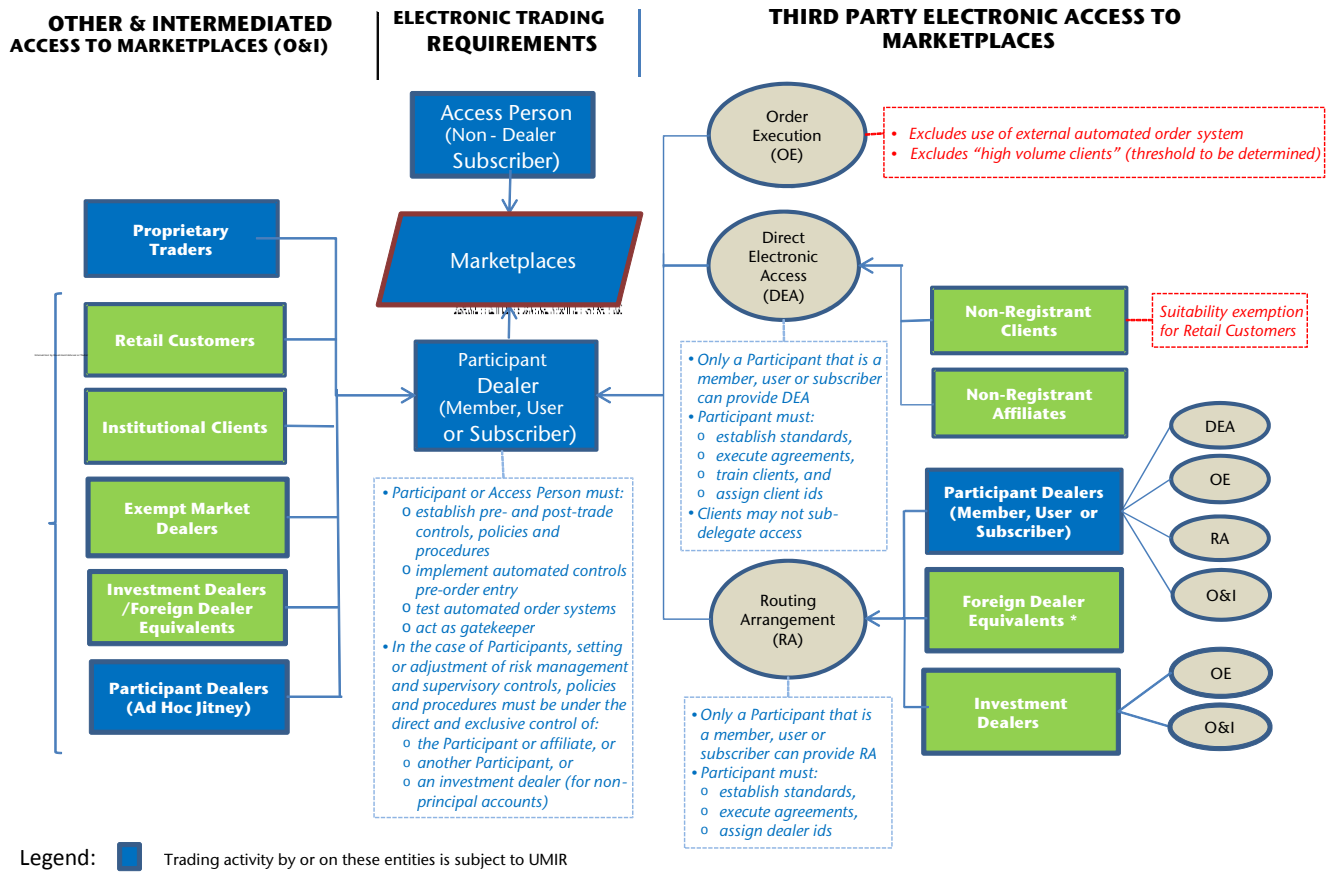
4.2.3 Order Execution Services

For Participants and other investment dealers that provide OES, the Amendments prohibit an OES client from using its own automated order system to generate orders. The Participant or investment dealer can, however, continue to provide automated order systems to its OES clients. The Amendments also restrict "high order volume" clients (clients whose trading activity exceeds a threshold set by IIROC) from using OES accounts. IIROC has not set a threshold; therefore there is no immediate impact in this respect on Participants and other investment dealers that provide OES.

4.3 Order Flow to Marketplaces

The following diagram summarizes the order flow to marketplaces further to the adoption of the Amendments. The diagram confirms that:

- the only means to access a marketplace for the purpose of trading a listed or quoted security is:
    - as an Access Person as a subscriber to an ATS, or
    - by or through a Participant as a member of an Exchange or subscriber to an ATS; and
- unless a client order is intermediated, the only third-party access that a Participant can provide will be governed by one of three options:
    - order execution service,
    - direct electronic access, or
    - routing arrangement.



5. Technological Implications

The technological implications and any associated costs related to the Amendments on Participants, Access Persons, investment dealers and marketplaces are expected to be commensurate with the degree of sophistication of trading and type of third-party electronic access to marketplaces sought to be provided. To the extent that the forms of access to marketplaces which are covered by the Amendments currently exist, IIROC does not expect that significant additional technological implications would be imposed on industry participants at this time by the introduction of the more formal framework to govern electronic access to marketplaces. Industry has already been expected to adopt the necessary technology for third-party electronic access as set out in previous IIROC guidance and pursuant to the marketplace rules and policies related to direct access to marketplaces in

order to mitigate risk and preserve market integrity as well as in accordance with the UMIR ETR.

The Amendments introduce requirements that an order from a client with DEA or an investment dealer or foreign dealer equivalent under a routing arrangement contain the unique identifier assigned by IIROC to such client, investment dealer or foreign dealer equivalent. **At this time, IIROC is continuing the practice that is currently used for the identification of orders from clients with DMA such that unique identifiers will be included in the "User ID" field (as designated by the marketplace on which the order is entered) for DEA clients, and for investment dealers and foreign dealers under routing arrangements.** Some changes may be required to the systems of Participants to ensure that the appropriate identifier is added in this field when orders are entered by a client through DEA or received from an investment dealer or foreign dealer equivalent under a routing arrangement. This is particularly true in the case of investment dealers that are not Participants as this third-party order flow is not currently being identified in this manner by executing Participants. The introduction of the identifier requirements also may have a technological impact on the systems of marketplaces and service providers.

IIROC acknowledges the forgoing technological implications; however, IIROC is of the view that they are proportionate to the benefits provided to the market as a whole given the policy objectives of the Amendments to protect market integrity, mitigate dealer and systemic risks and increase the confidence of investors.

6. Implementation Plan

The Amendments have been approved by the Recognizing Regulators as of the date of this Rules Notice. Implementation of the Amendments has been deferred and they will become effective on ***March 1, 2014***.

The Amendments require Participants to enter into written agreements with clients who have been provided direct electronic access and with investment dealers or foreign dealer equivalents under a routing arrangement. **As a transitional matter, IIROC will permit Participants a further 180 days following the implementation of the Amendments to replace or amend any existing access agreements with clients, investment dealers or foreign dealer equivalent to comply with the requirements regarding written agreements introduced by the Amendments.**

Appendix A – Text of UMIR Amendments

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by:

   (a) adding the following definition of "direct electronic access":

   "direct electronic access" means an arrangement between a Participant that is a member, user or subscriber and a client that permits the client to electronically transmit an order relating to a security containing the identifier of the Participant:

   (a) through the systems of the Participant for automatic onward transmission to a marketplace; or

   (b) directly to a marketplace without being electronically transmitted through the systems of the Participant.

   (b) adding the following definition of "foreign dealer equivalent":

   "foreign dealer equivalent" means a person in the business of trading securities in a foreign jurisdiction in a manner analogous to an investment dealer and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction.

   (c) adding the following definition of "order execution service":

   "order execution service" means a service that meets the requirements, from time to time, under Dealer Member Rule 3200 – *Minimum Requirements for Dealer Members Seeking Approval under Rule 1300.1(t) to Offer an Order-Execution Only Service.*

   (d) adding the following definition of "routing arrangement":

   "routing arrangement" means an arrangement under which a Participant that is a member, user or subscriber permits an investment dealer or a foreign dealer equivalent to electronically transmit an order relating to a security containing the identifier of the Participant:

   (a) through the systems of the Participant for automatic onward transmission to a marketplace; or

   (b) directly to a marketplace without being electronically transmitted through the systems of the Participant.

2. Rule 6.1 is amended by:

(a) renumbering subsection (3) as added effective April 13, 2012 as subsection (6); and

(b) inserting the following subsections:

(7) A Participant shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Participant unless the order has been:

(a) received, processed and entered on the marketplace by an employee of the Participant who is registered in accordance with applicable securities legislation to perform such functions; or

(b) has been entered on a marketplace or transmitted to a marketplace through:

(i) direct electronic access,

(ii) a routing arrangement, or

(iii) an order execution service.

(8) An Access Person shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Access Person unless the order is:

(a) for the account of the Access Person and not for any other person; or

(b) entered by an Access Person who is registered or exempted from registration as an adviser in accordance with applicable securities legislation and the order is for or on behalf of a client of the Access Person acting in the capacity of adviser for that client and not for any other person.

(9) A marketplace shall not allow an order to be entered on the marketplace unless:

(a) the order:

(i) has been entered by or transmitted through a Participant or Access Person who has access to trading on that marketplace, and

(ii) contains the identifier of the Participant or Access Person as assigned in accordance with Rule 10.15; or

(b) the order has been generated automatically by the marketplace on behalf of a person who has Marketplace Trading Obligations in order for that person to meet their Marketplace Trading Obligations.

3. Clause (a) of subsection (1) of Rule 6.2 is amended by:

(a) deleting the word "and" at the end of sub-clause (ii);

(b) deleting the phrase "; and" at the end of sub-clause (iii);

(c) inserting following sub-clauses:

(iv) the client for or on behalf of whom the order is entered under direct electronic access, and

(v) the investment dealer or foreign dealer equivalent for or on behalf of whom the order is entered under a routing arrangement; and

4. Part 7 is amended by adding the following as Rule 7.13:

7.13 Direct Electronic Access and Routing Arrangements

(1) A Participant that is a member, user or subscriber may:

(a) grant direct electronic access or enter into a routing arrangement provided the Participant has:

(i) established standards that are reasonably designed to manage, in accordance with prudent business practices, the Participant's risks associated with providing direct electronic access to a client or implementing a routing arrangement with an investment dealer or foreign dealer equivalent,

(ii) assessed and documented that the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant, and

(iii) executed a written agreement with the client, investment dealer or foreign dealer equivalent; and

(b) not grant direct electronic access if the client is acting and registered as a dealer in accordance with applicable securities legislation.

(2) The standards established by the Participant under subsection (1) must include a requirement that the client, investment dealer or foreign dealer equivalent:

(a) has sufficient resources to meet any financial obligations that may result from use of direct electronic access or the routing arrangement;

(b) has reasonable arrangements in place to ensure that all personnel transmitting orders using direct electronic access or the routing arrangement have reasonable knowledge of and proficiency in the use of the order entry system;

(c) has reasonable knowledge of and the ability to comply with all applicable Requirements, including the marking of each order with the designations and identifiers required by Rule 6.2;

(d) has reasonable arrangements in place to monitor the entry of orders transmitted using direct electronic access or the routing arrangement;

(e) takes all reasonable steps to ensure that the use of automated order systems, by itself or any client, does not interfere with fair and orderly markets; and

(f) ensures that each automated order system, used by itself or any client, is tested in accordance with prudent business practices, including initially before use or introduction of a significant modification and at least annually thereafter.

(3) The written agreement entered into by a Participant under subsection (1) with the client, investment dealer or foreign dealer equivalent must provide that:

(a) in the case of an agreement for direct electronic access or a routing arrangement:

(i) the trading activity of the client, investment dealer or foreign dealer equivalent will comply with:

(A) all Requirements, and

(B) the product limits or credit or other financial limits specified by the Participant;

(ii) the client, investment dealer or foreign dealer equivalent will maintain all technology facilitating direct electronic access or a routing arrangement in a secure manner and will not permit any person to transmit an order using the direct electronic access or the routing arrangement other than the personnel authorized by the client and named under the provision of the agreement referred to in sub-clause (b)(i), or personnel authorized by the investment dealer or foreign dealer equivalent;

(iii) the client, investment dealer or foreign dealer equivalent will fully co-operate with the Participant in connection with any investigation or proceeding by any marketplace or the Market Regulator with respect to trading conducted pursuant to direct electronic access or a routing arrangement, including upon request by the Participant, providing access to information to the marketplace or Market Regulator that is necessary for the purposes of the investigation or proceeding;

(iv) the Participant is authorized, without prior notice, to:

(A) reject any order,

(B) vary or correct any order entered on a marketplace to comply with Requirements,

(C) cancel any order entered on a marketplace, or

(D) discontinue accepting orders,

from the client, investment dealer or foreign dealer equivalent;

(v) the client, investment dealer or foreign dealer equivalent will immediately inform the Participant if the client, investment dealer or foreign dealer equivalent fails or expects not to meet the standards set by the Participant; and

(b) in the case of an agreement for direct electronic access:

(i) the client will immediately notify the Participant in writing of:

(A) the names of the personnel of the client authorized by the client to enter an order using direct electronic access, and

(B) details of any change to the information in sub-clause (A);

(ii) the client may not trade for the account of any other person unless the client is:

(A) registered or exempted from registration as an adviser under securities legislation, or

(B) a person conducting business in a foreign jurisdiction in a manner analogous to an adviser and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction

and the order is for or on behalf of a person who is itself a client of the client acting in the capacity of adviser for that person;

(iii) if the client trades for the account of any other person in accordance with sub-clause (ii), the client must:

(A) ensure that the orders for the other person are transmitted through the systems of the client before being entered on a marketplace, and

(B) ensure that the orders for the other person are subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the client;

(iv) the Participant shall provide to the client, in a timely manner, any relevant amendments or changes to:

(A) applicable Requirements, and

(B) the standards established by the Participant under subsection (1); and

(c) in the case of a routing arrangement agreement, the investment dealer or foreign dealer equivalent will not allow any order entered electronically by a client of the investment dealer or foreign dealer equivalent to be entered directly to a marketplace without being electronically transmitted through the systems of the Participant or the system of the investment dealer or foreign dealer equivalent.

(4) A Participant must not allow any order to be transmitted using direct electronic access or through a routing arrangement unless:

(a) the Participant is:

(i) maintaining and applying the standards established by the Participant under subsection (1),

(ii) satisfied the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant under subsection (1), and

(iii) satisfied the client, investment dealer or foreign dealer equivalent is in compliance with the written agreement entered into with the Participant; and

(b) the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a marketplace.

(5) The Participant shall:

(a) at least annually review and confirm that:

(i) the standards established by the Participant under subsection (1) are adequate, and

(ii) the Participant has maintained and consistently applied the standards in the period since the establishment of the standards or the date of the last annual review; and

(b) at least annually by the anniversary date of the written agreement assess, confirm and document that the client, investment dealer or foreign dealer equivalent:

(i) is in compliance with the written agreement with the Participant, and

(ii) has met the standards established by the Participant under subsection (1) since the date of the written agreement or the date of the last annual review.

(6) A Participant shall forthwith notify the Market Regulator:

(a) upon entering into a written agreement respecting direct electronic access or a routing arrangement, of the name of the client, investment dealer or foreign dealer equivalent; and

(b) of any change in the information described in clause (a).

5. Rule 10.15 is amended by:

(a) deleting subsection (1) and substituting the following:

(1) The Market Regulator shall assign a unique identifier to:

(a) a marketplace for trading purposes upon the Market Regulator being retained as the regulation services provider for the marketplace,

(b) an investment dealer, other than a Participant, or a foreign dealer equivalent upon the Market Regulator being notified that a Participant has entered into a written agreement with the

investment dealer or foreign dealer equivalent respecting a routing arrangement; and

(c) a client upon the Market Regulator being notified that a Participant has entered into a written agreement with the client respecting direct electronic access.

(b) adding the words "or Access Person" in subsection (2) as follows:

(2) A marketplace, upon granting access to the trading system of the marketplace to a Participant or Access Person, shall assign a unique identifier to the Participant or Access Person for trading purposes.

6. Part 10 is amended by adding the following as Rule 10.18:

10.18 Gatekeeper Obligations with Respect to Access to Marketplaces

(1) A marketplace that has provided access to a Participant or Access Person shall forthwith report to the Market Regulator the fact that the marketplace:

(a) has terminated the access of the Participant or Access Person to the marketplace; or

(b) knows or has reason to believe that the Participant or Access Person has or may have breached a material provision of any Marketplace Rule or agreement pursuant to which the Participant or Access Person was granted access to the marketplace.

(2) A Participant that has provided access to a marketplace pursuant to direct electronic access or through a routing arrangement shall forthwith report to the Market Regulator the fact that the Participant:

(a) has terminated the access of the client under the arrangement for direct electronic access or of the investment dealer or foreign dealer equivalent through a routing arrangement; or

(b) knows or has reason to believe that the client, investment dealer or foreign dealer equivalent has or may have breached a material provision of:

(i) any standard established by the Participant for the granting of direct electronic access or a routing arrangement, or

(ii) the written agreement between the Participant and the client regarding the direct electronic access, or the investment dealer or foreign dealer equivalent regarding a routing arrangement.

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

1. Part 1 of Policy 7.1 is amended by:

   (a) replacing the phrase "without the involvement of a trader" with "by direct electronic access, under a routing arrangement or through an order execution service";

   (b) replacing the phrase "entered directly by clients" with "entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service"; and

   (c) deleting each occurrence of the phrase "direct access client" and substituting "client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service".

2. Part 2 of Policy 7.1 is amended by:

   (a) amending the word "Element" in the title of Part 2 to "Elements"; and

   (b) inserting before the phrase "must comply" the phrase "(including orders entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or by a client through an order execution service)".

3. Policy 7.1 is further amended by adding the following Parts:

Part 9 - Specific Provisions Applicable to Direct Electronic Access and Routing Arrangements

Standards for Clients, Investment Dealers and Foreign Dealer Equivalents

In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that provides direct electronic access or implements a routing arrangement must establish, maintain and apply reasonable standards for granting direct electronic access or a routing arrangement and assess and document whether each client, investment dealer or foreign dealer equivalent meets the standards established by the Participant for direct electronic access or a routing arrangement. The Market Regulator expects that as part of its initial "screening" process, non-institutional investors will be precluded from qualifying for direct electronic access except in exceptional circumstances generally limited to sophisticated former traders and floor brokers or a person or company having assets under administration with a value approaching that of an institutional investor that has access to and knowledge regarding the necessary technology to use direct electronic access. The Participant offering direct electronic access or a routing arrangement must establish sufficiently stringent standards for each client granted direct electronic access or each investment dealer or foreign dealer equivalent under a routing arrangement to ensure that the Participant is not exposed to undue risk and in particular, in the case of a non-institutional client the standards must be set higher than for institutional investors.

The Participant is further required to confirm with the client granted direct electronic access or an investment dealer or foreign dealer equivalent in a routing arrangement, at least annually, that the client, investment dealer or foreign dealer equivalent continues to meet the standards established by the Participant including to ensure that any modification to a previously "approved" automated order system in use by a client, investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards.

Breaches by Clients with Direct Electronic Access or by Investment Dealers or Foreign Dealer Equivalents in a Routing Arrangement

A Participant that has granted direct electronic access to a client or entered into a routing arrangement with an investment dealer or foreign dealer equivalent must further monitor orders entered by the client, investment dealer or foreign dealer equivalent to identify whether the client, investment dealer or foreign dealer equivalent may have:

- breached any standard established by the Participant for the granting of direct electronic access or a routing arrangement;

- breached the terms of the written agreement regarding the direct electronic access or the routing arrangement;
- improperly granted or provided its access under direct electronic access or a routing arrangement to another person;
- engaged in unauthorized trading on behalf of the account of another person; or
- failed to ensure that its client's orders are transmitted through the systems of the client, or Participant, investment dealer or foreign dealer equivalent (which include proprietary systems or systems that are provided by a third party) before being entered on a marketplace.

Identifying Originating Investment Dealer or Foreign Dealer Equivalent

In relation to the assignment of a unique identifier to an investment dealer or foreign dealer equivalent in a routing arrangement, if orders are routed through multiple investment dealers or foreign dealer equivalents, the executing Participant is responsible for properly identifying the originating investment dealer or foreign dealer equivalent and must establish and maintain adequate policies and procedures to assure that orders routed by an investment dealer or foreign dealer equivalent to the executing Participant containing the Participant's identifier are also marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.

Identifying Clients with Direct Electronic Access

In relation to the assignment of a unique identifier to a client that is granted direct electronic access, the Participant must establish and maintain adequate policies and procedures to assure that orders routed by the client to the executing Participant containing the Participant's identifier are marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.

Appendix B – Text of Dealer Member Rule Amendments

The Dealer Member Rules are hereby amended as follows:

1. Dealer Member Rule 1300.1 is amended by:

   (a) in subsection (p), repealing the text "Subject to Rules 1300.1(t) and 1300.1(u)", and replacing it with the text "Subject to Rules 1300.1(t), and 1300.1(u) and 1300.1(v)".

   (b) in subsection (r), repealing the text "subject to Rules 1300.1(t) and 1300.1(u)", and replacing it with the text "subject to Rules 1300.1(t), and 1300.1(u) and 1300.1(v)".

   (c) repealing and replacing the subtitle before subsection (t) with the following:

   Exemptions from the suitability assessment requirements

   (d) in subsection (t), repealing the text "pursuant to Rule 1300.1(v)", and replacing it with the text "pursuant to Rule 1300.1(w)".

   (e) re-lettering existing subsection (v) as subsection (w).

   (f) adding new subsection (v) as follows:

   (v) A Dealer Member is not required to comply with rules 1300.1(p), 1300.1(r) and 1300.1(s), when accepting or transmitting orders for a client who has been provided with direct electronic access within the meaning of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*, if the Dealer Member:

   (i) Determines that the direct electronic access service offering is suitable for the client;

   (ii) Does not provide recommendations to any Retail Customers who have been provided with direct electronic access; and

(iii) Complies with the Universal Market Integrity Rule requirements applicable to the direct electronic access service offering and the requirements of NI 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*.

2. Dealer Member Rule 3200 is amended by:

(a) repealing and replacing the title as follows:

RULE 3200

MINIMUM REQUIREMENTS FOR DEALER MEMBERS SEEKING APPROVAL UNDER RULE 1300.1(T) TO OFFER AN ORDER-EXECUTION ONLY SERVICE

(b) repealing and replacing as follows the second paragraph of the Rule beginning with "In this Rule, "order execution service" means...":

In this Rule, "order-execution only service" means the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of orders accepted or account positions held.

(c) adding the following paragraph after the second paragraph of the Rule:

In this Rule "automated order system" has the same meaning as defined in National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces.*

(d) repealing and replacing Part A.1. as follows:

A. Minimum requirements for Dealer Members offering solely an order-execution only service, either as the Dealer Member's only business or through a separate business unit of the Dealer Member

1. Business Structure and Compensation

(a) The Dealer Member must operate either as a legal entity or a separate business unit which provides order-execution only services.

(b) The legal entity or separate business unit of the Dealer Member offering an order execution only service must not allow its order execution only service clients to:

(i) use their own automated order system to generate orders to be sent to the Dealer Member or send order to the Dealer Member on a pre-determined basis; or

(ii) manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.

(c) If operated as a separate business unit of the Dealer Member, the order-execution only service must have separate letterhead, accounts, registered representatives and investment representatives and account documentation.

(d) The registered representatives and investment representatives of the Dealer Member or separate business unit of the Dealer Member shall not be compensated on the basis of transactional revenues.

(e) renumbering existing sections 2 through 5 in Part B as sections 3 through 6.

(f) adding new section 2 to Part B as follows:

B. Minimum requirements for Dealer Members offering both an advisory and an order-execution only service

...

2. Business Structure

The Dealer Member offering both an advisory and an order execution only service must not allow its order execution only service clients to:

(a) Use their own automated order system to generate orders to be sent to the Dealer Member or send orders to the Dealer Member on a pre-determined basis; or

(b) Manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.

Appendix C – Comments Received in Response to Rules Notice 12-0315 - Rules Notice – Request for Comments – UMIR - *Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces* (October 25, 2012)

On October 25, 2012, IIROC issued Notice 12-0315 requesting comments on Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces ("Proposed Amendments"). IIROC received comments on the Proposed Amendments from:

Investment Industry Association of Canada ("IIAC")
Mark DesLauriers, Blair Wiley, Osler LLP ("Wiley")
National Bank Financial ("NBF")
RBC Dominion Securities Inc. and RBC Direct Investing Inc. ("RBC")
Scotia Capital Inc. ("Scotia")
TD Securities Inc. ("TDSI")
TMX Group ("TMX")
TD Waterhouse Institutional Services ("TDW IS")

A copy of the comment letters received in response to the Proposed Amendments is publicly available on the website of IIROC (www.iiroc.ca under the heading "Notices", sub-heading "Marketplace Rules" and further sub-heading "Request for Comments"). The following table presents a summary of the comments received on the Proposed Amendments together with the responses of IIROC to those comments. Column 1 of the table highlights the revisions to the Proposed Amendments made on the approval of the Amendments.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
1.1 Definitions **"direct electronic access"** means an arrangement between a Participant that is a member, user or subscriber and a client that permits the client to electronically transmit an order relating to a security containing the identifier of the Participant:		Amendment for consistency with NI 23-103 direct electronic access ("DEA") definition and definition of "routing arrangement" below.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(a) through the systems of the Participant for automatic onward transmission to a marketplace; or (b) directly to a marketplace without being electronically transmitted through the systems of the Participant.		
1.1 Definitions **"foreign dealer equivalent"** means a person ~~registered in a category~~ in the business of trading securities in a foreign jurisdiction in a manner analogous to ~~that of~~ an ~~-~~investment dealer ~~in a foreign jurisdiction that~~ and that is ~~a~~ subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction.		Definition has been amended for consistency with NI 23-103 concerning foreign "advisers" that may trade for clients and no longer employs the term "registered" with reference to foreign dealers.
1.1 Definitions **"order execution service"** means a service that meets the requirements, from time to time, under Dealer Member Rule 3200 – *Minimum Requirements for Dealer Members Seeking Approval under Rule 1300.1(t)* ~~*for Suitability Relief for Trades Not Recommended by the Member*~~ *to Offer an Order-Execution Only Service*.		
1.1 Definitions **"Participant"** means: (a) a dealer registered in accordance with securities legislation of any jurisdiction and who is: (i) a member of an Exchange, (ii) a user of a QTRS, or (iii) a subscriber of an ATS, or ~~(iv) an investment dealer that is a party to a routing arrangement and who, in accordance with the applicable written agreement:~~ ~~(A) is able to enter orders directly to the marketplace without being electronically transmitted through the systems of the Participant and is authorized to set or adjust the various controls, policies or procedures respecting such orders, or~~		IIROC acknowledges the comment (see question 1 below) expressing support for a clear prohibition on investment dealers offered "naked access" by Participants, and that an investment dealer should become a full Participant rather than be deemed one under certain conditions. IIROC has determined that extending the definition of Participant for anti-avoidance purposes is not necessary because naked access is clearly prohibited under UMIR and in the Amendments, and an extension of the definition might have the effect of confusing stakeholders. The definition of Participant has accordingly been restored to its original scope.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~(B) has been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; or~~ (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.		
1.1 Definitions **"routing arrangement"** means an arrangement under which a Participant that is a member, user or subscriber permits an investment dealer or a foreign dealer equivalent to electronically transmit an order relating to a security containing the identifier of the Participant: (a) through the systems of the Participant for automatic onward transmission to~~:~~ ~~(i)~~ a marketplace ~~to which the Participant has access using the identifier of the Participant~~, or ~~(ii) a foreign organized regulated market to which the Participant has access directly or through a dealer in the other jurisdiction; or~~ (b) directly to a marketplace ~~using the identifier of the Participant~~ without being electronically transmitted through the systems of the Participant**.**	**IIAC -** Questions the impact of routing arrangements on Introducing-Carrying (IC) arrangements. Suggests IC arrangements will require new documentation, re-examination and possibly changes to the established supervisory relationships under existing regulation. Seeks clarification concerning application of the proposed amendments to those relationships in which the Participant provides third-party electronic access "without intermediation" by an employee of the Participant.	In reference to question 2 below, although similar to direct electronic access, IIROC has retained the definition of "routing arrangement" in order to maintain a distinction for dealer to dealer direct access relationships with agency order flow, and in view of the CSA's exclusion of dealers from direct electronic access which is instead provided for in UMIR under the rubric of a "routing arrangement". There is no change to IC arrangements under Dealer Member Rule 35 as a result of the definition of "routing arrangement" (or "RA") in UMIR for the purposes of regulating direct access to marketplaces. Rather, an introducing dealer in an IC arrangement today may also be able to electronically transmit non-intermediated order flow containing the identifier of the carrying/executing Participant to a marketplace. Going forward, this form of direct access would have to be implemented in accordance with UMIR 7.13 and related UMIR rules that govern a "routing

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		arrangement". Intermediation refers to clients or registrants using an advisor or trader to enter transactions on their behalf for execution on a marketplace.
6.1 Entry of Orders to a Marketplace **...** (7) A Participant shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Participant unless the order has been: (a) received, processed and entered on the marketplace by an employee of the Participant who is registered in accordance with applicable securities legislation to perform such functions; or (b) has been entered on a marketplace or transmitted to a marketplace through: (i) direct electronic access, (ii) a routing arrangement, or (iii) an order execution service. (8) An Access Person shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Access Person unless the order is: (a) for the account of the Access Person and not for any other person; or (b) entered by an Access Person who is registered or exempted from registration as an adviser ~~a portfolio manager or a restricted portfolio manager~~ in accordance with applicable securities legislation and the order is for or on behalf of ~~the~~ a client of the Access Person acting in the capacity of adviser for that client and not for any other person. (9) A marketplace shall not allow an order to be entered on the marketplace unless: (a) the order: (i) has been entered by or transmitted through a Participant or Access Person who has access to trading on that marketplace,	**Wiley –** of view that use of the term "registrant" is unclear and/or inappropriate.	Amendment to conform with change to NI 23-103 respecting advisers.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
and (ii) contains the identifier of the Participant or Access Person as assigned in accordance with Rule 10.15; or (b) the order has been generated automatically by the marketplace on behalf of a person who has Marketplace Trading Obligations in order for that person to meet their Marketplace Trading Obligations.		
6.2 Designations and Identifiers (1) Each order entered on a marketplace shall contain: (a) the identifier of: (i) the Participant or Access Person entering the order as assigned to the Participant or Access Person in accordance with Rule 10.15, (ii) the marketplace on which the order is entered as assigned to the marketplace in accordance with Rule 10.15, (iii) the Participant for or on behalf of whom the order is entered, if the order is a jitney order, (iv) the client for or on behalf of whom the order is entered under direct electronic access, and (v) the investment dealer or foreign dealer equivalent for or on behalf of whom the order is entered under a routing arrangement; and		
~~**7.12 Routing Arrangements**~~ ~~(1) A Participant that is a member, user or subscriber may enter into a routing arrangement with an investment dealer or a foreign dealer equivalent provided the Participant has:~~ ~~(a) established standards for the investment dealer or foreign dealer equivalent that are reasonably designed to manage, in accordance with prudent business practices, the Participant's risks associated with implementing a routing arrangement;~~ ~~(b) assessed and documented that the investment dealer or foreign dealer equivalent meets the standards established by the Participant~~		The Rules have been restructured to simplify and avoid duplication to the extent possible, such that Rule 7.12 has been deleted and merged into Rule 7.13 to address both DEA and routing arrangements. See also response to question 2 below.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~for a routing arrangement; and~~ ~~(c) executed a written agreement with the investment dealer or foreign dealer equivalent.~~ ~~(2) The standards established by the Participant under subsection (1) must include a requirement that the investment dealer or foreign dealer equivalent:~~ ~~(a) has sufficient resources to meet any financial obligations that may result from the routing arrangement;~~ ~~(b) has reasonable arrangements in place to ensure that all personnel transmitting orders under a routing arrangement have reasonable knowledge of and proficiency in the use of the order entry system;~~ ~~(c) has reasonable knowledge of and the ability to comply with all Requirements, including the marking of each order with the designation and identifiers required by Rule 6.2;~~ ~~(d) has reasonable arrangements in place to monitor the entry of orders transmitted under the routing arrangement;~~ ~~(e) take all reasonable steps to ensure that the use of automated order systems, by itself or any investment dealer or foreign dealer equivalent, does not interfere with fair and orderly markets; and~~ ~~(f) ensure that each automated order system, used by the investment dealer, foreign dealer equivalent or any client, is tested in accordance with prudent business practices, including initially before use or introduction of a significant modification and at least annually thereafter.~~		
~~(3) The written agreement entered into by a Participant under subsection (1) with the investment dealer or foreign dealer equivalent must provide that:~~ ~~(a) the trading activity of the investment dealer or foreign dealer equivalent will comply with all Requirements;~~ ~~(b) the trading activity of the investment dealer or foreign dealer equivalent will comply with the product limits or credit or other financial limits specified by the Participant;~~ ~~(c) the investment dealer or foreign dealer equivalent will maintain all~~		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~technology facilitating the routing arrangement in a secure manner and will not permit personnel, other than those authorized by the Participant or the investment dealer or foreign dealer equivalent, to transmit orders under the routing arrangement to the Participant; (d) the Participant is authorized, without prior notice, to:~~ ~~(i) reject any order,~~ ~~(ii) vary, correct or cancel any order entered on a marketplace, or~~ ~~(iii) discontinue accepting orders,~~ ~~from the investment dealer or the foreign dealer equivalent;~~ ~~(e) the investment dealer or foreign dealer equivalent will immediately inform the Participant if the investment dealer or foreign dealer equivalent fails or expects not to meet the standards set by the Participant; and~~ ~~(f) the investment dealer or foreign dealer equivalent will not allow any order entered electronically by a client of the investment dealer or foreign dealer equivalent to be entered directly to a marketplace without being electronically transmitted through the systems of the Participant or the system of the investment dealer or foreign dealer equivalent.~~		
~~(4) A Participant must not allow any order to be transmitted under a routing arrangement unless:~~ ~~(a) the Participant is:~~ ~~(i) maintaining and applying the standards established by the Participant under subsection (1);~~ ~~(ii) satisfied the investment dealer or foreign dealer equivalent meets the standards established by the Participant under subsection (1), and~~ ~~(iii) satisfied the investment dealer is in compliance with the written agreement entered into with the Participant; and~~ ~~(b) the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a~~		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~marketplace~~.		
~~5) The Participant shall review and confirm:~~ ~~(b) at least annually that:~~ ~~(i) the standards established by the Participant under subsection (1) are adequate, and~~ ~~(ii) the Participant has maintained and consistently applied the standards in the period since the establishment of the standards or the date of the last annual review; and~~ ~~(b) at least annually by the anniversary date of the written agreement with an investment dealer or foreign dealer equivalent that the investment dealer or foreign dealer equivalent:~~ ~~(i) is in compliance with the written agreement with the Participant, and~~ ~~(ii) has met the standards established by the Participant under subsection (1) since the date of the written agreement or the date of the last annual review.~~		
~~(6) A Participant shall forthwith notify the Market Regulator:~~ ~~(a) upon entering into a written agreement with an investment dealer or foreign dealer equivalent respecting a routing arrangement, of:~~ ~~(i) the name of the investment dealer or foreign dealer equivalent, and~~ ~~(ii) the contact information for the investment dealer or foreign dealer equivalent which will permit the Market Regulator to deal with the investment dealer or foreign dealer equivalent immediately following the entry of an order by the investment dealer or foreign dealer equivalent in respect of which the Market Regulator wants additional information; and~~ ~~(b) of any change in the information described in clause (a).~~		
7.13 Direct Electronic Access and Routing Arrangements (1) A Participant that is a member, user or subscriber may: ~~grant direct electronic access to a client provided:~~ (a) grant direct electronic access or enter into a routing arrangement		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
provided that the Participant has: (i) established standards ~~for the client~~ that are reasonably designed to manage, in accordance with prudent business practices, the Participant's risks associated with providing direct ~~market~~ electronic access to a client or implementing a routing arrangement with an investment dealer or foreign dealer equivalent, (ii) assessed and documented that the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant ~~for direct electronic access~~, and (iii) executed a written agreement with the client, investment dealer or foreign dealer equivalent; and (b) not grant direct electronic access if the client is ~~not~~ acting and registered as a dealer ~~registrant~~ in accordance with applicable securities legislation ~~other than:~~ ~~(i) a portfolio manager, or~~ ~~(ii) a restricted portfolio manager~~. .		
(2) The standards established by the Participant under subsection (1) must include a requirement that the client, investment dealer or foreign dealer equivalent: (a) has sufficient resources to meet any financial obligations that may result from use of direct electronic access or the routing arrangement; (b) has reasonable arrangements in place to ensure that all personnel transmitting orders using direct electronic access or the routing arrangement have reasonable knowledge of and proficiency in the use of the order entry system; (c) has reasonable knowledge of and the ability to comply with all applicable Requirements, including the marking of each order with the designations and identifiers required by Rule 6.2; (d) has reasonable arrangements in place to monitor the entry of orders transmitted using direct electronic access or the routing arrangement;	**Scotia, IIAC –** Re. UMIR 7.12(2)(c) and 7.13(2)(c); concerned that a higher standard of order marking is expected of RA and DEA orders than those given to a traditional trading desk. Participants only have to apply Insider (IA) or Significant Shareholder (SS) markers if they are aware that a particular client is IA or SS. Foreign dealers do not typically know specific insider information for their clients and would not generally be expected to apply these markers.	Rule 6.2 applies under the same standard whether an order is transmitted through DEA, RA or is intermediated. The Participant is similarly under an obligation to maintain policies and procedures to ensure the proper marking of any order transmitted through RA or DEA and there is no exception for orders that are not intermediated. The requirement may be met by reliance on "know your client" information which has been collected from an account holder, that is current, except if there is actual knowledge that a client exceeds the levels of ownership or control of an issuer and is an insider or significant shareholder, then appropriate order marking must be implemented accordingly. There is no exception to compliance with Rule 6.2 for RA with a foreign dealer equivalent. IIROC expects that a Participant permitting a foreign dealer equivalent to enter

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(e) takes all reasonable steps to ensure that the use of automated order systems, by itself or any client, does not interfere with fair and orderly markets; and		orders by RA on a Canadian marketplace will comply with Rule 6.2, just as a Canadian dealer must comply with foreign regulations when its client trades in a foreign market.
(f) ensures that each automated order system, used by itself ~~the client~~ or any ~~of its~~ client~~s~~, is tested in accordance with prudent business practices, including initially before use or introduction of a significant modification and at least annually thereafter.	**Scotia, RBC and IIAC -** Re. UMIR 7.12(2), 7.13(2) Standards Established by Participants • Onerous expectation that the standards to be established by a Participant for its clients under DEA, or investment dealers or foreign dealer equivalents under RA must be "tailored" to each client or dealer and assessed for compliance annually, in addition to an annual review for compliance with the written agreement. If this rule remains, the Participant should maintain full discretion on how to achieve this. • Tailored standards should be required only in limited cases (i.e. grants of DEA to a sophisticated retail customer).	A principal requirement underpinning the provision of third-party electronic access is that the Participant must undertake due diligence with respect to any DEA client, or investment dealer or foreign dealer equivalent in a routing arrangement in lieu of a mandated "eligible client list". This is a key method of managing risks associated with providing third-party electronic access and necessitates a thorough vetting of each potential DEA client, investment dealer or foreign dealer equivalent. There is flexibility however, in determining what standards to apply beyond the minimum, based on the risks presented to the Participant's business. Accordingly, it is not necessary that different standards beyond the minimum apply to each client, investment dealer or foreign dealer equivalent, but it does require that the Participant undertake the assessment and determination of what additional standards are reasonable given the particular circumstances of the Participant and each prospective DEA client, investment dealer or foreign dealer equivalent in a routing arrangement. While additional standards would be applied for a retail customer granted DEA, IIROC expects that the need for additional standards would not be limited to this circumstance. Under Rule 7.13(5), the assessment for compliance with the agreements must be done by the anniversary date of the agreement which may be done together with the annual review of the standards or the review of standards may be undertaken annually since the last review. The requirement to periodically determine compliance with the agreement and standards is integral to the Rules concerning third-party electronic access and cannot be conducted on a "discretionary" basis by a Participant to adequately mitigate

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		its risks.
	Scotia - Language in UMIR 7.12 (2)(e) should mirror sub-section (f), seeks clarification.	UMIR 7.12(2)(e) has been deleted and the requirements in Rule 7.13(e) and (f) have also been aligned.
	Scotia, RBC, IIAC – Re. automated order systems ("AOS") testing – UMIR 7.12(2)(f), 7.13(2)(f). • The requirement for DEA and RA clients to "ensure" that their AOSs, and those of their clients, are tested in accordance with prudent business practices is too high a standard. Policies and procedures should be "reasonably designed" to ensure appropriate testing. Foreign dealer equivalents may not enter contracts that require they 'ensure' their clients have adequately tested since they do not directly control those systems. • Seeks confirmation that a statement, attestation or representation from the DEA client or dealer, or the third party service provider as applicable, that the automated order system is appropriately tested would suffice.	The same language has been used in Part 8 of Policy 7.1 respecting trading supervision obligations for use of AOSs by a Participant or its client (see IIROC Notice 12-0363 – *Provisions Respecting Electronic Trading*). This provision contemplates a similar obligation to also ensure testing of an AOS used by clients of a DEA client, investment dealer or foreign dealer equivalent. This testing requirement captures all AOSs used for DEA or RA in order to mitigate the risk that an improperly operating AOS may interfere with fair and orderly markets. Similar to the expectation outlined in IIROC Notice 12-0364 - *Guidance Respecting Electronic Trading*, IIROC expects a Participant to maintain written records documenting the testing undertaken by the DEA client or dealer, or by any third party service provider that the AOS is appropriately tested. The Participant continues however to be responsible for any offending order entered on or trade executed on a marketplace resulting from the improper operation of the AOS.
(3) The written agreement entered into by a Participant under subsection (1) with the client, investment dealer or foreign dealer equivalent must	**Scotia -** Written Agreements – UMIR 7.12(3)(a),	See 7.13(1)(a)(i) which uses "reasonably designed" language in reference to the standards that a Participant establishes.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
provide that: (a) in the case of an agreement for direct electronic access or a routing arrangement: (i) the trading activity of the client, investment dealer or foreign dealer equivalent will comply with: (A) all Requirements~~;~~, and ~~(b)~~ (B) ~~the trading activity of the client will comply~~ the product limits or credit or other financial limits specified by the Participant~~;~~, ~~(c~~ii) the client, investment dealer or foreign dealer equivalent will maintain all technology facilitating direct ~~market~~ electronic access or a routing arrangement in a secure manner and will not permit any person to transmit an order using the direct ~~market~~ electronic access or the routing arrangement other than the personnel ~~of the client who have been~~ authorized by the client and named under the provision of the agreement referred to in sub-clause (b)(i), or personnel authorized by the investment dealer or foreign dealer equivalent ~~to transmit orders using direct market access~~; (iii) the client, investment dealer or foreign dealer equivalent will fully co-operate with the Participant in connection with any investigation or proceeding by any marketplace or the Market Regulator with respect to trading conducted pursuant to direct electronic access or a routing arrangement, including upon request by the Participant, providing access to information to the marketplace or Market Regulator that is necessary for the purposes of the investigation or proceeding; (~~d~~iv) the Participant is authorized, without prior notice, to: (~~i~~A) reject any order, (~~ii~~B) vary or~~,~~ correct ~~or cancel~~ any order entered on a marketplace to comply with Requirements, ~~or~~ (C) cancel any order entered on a marketplace, or (~~iii~~D) discontinue accepting orders,	7.13(3)(a) - Requirement that written agreements stipulate that DEA and RA client orders, and those of their clients, "will" comply with all Requirements is not a reasonable standard. Participant should be required to maintain policies and procedures reasonably designed to ensure orders comply with the Requirements.	This is distinct from the term of the agreement that must mandate trading activity by the client, investment dealer or foreign dealer equivalent will comply with the Requirements. This is also required in NI-23-103.
	Scotia - "Vary" or "Correct" Orders – UMIR 7.12(3)(d), 7.13(3)(d) • A Participant does not require the ability to vary or correct client orders. This requirement, which is also part of the existing TMX direct access rules, is problematic when establishing contracts with clients. The ability to reject or cancel any order and to discontinue accepting orders is sufficient to manage client trading. To the extent that specific scenarios or order details are the subject of IIROC's concern, it is suggested this ability be limited to those specific cases. Otherwise prefer that requirement be removed.	IIROC acknowledges the comment and has addressed it in the amendment to the subject provision (which has been paralleled in NI-23-103). The qualification "to comply with Requirements" limits the circumstances when such action may be taken by the Participant, such as to comply with the Order Protection Rule or to comply with the direction of a Market Integrity Official.
	Wiley - Prohibition on trading for accounts of clients too restrictive – UMIR 7.13(3)(f) • No policy reason to treat trading for accounts of clients differently than DEA client trading for its own account. • Prohibition too broad and will cause market disruption (e.g. CDN pension fund managing accounts, foreign dealer trading for a fully managed account of a client in a foreign jurisdiction, foreign hedge fund manager trading fund accounts, a firm relying on the international adviser exemption trading an incidental amount of CDN securities for a CDN permitted client).	The CSA and IIROC remain of the view that it is important to limit the risk of DEA trading by preventing DEA clients from trading for another person except under specified circumstances. However, investment dealers and foreign dealer equivalents that trade for other persons are permitted to enter "routing arrangements" under UMIR.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
from the client, investment dealer or foreign dealer equivalent; (ev) the client, investment dealer or foreign dealer equivalent will immediately inform the Participant if the client, investment dealer or foreign dealer equivalent fails or expects not to meet the standards set by the Participant; and (~~f~~b) in the case of an agreement for direct electronic access: (i) the client will immediately notify the Participant in writing of: (A) the names of the personnel of the client authorized by the client to enter an order using direct electronic access, and (B) details of any change to the information in sub-clause (A); (ii) the client may not trade for the account of any other person unless the client is: (A) ~~a portfolio manager~~ registered or exempted from registration as an adviser under securities legislation, or (B) ~~a restricted portfolio manager, or~~ a person conducting business in a foreign jurisdiction in a manner analogous to an adviser and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction and the order is for or on behalf of a person who is itself a client of the client acting in the capacity of adviser for that person; ~~(iii) an entity that is registered in a category analogous to the entities referred to in subclause (i) or (ii) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding;~~ (~~g~~iii) if the client trades for the account of any other person in	**Scotia, IIAC, RBC** - DEA Client Risk Controls - UMIR 7.13(3)(g)(ii) • Obligation to ensure that a client has reasonable risk controls for its own clients should not be placed on the Participant, but should remain with the client via contractual agreement. The language should read "the client must ensure that they have established and maintain reasonable risk management...".	IIROC acknowledges the comment and has amended the provision accordingly.
	RBC - Provision of Requirements to DEA Client - UMIR 7.13(3)(h) • Imposes a significant burden on Participants to send DEA clients updates to all the collective Requirements. The DEA client is already required to agree in writing that it will comply with the Requirements (and reconfirm annually). The onus should be on the DEA client to fulfill its contractual obligations under the DEA agreement and requirement on Participant should be removed.	This requirement is consistent with NI-23-103 and applies only with respect to relevant amendments to "applicable" Requirements following a grant of DEA.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
accordance with sub-clause (~~f~~ii), the client must: (~~i~~A) ensure that the orders for the other person are transmitted through the systems of the client before being entered on a marketplace~~directly or indirectly through a Participant~~, and (~~ii~~B) ~~the Participant must ensure that~~ ensure that the orders for the other person are subject to ~~has~~ ~~established and maintains~~ reasonable risk management and supervisory controls, policies and procedures established and maintained by the client; ~~and~~ (~~h~~iv) the Participant shall provide to the client, in a timely manner, any relevant amendments or changes to: (~~i~~A) applicable Requirements, and (~~ii~~B) the standards established by the Participant under subsection (1)~~.~~; and (c) in the case of a routing arrangement agreement, the investment dealer or foreign dealer equivalent will not allow any order entered electronically by a client of the investment dealer or foreign dealer equivalent to be entered directly to a marketplace without being electronically transmitted through the systems of the Participant or the system of the investment dealer or foreign dealer equivalent.		
(4) A Participant must not allow any order to be transmitted using direct electronic access or through a routing arrangement unless: (a) the Participant is: (i) maintaining and applying the standards established by the Participant under subsection (1), (ii) satisfied the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant under subsection (1), and (iii) satisfied the client, investment dealer or foreign dealer equivalent is in compliance with the written agreement entered into with the Participant; and		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(b) the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a marketplace.		
(5) The Participant shall ~~review and confirm~~: (a) at least annually review and confirm that: (i) the standards established by the Participant under subsection (1) are adequate, and (ii) the Participant has maintained and consistently applied the standards in the period since the establishment of the standards or the date of the last annual review; and (b) at least annually by the anniversary date of the written agreement assess, confirm and document ~~with a client~~ that the client, investment dealer or foreign dealer equivalent: (i) is in compliance with the written agreement with the Participant, and (ii) has met the standards established by the Participant under subsection (1) since the date of the written agreement or the date of the last annual review.	**Scotia -** Annual Client Review of Standards and Agreement – UMIR 7.12(5)(b), 7.13(5)(b) • Seeks clarification that an annual confirmation and sign-off by clients would meet the requirement to confirm continued client compliance with the agreement and standards. • Wants flexibility in defining an annual review date in their policies and confirm client compliance before that date rather than the effective date of each individual agreement. This would allow coordination such reviews as part of an annual process, without compromising effectiveness. • Expectations regarding potential consequences resulting from a breach of the written agreement (material or otherwise) should be set out in guidance and confirm that the Participant has full discretion in this regard.	In IIROC's view the annual compliance review of standards and the agreement for third-party electronic access should be conducted in accordance with policies and procedures reasonably designed to meaningfully assess compliance beyond an annual client "sign-off", which would be part of that process. The annual review should confirm whether, pursuant to trading supervision requirements under UMIR 7.1 and Policy 7.1, there has been effective detection of any compliance failure. The timing of annual reviews with respect to the agreement has been structured so that the anniversary date of the agreement will not be exceeded before a review occurs. The annual review of standards may coincide with that review or may be conducted annually from the date of the last standards review. A gatekeeper report under UMIR 10.18 is the mechanism Participants must employ to report material breaches of the standards or agreement. The Participant may consider terminating access as a consequence of any breach as part of its policies and procedures in order to mitigate risks to its business and market integrity.
(6) A Participant shall forthwith notify the Market Regulator: (a) upon entering into a written agreement ~~with a client~~ respecting direct electronic access or a routing arrangement, of (i) the name of the client, investment dealer or foreign dealer equivalent; and ~~(ii) the contact information for the client which will permit the Market Regulator to deal with the investment dealer immediately following the entry of an order by the client in respect of which~~	**Scotia, RBC -** Client Contact Information – UMIR 7.12(6)(a)(ii) and 7.13(6)(a) • Concerned about the requirement to provide DEA and RA client contact information to IIROC. Clients may refuse to respond to regulator that does not directly regulate them. Excludes the responsible Participant from discussions and may cause client confusion. Participant should be	IIROC acknowledges the comment and has amended the provision to remove the client contact information requirement. A requirement to notify the Participant (rather than the Market Regulator) of the personnel of a DEA client authorized to enter an order using DEA has been added, however, as a term of the agreement specific to DEA in s. 7.13(3)(b)(i), consistent with current practice and aligned with NI 23-103.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~the Market Regulator wants additional information, and(iii) the names of the personnel of the client authorized by the client to enter an order using direct electronic access, and~~ ~~(iii) the names of the personnel of the client authorized by the client to enter an order using direct electronic access; and~~ (b) of any change in the information described in clause (a).	contacted first and allowed opportunity to contact the client, or alternatively, be notified if and when the Market Regulator has contacted the client directly.	
10.15 Assignment of Identifiers and Symbols (1) The Market Regulator shall assign a unique identifier to: (a) a marketplace for trading purposes upon the Market Regulator being retained as the regulation services provider for the marketplace~~;, and~~ (b) an investment dealer, other than a Participant, or a foreign dealer equivalent upon the Market Regulator being notified that a Participant has entered into a written agreement with the investment dealer or foreign dealer equivalent respecting a routing arrangement; and (c) a client upon the Market Regulator being notified that a Participant has entered into a written agreement with the client respecting direct electronic access. (2) A marketplace, upon granting access to the trading system of the marketplace to a Participant or Access Person, shall assign a unique identifier to the Participant or Access Person for trading purposes.	**Scotia, RBC, IIAC and TMX -** Unique client ID - UMIR 6.2(1)(a)(iv),(v) and 10.15 • Process appears to be inconsistent with that under NI 23-103. Seeks confirmation that process currently in place will remain with continuing use of the User ID Field for every order, dealers creating client IDs and reporting them to IIROC. • Creation and assignment of IDs by IIROC would not be workable as all existing IDs would have to be changed to meet a new convention. • Confusion as to whether client User ID for a DEA client would be communicated through the trader ID in the case that DEA client accesses market through jitneying Participant. Currently a DEA client is not identified for jitney orders. A significant change to systems and operations would be required. Suggests creation of new standardized marketplace order entry protocol tag to mandate ID of DEA client to ensure DEA client flows via RAs are all identified.	NI 23-103 has been amended for consistency with UMIR, to clarify that a Participant must ensure the client is assigned a DEA client identifier in the form and manner required by IIROC as regulation services provider. IIROC has indicated in the Notice of Approval that the current process related to use of the User ID field and reporting of the client ID to IIROC will remain in place at this time.
10.18 Gatekeeper Obligations with Respect to Access to Marketplaces (1) A marketplace that has provided access to a Participant or Access Person shall forthwith report to the Market Regulator the fact that the marketplace: (a) has terminated the access of the Participant or Access Person to the marketplace; or		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
(b) knows or has reason to believe that the Participant or Access Person has or may have breached a material provision of any Marketplace Rule or agreement pursuant to which the Participant or Access Person was granted access to the marketplace. (~~2) A Participant that has provided access to a marketplace to an investment dealer or foreign dealer equivalent pursuant to a routing arrangement shall forthwith report to the Market Regulator the fact that:~~ ~~(a) the routing arrangement has been terminated; or~~ ~~(b) the Participant knows or has reason to believe that the investment dealer or foreign dealer equivalent has or may have breached a material provision of:~~ ~~(i) any standard established by the Participant for the routing arrangement with the investment dealer or foreign dealer equivalent, or~~ ~~(ii) the written agreement between the Participant and the investment dealer or foreign dealer equivalent regarding the routing arrangement.~~ (~~3~~2) A Participant that has provided access to a marketplace pursuant to direct electronic access or through a routing arrangement shall forthwith report to the Market Regulator the fact that the Participant: (a) has terminated the access of the client under the arrangement for direct electronic access or of the investment dealer or foreign dealer equivalent through a routing arrangement; or (b) knows or has reason to believe that the client, investment dealer or foreign dealer equivalent has or may have breached a material provision of: (i) any standard established by the Participant for the granting of direct electronic access or a routing arrangement, or (ii) the written agreement between the Participant and the client regarding the direct electronic access, or the investment dealer or foreign dealer equivalent regarding a routing arrangement.		
Policy 7.1 – Trading Supervision Obligations		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
Part 1 – Responsibility for Supervision and Compliance **…** In performing the trading supervision obligations, the Participant will act as a "gatekeeper" to help prevent and detect violations of applicable Requirements. When an order is entered on a marketplace by direct electronic access, under a routing arrangement or through an order execution service, the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered ~~directly~~ by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service than the percentage of orders sampled in other circumstances. In addition, the "post-order entry" compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service may restrict the ability of the Participant to detect orders that are not in compliance with specific rules. For example, "post-order entry" compliance testing may be focused on whether an order entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service: • has created an artificial price contrary to Rule 2.2; • is part of a "wash trade" (in circumstances where the client has more than one account with the Participant); • is an unmarked short sale (if the trading system of the Participant does not automatically code as "short" any sale of a security not then held in the account of the client other than a client required to use the "short-marking exempt" designation); and		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
• has complied with order marking requirements and in particular the requirement to mark an order as from an insider or significant shareholder (unless the trading system of the Participant restricts trading activities in affected securities).		
Policy 7.1 – Trading Supervision Obligations **Part 2 – Minimum Elements of a Supervision System** … The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, in accordance with subsection (2) of Rule 10.1, orders entered (including orders entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or by a client through an order execution service) must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed.		
Policy 7.1 – Trading Supervision Obligations **Part 9 - Specific Provisions Applicable to Direct Electronic Access and Routing Arrangements** *Standards for Clients, Investment Dealers and Foreign Dealer Equivalents* In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that provides direct electronic access or implements a routing arrangement must establish, maintain and apply reasonable standards for granting direct electronic access or a routing arrangement and assess and	**TDSI** - Onerous requirement for Participant to identify an originating investment dealer or foreign dealer equivalent and ensure that each order ultimately transmitted through the RA is properly marked and identified. This is not current practice and has significant technology and operational implications as order flow is commingled with many investment dealers on same routing connection. Client confidentiality may be breached by disclosing originating investment dealer.	As indicated in the response to the comment above related to the "standard" for order marking, Participants permitting foreign dealer equivalents to access a Canadian marketplace must have policies and procedures to ensure that UMIR 6.2 is complied with as it would for any other client trading on a Canadian marketplace. The identification of an originating investment dealer would not breach "client confidentiality" as the investment dealer is an IIROC regulated member.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
document whether each client, investment dealer or foreign dealer equivalent meets the standards established by the Participant for direct electronic access or a routing arrangement. The Market Regulator expects that as part of its initial "screening" process, non-institutional investors will be precluded from qualifying for direct electronic access except in exceptional circumstances generally limited to sophisticated former traders and floor brokers or a person or company having assets under administration with a value approaching that of an institutional investor that has access to and knowledge regarding the necessary technology to use direct electronic access. The Participant offering direct electronic access or a routing arrangement must establish sufficiently stringent standards for each client granted direct electronic access or each investment dealer or foreign dealer equivalent under a routing arrangement to ensure that the Participant is not exposed to undue risk and in particular, in the case of a non-institutional client the standards must be set higher than for institutional investors. The Participant is further required to confirm with the client granted direct electronic access or the investment dealer or foreign dealer equivalent in a routing arrangement, at least annually, that the client, investment dealer or foreign dealer equivalent continues to meet the standards established by the Participant including to ensure that any modification to a previously "approved" automated order system in use by a client, investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards. *Breaches by Clients with Direct Electronic Access or by Investment Dealers or Foreign Dealer Equivalents in a Routing Arrangement* A Participant that has granted direct electronic access to a client or entered into a routing arrangement with an investment dealer or foreign dealer equivalent must further monitor orders entered by the client, investment dealer or foreign dealer equivalent to identify whether the client, investment dealer or foreign dealer equivalent may have: • breached any standard established by the Participant for the granting of direct electronic access or a routing arrangement; • breached the terms of the written agreement ~~between the Participant and the client~~ regarding the direct electronic access or the routing arrangement;		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
• improperly granted ~~access to~~ or ~~passed on~~ provided its ~~direct electronic~~ access under direct electronic access or a routing arrangement to another person ~~or company~~; • engaged in unauthorized trading on behalf of the account of another person ~~or company~~; or • failed to ensure that its client's orders ~~flowed~~ are transmitted through the systems of the client, or Participant, investment dealer or foreign dealer equivalent (which include proprietary systems or systems that are provided by a third party) before being entered on a marketplace. *Identifying Originating Investment Dealer or Foreign Dealer Equivalent* In relation to the assignment of a unique identifier to an investment dealer or foreign dealer equivalent in a routing arrangement, if orders are routed through multiple investment dealers or foreign dealer equivalents, the executing Participant is responsible for properly identifying the originating investment dealer or foreign dealer equivalent and must establish and maintain adequate policies and procedures to assure that orders routed by an investment dealer or foreign dealer equivalent to the executing Participant containing the Participant's identifier are also marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace. *Identifying Clients with Direct Electronic Access* In relation to the assignment of a unique identifier to a client that is granted direct electronic access, the Participant must establish and maintain adequate policies and procedures to assure that orders routed by the client to the executing Participant containing the Participant's identifier are marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.		
~~**Policy 7.1 – Trading Supervision Obligations**~~ ~~**Part 10 - Specific Provisions Applicable to Routing Arrangements**~~ ~~**Standards for Investment Dealers or Foreign Dealer Equivalents**~~		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8,~~ ~~a Participant that enters into a routing arrangement with an investment dealer or foreign dealer equivalent must establish, maintain and apply reasonable standards for entering into the routing arrangement and assess and document whether each investment dealer or foreign dealer equivalent meets the standards established by the Participant for the routing arrangement. The Participant offering the routing arrangement must establish sufficiently stringent standards for each investment dealer or foreign dealer equivalent to ensure that the Participant is not exposed to undue risk.~~ ~~The Participant is further required to confirm with the investment dealer or foreign dealer equivalent at least annually, that the investment dealer or foreign dealer equivalent continues to meet the standards established by the Participant including to ensure that any modification to a previously "approved" automated order system in use by the investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards.~~ ~~Identifying Originating Investment Dealer or Foreign Dealer Equivalent~~ ~~In addition to assigning a unique identifier to an investment dealer or foreign dealer equivalent in a routing arrangement with the Participant, the Participant is responsible for properly identifying the originating investment dealer or foreign dealer equivalent and must establish and maintain policies and procedures to appropriately mark and identify the originating investment dealer or foreign dealer equivalent for each order that is ultimately transmitted through the routing arrangement.~~ ~~Breaches by Investment Dealer of Foreign Dealer Equivalent~~ ~~A Participant that has provided access to a marketplace to an investment dealer or foreign dealer equivalent pursuant to a routing arrangement must monitor all orders entered by the investment dealer or foreign dealer equivalent to identify whether the investment dealer or foreign dealer equivalent may have:~~ ~~• breached any standard established by the Participant for the routing arrangement; or~~ ~~• breached the written agreement between the Participant and the investment dealer or foreign dealer equivalent regarding the routing~~		

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
~~arrangement.~~		
~~**Policy 7.1 – Trading Supervision Obligations**~~ ~~**Part 11 - Specific Provisions Applicable to Order Execution Services**~~ ~~In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that provides order execution services must monitor orders entered by an order execution services client to determine if the client may be using an automated order system other than one provided as part of the order execution service. The Participant shall confirm with the order execution services client, at least annually, whether the client has used since the date of the last confirmation an automated order system other than one provided as part of the order execution service.~~	**Scotia, TDSI, TDW, IIAC, NBF** – • Not feasible to confirm annually with order execution service (OES) client re. use of AOS, a firm suggested an exemption from the requirement if AOS cannot be connected other than if firm "hacked" into. • No clear policy rationale for excluding Institutional Customers from OES which will disadvantage these customers. • Clarification requested as to implementation, communication and methodology of "manual order threshold" required so that firms can implement threshold.	The proposed amendments to Dealer Member Rule 3200 and UMIR Policy 7.1 relating to restriction on access to OES by Institutional Customers and monitoring for AOS use by OES clients have not been brought forward with this set of Amendments. Please refer to Appendix "B" of the Notice of Approval for final Dealer Member Rule amendments. However, these proposals are being re-examined and may form a new request for comments to be issued separately. A value for the order threshold is not being applied by IIROC at this time. However, at such time as IIROC is of the view that it may be necessary to impose a threshold for the purpose of supporting market integrity, a request for comments will be issued concerning methodology and implementation so that firms will have the ability to provide input and have time to implement.
Questions: 1. Are there any consequences from the proposed extension of the definition of "Participant" that have not been addressed in the Proposed UMIR Amendments? In the alternative, should routing arrangements simply prohibit: a) a Participant from authorizing an investment dealer engaged in proprietary trading to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure; and b) the ability of an investment dealer to transmit orders to a marketplace without first passing through the systems of a Participant? In the alternative, should routing arrangements simply prohibit: • a Participant from authorizing an investment dealer engaged in proprietary trading to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control,	**TDSI** – Support for clear prohibition on investment dealers offered "naked access" by Participants. Investment dealer should become a full Participant rather than be deemed one.	Please see response above in reference to amended definition of "Participant".
	Scotia – If an investment dealer engaged in proprietary trading is authorized to set risk management or supervisory controls, the investment dealer should be both a DEA client for such trading and RA client for its agency trading.	As the definition of Participant is no longer expanded, an investment dealer may only be authorized to set or adjust the risk management or supervisory controls for agency order flow where there is an "ultimate client". This precludes the authorization of control setting to an investment dealer in respect of any account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
policy or procedure; and • the ability of an investment dealer to transmit orders to a marketplace without first passing through the systems of a Participant?		
2. Are the risks of providing direct electronic access to a client sufficiently different from the risks associated with operating a routing arrangement with an investment dealer to justify a separate "rule" governing each means of electronically accessing a marketplace?	**Scotia** - favours keeping rules distinct but not opposed one way or another. **TD** - favours simplifying the rule structure given difficulties explaining subtle differences in rule sets to clients.	In recognition that investment dealers and foreign dealer equivalents are granted market access without intermediation equivalent to direct electronic access and that the requirements respecting routing arrangements and direct electronic access are substantially similar, IIROC has restructured the rule framework for simplicity from two separate rules to one, Rule 7.13, to address both DEA and routing arrangements, and similarly for related Part 9, Policy 7.1, with qualifications for direct electronic access and routing arrangements specifically in the Rules where necessary.
3. Are there any implementation issues respecting the regulatory framework for electronic access to marketplaces that have not been considered?	**Scotia** – Seeks clarification of the treatment of clients with "direct access" to dealer algorithms with respect to application of DEA and RA regulations.	The comment has been addressed in the revised guidance with the addition of a new question for clarity. To the extent that an algorithm offered by the Participant is managed by and includes inputs of the Participant, this is equivalent to "intermediation" of the orders of the client, investment dealer or foreign dealer equivalent and is excluded from application of the third-party-electronic access regulatory framework.
4. Is the contemplated timeframe for implementation sufficient?	**Scotia, TDSI, RBC, IIAC** - Support for a one year implementation period (i.e. add 180 days to the 180 days provided for). Concern over time required to amend or replace existing contracts with DEA and RA clients as well as time involved for migration of Institutional Customers from OES platform.	Participants with existing agreements have been provided an additional 180 days to replace/amend their agreements such that the effective implementation period is one year.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
General Comments	**RBC, IIAC -** A DEA client or a dealer under routing arrangement that is affiliated with a Participant generally relies on the same standard of risk and supervisory controls employed by the Participant and would not be subject to the type of financial and operational risks contemplated in the Proposal. IIROC should exempt affiliates of a Participant from the proposed requirements and allow Participants flexibility in determining and applying the controls that best address its business risks when providing electronic access to marketplaces to its affiliates.	Pursuant to IIROC Notice 12-0363 – Provisions Respecting Electronic Trading, there is no exemption provided with respect to the requirement for a Participant to maintain a system of risk management controls, policies and procedures in respect of orders received from affiliates of a Participant, whether through a routing arrangement or DEA. The Provisions Respecting Electronic Trading do permit the authorization of the setting or adjustment of the risk management controls, policies and procedures in certain circumstances to an investment dealer, which may also be an affiliate of the Participant, and thus provides some flexibility in setting and applying controls where the investment dealer is in a better position to know the "ultimate client".
	Wiley - Inconsistency in drafting between NI 23-103 and UMIR: • Concern that different wording as between CSA and IIROC provisions could lead to different interpretations. •Duplication of proposals in NI 23-103 and UMIR. Could lead to unintended consequences (e.g. differences in processes for seeking exemptive relief).	Although the rule structure and some language in UMIR is not identical to that in NI 23-103, in certain cases given specific UMIR terminology, the CSA and IIROC are of the view that with the amendments, the language has been made as consistent as possible and the requirements and their meaning are essentially the same. In addition, under section 4.1 of NI 23-103, a Participant that complies with similar UMIR requirements to those established under Part 2.1 of the Instrument would not need to meet the requirements of Part 2.1 and would therefore only need to gain an exemption under UMIR. A separate exemption from NI 23-103 would not be necessary.

Text of Guidance - Blacklined Revisions to IIROC Notice 12-0316 – Rules Notice - Request For Comments – UMIR

Proposed Guidance Respecting Third-Party Electronic Access to Marketplaces

On October 25, 2012, IIROC issued Notice 12-0316 requesting comments on Proposed Guidance Respecting Third-Party Electronic Access to Marketplaces ("Proposed Guidance"). IIROC did not receive comments on the Proposed Guidance. However, editorial modifications have been made to the Proposed Guidance to conform with changes to the Proposed Amendments (see above Summary of Comments), as well as to include clarifications in response to questions received from industry representatives, confirming that:

- "naked access" is not permitted (new Question 3);
- DEA and routing arrangement requirements do not apply to client order flow that is intermediated by a Participant's algorithm (new Question 12); and
- a foreign dealer equivalent that is also registered as an exempt market dealer is permitted to use electronic access but not when it is acting in its capacity as an exempt market dealer (new paragraph in Question 2).

The following table highlights the revisions to the Proposed Guidance together with IIROC's commentary in regard to the revisions.

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
Executive Summary This Rules Notice provides guidance relating to the requirements under UMIR with respect to a Participant granting a third-party electronic access to a marketplace. The Guidance updates previous guidance issued with respect to aspects of electronic access to marketplaces and specifically addresses provisions established under both National Instrument 23-103 (the "CSA Access Rule")[33] and amendments to UMIR ("Amendments").[34] The Guidance expands upon the obligations of Participants under the framework for third-party electronic access to marketplaces by means of:	Revision to conform with change to proposed expanded definition of Participant, which has returned to its original scope.

[33] Published at (2013) 36 OSCB 6893.
[34] IIROC Notice 13-0184 - Rules Notice – Notice of Approval – UMIR and Dealer Member Rules – *Provisions Respecting Third-Party Electronic Access to Marketplaces* (July 4, 2013).

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
• direct electronic access; • a routing arrangement; or • an order execution service. In particular, the Guidance: • provides examples relating to the requirements for order identification and designation, including the use of the "jitney" marker; and • highlights specific changes respecting order execution services, ~~and~~ direct electronic access and routing arrangements.~~; and~~ ~~• outlines the effect of the expanded definition of Participant to include investment dealers who, while not a member, user or subscriber to a marketplace, have under a routing arrangement:~~ ~~o the ability to enter orders on a marketplace without the order being transmitted through the system of a Participant and who have been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting orders from client accounts, or~~ ~~o been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management and supervisory controls, policies and procedures for accounts in which the investment dealer has a direct or indirect interest in addition to those of its clients.~~	
1. Background ***1.1 CSA Access Rule and UMIR Amendments*** On July 4, 2013, IIROC published notice of the approval of the Amendments which ~~Amendments~~ align UMIR with the requirements set out in the CSA Access Rule and introduce a regulatory framework for third-party electronic access to marketplaces.[35] The Amendments confirm that a third-party may only obtain electronic access to marketplaces through a Participant using the mechanisms of: • direct electronic access ("DEA") provided by Participants to ~~certain Canadian registrants~~ advisers and other clients ("DEA clients"); • ~~order~~ routing arrangements between investment dealers or foreign dealer equivalents[36] and Participants; or	Revision to conform with new reference to "advisers" in NI 21-103 as well as in UMIR provisions, and to reflect conforming change to proposed UMIR definition of "foreign dealer equivalent".

[35] See IIROC Notice 13-0184 *op.cit.*

[36] The Amendments define a "foreign dealer equivalent" as "~~a person registered in a category analogous to that of investment dealer in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding~~ a person in the business of trading securities in a foreign jurisdiction in a manner analogous to an

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
• order execution services presently offered to a range of client account types. The framework is designed to address areas of concern and risks brought about by electronic access to marketplaces. Such risks include those relating to: liability; credit; market integrity; sub-delegation; technology or systems; and regulatory arbitrage.	
1.2 UMIR Requirements for Identifiers and Designations ~~Prior to the Amendments, Rule 1.1 of UMIR defined a "Participant" generally as a registered dealer that is a:~~ ~~member of an exchange;~~ ~~user of a quotation and trade reporting system; or~~ ~~subscriber to an alternative trading system.~~ ~~Under the Amendments, the definition of "Participant" was expanded to include an investment dealer that is a party to a routing arrangement with a Participant and, in the applicable written agreement, the investment dealer:~~ ~~may enter orders directly to the marketplace without being electronically transmitted through the Participant's systems and is authorized to set or adjust on behalf of the Participant the various controls, policies or procedures respecting such orders; or~~ ~~has been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than in the commission charged on a transaction or reasonable fee for the administration of the account (that is an account in which proprietary trading is taking place).~~ ~~Rule 1.1 of UMIR defines a "jitney order" as an order entered on a marketplace by a Participant acting for or on behalf of another Participant. In light of the expansion of the definition of "Participant" under the Amendments, the definition of "jitney order" will include orders from an investment dealer that, while not a member, user or subscriber, has become a "Participant" under the expanded definition.~~ Prior to the Amendments, Rule 6.2 of UMIR required that each order entered on a marketplace contain various identifiers and designations that may be applicable to the order including: • the identifier of the Participant entering the order on a marketplace (the "Executing Participant"); • in the case of a jitney order, the identifier of the Participant for or on behalf of whom the order is entered; • the designation that the order is:	Revision to conform with change to proposed expanded UMIR definition of Participant which has returned to its original scope.

investment dealer and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction".

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
o a jitney order, o a principal or non-client order, o an order that will be a short sale or ~~a~~ short-marking exempt ~~sale~~, and ~~o~~ an order from an insider or significant shareholder. The Amendments expand~~ed~~ the identifiers which must be included on an order to add: • the identifier of the client for or on behalf of whom an order is entered under direct electronic access; and • the identifier of the investment dealer or foreign dealer equivalent for or on behalf of whom the order is entered under a routing arrangement. ***At this time, IIROC*** ~~will require~~ ***is continuing the practice that*** ~~these new~~ ***is currently used for the identification of orders from clients with direct market access such that unique identifiers~~,~~ will be included in the "User ID" field (as designated by the marketplace on which the order is entered)~~, be included in the "User ID" field~~ for DEA clients, and for investment dealers and foreign dealer equivalents under routing arrangements.*** Reference should be made to the text of Rule 6.2 for a listing of all of the required identifiers and designations to be attached to an order entered on a marketplace.	
1.3 Origination and Routing of Orders for Execution and Use of Identifiers Only a Participant that is a member, user or subscriber may provide ~~direct~~ third-party access to a marketplace through: • DEA to DEA clients; or • a routing arrangement with other Participants, investment dealers or foreign dealer equivalents. A client order, principal order or non-client order may originate with a dealer that is either a Participant[37] (an "Originating Participant") or with an investment dealer or foreign dealer equivalent that is not a Participant for the	Editorial change to more clearly address in s.1.3 the use of identifiers, and moving certain text related to order marking in s. 1.4 following.

~~37 This would include an investment dealer which, while not being a member, user or subscriber of a marketplace, has either:~~
~~• direct access to a marketplace under a routing arrangement with a Participant that permits the investment dealer to enter orders directly to the marketplace without being electronically transmitted through the Participant's systems and who have been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting orders from client accounts; or~~
~~• been authorized to perform on behalf of a Participant the setting or adjustment of a risk management or supervisory control, policy or procedure related to the handling of the dealer's proprietary orders.~~

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary

purposes of UMIR (an "Originating Dealer"). The order may be routed to another dealer to act as intermediary (a "Participant Intermediary" if the other dealer is a Participant for the purposes of UMIR or otherwise a "Dealer Intermediary") in on-routing the order to an Executing Participant.
 	
~~***1.4 Responsibility for Ensuring Proper Order Marking***~~
 	
With the Amendments, an order will be able to carry up to three separate identifiers. Each of the Executing Participant and any Originating Participant or Participant Intermediary has an obligation to ensure that all applicable designations and identifiers are included on the entry of an order on a marketplace. With respect to identifiers:
 	
• the Broker ID Field must always contain the identifier of the Executing Participant;
 	
• the Jitney ID Field must contain the identifier of the first Participant involved in the routing of the order if an Originating Participant or a Participant Intermediary is involved in the routing of the order and the order must be market "jitney"; and
 	
• the User ID Field must contain:
  o the identifier of the DEA client if a client enters an order using DEA provided by a Participant, or
  o if no DEA client is involved, the identifier of the first Participant, investment dealer or foreign dealer equivalent that receives access under a routing arrangement with a Participant (regardless if there are other intermediaries in the chain) and is using the routing arrangement in the transmission of the order.
 	
~~With respect to designations, an order must contain all designations required under Rule 6.2 that are relevant to the order (e.g. non-client, insider, short sale, short marking exempt, etc.).~~
 	
~~The Originating Participant has the same obligations regarding client knowledge that it would have if it entered the order directly onto the marketplace and must therefore provide any intermediary or the Executing Participant with all required designations and identifiers.~~
 	
~~If an Executing Participant receives an order directly from an Originating Dealer or from a Dealer Intermediary that is acting on behalf of an Originating Dealer that order will not be considered a "jitney order" for the purposes of UMIR. In these circumstances, the Executing Participant is responsible for ensuring that its identifier and all designations relevant to the order as required under Rule 6.2 of UMIR are included on the entry of the order to a marketplace.~~
 	
~~An Originating Participant that uses a Dealer Intermediary for routing orders to an Executing Participant must ensure that the Dealer Intermediary is able to receive and to pass on to the Executing Participant all required identifiers and designations on an order. Similarly, a Participant Intermediary or Executing Participant must ensure that a Dealer Intermediary or Originating Dealer has adequate policies and procedures in place to assure that orders routed to the Executing Participant contain all of the designations and identifiers that are required by Rule 6.2 of UMIR.~~	

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
~~If a Participant has provided DEA to a client, the Participant must have established standards that require the client to have reasonable knowledge of and the ability to comply with all applicable requirements, including the marking of each order with the designations and identifiers as by required by Rule 6.2. On an on-going basis, the Participant would be expected to supervise the entry of orders on a marketplace and to undertake compliance testing (including testing of compliance with order marking requirements). The Participant is expected to review and confirm at least annually that the client is in compliance with standards established by the Participant. Under the Amendments, each client with direct electronic access will be assigned a unique identifier which must be included in the User ID field on each order that the client enters using direct electronic access.~~ ~~While a client that enters orders through an order execution service will not be assigned a separate unique identifier, any Participant handling the orders at any stage in the transmission to a marketplace must take reasonable steps to ensure that the orders comply with all applicable requirements, including the marking of each order with designation and identifiers as required by Rule 6.2.~~ Any Participant handling the orders at any stage in the transmission to a marketplace must take reasonable steps to ensure that the orders comply with all applicable Requirements, including the marking of each order with designations and identifiers as required by Rule 6.2. The following table sets out the identifiers which should be attached to an order based on a number of order routing and transmission scenarios. The table includes situations where there would be no change in the current order marking practices but these are provided in order to better illustrate the changes that are introduced by the Amendments. For the purposes of this table, "intermediated" means the provision of an order by a means other than third-party electronic access through: • direct electronic access; • a routing arrangement; or • an order execution service~~s~~ account. …	
1.4 Responsibility for Ensuring Proper Order Marking With respect to designations, an order must contain all designations required under Rule 6.2 that are relevant to the order (e.g. non-client, insider, short sale, short-marking exempt, etc.). Rule 6.2 is applicable in the same manner whether orders are transmitted via third-party electronic access or are intermediated by a Participant. The Originating Participant has the same obligations regarding client knowledge that it would have if it entered the order directly onto the marketplace and must therefore provide any intermediary or the Executing Participant with all required designations and identifiers. If an Executing Participant receives an order directly from an Originating Dealer or from a Dealer Intermediary that is acting on behalf of an Originating Dealer that order will not be considered a "jitney order" for the purposes of	Revision to clarify that there is no difference in application of UMIR 6.2 whether trading is by third-party electronic access or intermediated.

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
UMIR. In these circumstances, the Executing Participant is responsible for ensuring that its identifier and all designations relevant to the order as required under Rule 6.2 of UMIR are included on the entry of the order to a marketplace. An Originating Participant that uses a Dealer Intermediary for routing orders to an Executing Participant must ensure that the Dealer Intermediary is able to receive and to pass on to the Executing Participant all required identifiers and designations on an order. Similarly, a Participant Intermediary or Executing Participant must ensure that a Dealer Intermediary or Originating Dealer has adequate policies and procedures in place to assure that orders routed to the Executing Participant contain all of the designations and identifiers that are required by Rule 6.2 of UMIR. If a Participant has provided DEA to a client or enters into a routing arrangement with an investment dealer or foreign dealer equivalent, the Participant must have established standards that require the client, investment dealer or foreign dealer equivalent to have reasonable knowledge of and the ability to comply with all applicable ~~r~~Requirements~~, including the marking of each order with the designations and identifiers as by required by Rule 6.2~~. On an on-going basis, the Participant would be expected to supervise the entry of orders on a marketplace and to undertake compliance testing (including testing of compliance with order marking requirements). The Participant is expected to review and confirm at least annually that the client is in compliance with standards established by the Participant.	
2. Questions and Answers The following is a list of questions regarding the supervision and compliance obligations of a Participant or Access Person under the Amendments and IIROC's response to each question: 1. ***May a Participant in a routing arrangement authorize ANY investment dealer with an ultimate client that originates the orders to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure?*** **...** No. A Participant may only authorize an investment dealer that is a party to a routing arrangement with the Participant to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure. The routing arrangement is subject to minimum standards, a written agreement and regulatory oversight under UMIR. ~~If the investment dealer is authorized, pursuant to the applicable routing agreement, to:~~ ~~- enter orders directly to the marketplace without being transmitted through the Participant's systems and the investment dealer is authorized to set or adjust the various controls, policies or procedures respecting client orders; or~~ ~~• engage in "proprietary" trading on its own behalf or that of a related entity in which the investment dealer holds a direct or indirect interest,~~ ~~the investment dealer will be considered a Participant subject to UMIR under the expanded definition of~~	Revision to conform with change to proposed expanded definition of Participant which is returned to its original scope, and to conform language to NI 23-103 respecting authorization of setting or adjusting of controls.

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
~~"Participant". This is to ensure that all proprietary trading or trading outside the Participant's systems is equally subject to UMIR and regulatory oversight to mitigate the higher risk associated with these trading activities.~~ Market Regulation Policy staff may consider requests for exemptions related to the ~~allocation~~ authorization of an investment dealer to perform on behalf of the Participant the setting or adjusting of a risk management or supervisory ~~of~~ control~~s~~, policy or procedure in certain circumstances if it is demonstrated that each dealer in the chain of order transmission has reasonable controls so as to manage their individual risks and comply with the requirements under UMIR and ~~,~~ National Instrument 23-103 ~~and the CSA Access Rule~~.	
2. Are Exempt Market Dealers permitted electronic access to marketplaces? No. Registered dealers such as Exempt Market Dealers ("EMDs") may not gain ~~direct~~ electronic access to a marketplace through a Participant under a routing arrangement or direct electronic access ~~and would not be eligible to trade through an order execution account for Retail Customers~~. These restrictions are intended to prevent regulatory arbitrage with respect to trading and encourage registered dealers wishing to have direct access to a marketplace to become a member of IIROC (and be subject to the Dealer Member Rules and, in certain cases, UMIR).~~[38]~~ In the event a foreign dealer equivalent is also registered as an EMD, the foreign dealer equivalent would be eligible to be granted DEA for its proprietary trading and may enter into a routing arrangement with respect to its agency order flow, but would not be eligible for direct access to a marketplace when acting in its capacity as an EMD for Canadian clients.	Revisions to account for deferral of proposal respecting institutional order execution accounts and to clarify types of access that a foreign dealer equivalent may have when also registered as an EMD.
3. Is "naked access" permitted under DEA or a routing arrangement? No. While a Participant may, in limited circumstances, authorize an investment dealer that is a party to a routing arrangement with the Participant to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure,[39] this is precluded in the case of an investment dealer or related entity engaged in proprietary trading. In addition, notwithstanding that a Participant may have authorized an investment dealer to set or adjust the specific risk management or supervisory controls, policies or procedures in respect of client orders from that investment dealer, under Rule 7.13(4)(b), orders transmitted through a routing arrangement as well as using direct electronic access cannot "bypass" a Participant's risk management and supervisory controls, policies and procedures. However, this does not impact the ability of a client, investment dealer or foreign dealer equivalent, to transmit orders containing the identifier of the Participant directly to a marketplace without being electronically	New question to clarify and confirm that naked access is not permitted.

~~[38] IIROC has issued a concept proposal regarding the establishment of a new class of IIROC Member to be called a "Restricted Dealer Member". If the concept proposal is pursued and adopted, a firm with exempt market dealer or restricted dealer registration under applicable securities legislation would be able to apply for registration as an investment dealer and for membership in IIROC as a "Restricted Dealer Member". See IIROC Notice 12-0217 – Rules Notice – Concept Paper – Request for Comments – Dealer Member Rules – *IIROC Concept Proposal – Restricted Dealer Member Proposal* (July 12, 2012).~~

[39] See Rule 7.1(8) in IIROC Notice 12-0363 – Rules Notice – Notice of Approval – UMIR – *Provisions Respecting Electronic Trading* (December 7, 2012).

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
transmitted through the "systems" of the Participant and instead be transmitted through the technology systems of a service provider retained by the Participant for facilitating access to a marketplace.	
~~3~~4. Does the form of electronic access to marketplaces impact whether a Participant should apply the "short-marking exempt" designation to purchases and sales in an account? No. The characteristics of the account activity govern whether the short-marking exempt designation should apply, not the means of electronically accessing the marketplace.[40] In particular, UMIR defines a "short-marking exempt order" ("SME order") as including an order for the purchase or sale of a security from an account that is an arbitrage account. Whether an arbitrage account is held by an order execution services client, a DEA client or an investment dealer in a routing arrangement, the arbitrage account would qualify for the SME order designation. Accounts which use automated order generation and entry and which are generally "directionally neutral" in their trading activity will also have SME orders. A Participant that provides electronic access to a marketplace must ensure that orders entered through any form of such arrangements are correctly designated. IIROC expects the Participant to review the designation of orders by clients with SME order designations as part of the Participant's supervisory procedures required by Rule 7.1 and Policy 7.1 of UMIR.	
~~4~~5. ~~-~~Are the standards to be established by a Participant for granting direct electronic access to a client or entering a routing arrangement with an investment dealer or foreign dealer equivalent the same for each DEA client and for each investment dealer or foreign dealer equivalent? No. While the general standards that must be established by the Participant in granting access to a marketplace ~~are included in Rule 7.12 for~~ via routing arrangements and ~~Rule 7.13 for~~ direct electronic access are provided for in Rule 7.13, their application must be appropriate ~~and customized to~~ for the type, level of risk and ~~level of~~ sophistication of trading that would be undertaken by the DEA client or by the investment dealer or foreign dealer equivalent that the Participant would grant access to. As the provider of electronic access to marketplaces, the Participant's role in undertaking due diligence with respect to its clients is a key method of managing risks associated with electronic access to marketplaces and necessitates a thorough vetting of potential DEA clients and parties to routing arrangements. This process is accordingly integral to the preservation of market integrity, which can only be accomplished if the standards are meaningfully set by Participants. A Participant should assess and determine what additional standards are reasonable given the particular circumstances of the Participant and each client, ~~or~~ investment dealer or foreign dealer equivalent. This includes an evaluation of the suitability of the form of access that shouldbe provided to any client. In the case of a Retail Customer considered for direct electronic access, IIROC expects such would only be provided in exceptional	Editorial changes to clarify the application of standards pursuant to Rule 7.13.

[40] See IIROC Notice 12-0078 - *Provisions Respecting Regulation of Short Sales and Failed Trades* (March 2, 2012) and IIROC Notice 12-0030 -*Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (October 11, 2012).

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
circumstances upon application of more stringent standards than to an institutional client. Additional factors a Participant may consider when setting such standards for prospective DEA clients, ~~and~~ investment dealers ~~or~~and foreign dealer equivalents include prior sanctions for improper trading activity, evidence of a proven track record of responsible trading, knowledge and ~~of and~~ proficiency regarding use of an automated order system, knowledge of trading rules, supervisory oversight, the proposed trading strategy and associated volumes of trading.	
~~5~~6. What level of "knowledge" must a DEA client have before being provided DEA by a Participant? A Participant's standards -must ~~provide~~ require ~~its~~ a DEA client to have reasonable knowledge of and the ability to comply with the applicable Requirements; and the Participant must provide its DEA client with relevant changes or amendments to the applicable Requirements and standards established by the Participant ~~and further must regularly update this information with all relevant amendments~~ as they are introduced. In addition, a Participant must assess each client's knowledge and determine what, if any, training is reasonably required in the particular circumstances. The training must at a minimum enable the client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. It may be appropriate for the Participant dealer to require that the client have the same training and proficiency required of registrants. After DEA has been granted, an assessment of the DEA client's knowledge of applicable marketplace and regulatory requirements would be considered necessary if significant changes to these Requirements are made or if the Participant detects unusual trading activity by the DEA client. If the Participant finds the DEA client's knowledge to be deficient after such an assessment, the Participant may require additional training for the DEA client.	Editorial revision for greater clarity regarding Participant's standards for DEA clients and obligation on Participant to provide DEA clients with changes to applicable Requirements and standards.
~~6~~7.. Should a Participant employ the same compliance and supervision standards to monitor trading conducted by order execution clients as with other forms of electronic access to marketplaces? Yes. A Participant is expected to comply with the trading supervision obligations set out in Rule 7.1 and Policy 7.1 with respect to all forms of electronic access to marketplaces, which emphasize the higher risks attendant with trading which does not involve a Participant's staff directly. It is important to note, however, that these risks may be heightened for trading by order execution clients as, in distinction to DEA and routing arrangements, a ~~Retail Customer~~ client seeking to open an order execution service account would not be subject to a similar "screening" process and would not be provided training. There may be a disparity in knowledge of trading rules and obligations causing a higher proportion of unintentional offending orders or a greater degree of unscrupulous trading by sophisticated clients given the relative "anonymity" afforded in the order execution service[41]. In order to mitigate some of these risks, the Dealer Member Rules provide that an order execution client must not employ an automated order system that is not provided by the order execution service and provide IIROC with the authority to set, from time to time, a threshold on the number of orders that may be manually sent by order	Revision to account for deferral of proposed UMIR Policy concerning monitoring of use of an AOS by an order execution service client.

[41] Please refer to Market Integrity Notice 2007-011 – Guidance - *Compliance Requirements for Order Execution Services* (April 20, 2007).

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
execution clients~~Policy 7.1 of UMIR requires that a Participant providing an order execution service must, in addition to the other applicable compliance and supervision obligations, monitor to determine if the order execution client may be using such an automated order system and confirm at least annually with the client that an automated order system is not used~~.	
~~78~~. Are there any new "gatekeeper obligations" in regard to trading activities of: a DEA client; investment dealer or foreign dealer equivalent in a routing arrangement; and order execution service client? Yes. Policy 7.1 provides for trading supervision obligations with regard to all forms of electronic access to a marketplace and requires the monitoring of all orders entered by the party provided with electronic access to a marketplace for UMIR violations such as "manipulative and deceptive" trading activities and "improper orders and trades". However, the scope of supervision is expanded to include potential breaches of any standard set by a Participant or term of a written agreement, unauthorized trading or improper use of an automated order system, associated with the grant of electronic access to a marketplace. Rule 10.16 already requires a Participant or Access Person to conduct further investigation or review where the Participant or Access Person has reason to believe that there may have been a violation of UMIR.[42] A Participant or Access Person cannot ignore "red flags" which may be indicative of improper behaviour by a client, director, officer, partner or employee of the Participant, Access Person or related entity. A Participant that has provided third-party electronic access must, as part of its gatekeeper responsibilities, report to IIROC: • any termination by the Participant of access to a marketplace; and • knowledge of, or a reason to believe that any person who has been granted access has materially breached: o a Marketplace Rule, o a term of the agreement governing third-party access, or o a standard established by the Participant governing third-party access.	
~~89~~. Can a Participant use the same compliance sampling and testing standards to monitor trading conducted by persons with third-party electronic access as it does for other trading activity? Under Policy 7.1 of UMIR, if an order is entered on a marketplace without the involvement of a trader, a Participant's supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. To the extent that a Participant does not conduct separate testing of trading by persons with third-party electronic access to marketplaces, it may be appropriate for a Participant to sample for compliance testing a higher percentage of orders entered by these persons that have not been handled by staff of the Participant (i.e. orders that were not	Revision to conform with Guidance on Certain Manipulative and Deceptive Trading Practices, *op. cit*.

[42] See also IIROC Notice 13-0053 - *Guidance on Certain Manipulative and Deceptive Trading Practices* (February 14, 2013), which provides guidance on manipulative and deceptive activities, particularly trading strategies using automated order systems or direct electronic access.

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
"flagged" through an automated compliance system or otherwise handled by staff of the Participant) than the percentage of orders sampled in other circumstances. Participants should consider using an automated compliance system for post-trade review and analysis of orders that have been generated by an automated order system.	
~~9~~10. Are there any particular "risks" that need to be addressed in compliance procedures for trading by persons with third-party electronic access? Part 3 of Policy 7.1 under UMIR sets out the minimum compliance procedures for trading on a marketplace. However, Policy 7.1 also stipulates that the compliance procedures must be appropriate for the lines of business conducted by a Participant. Given that orders entered by a person with third-party electronic access will be subject to pre-entry filtering as set out in Part 7 of Policy 7.1 but, in most circumstances, will be subject to limited supervision prior to being sent to the order routing system of the Participant, the compliance procedures for persons with third-party electronic access should, at a minimum, address the procedures for testing: • markers and identifiers as required by Rule 6.2 of UMIR, and in particular: o the "short sale" or "short-marking exempt" markers, and o the insider or significant shareholder order markers; • orders that have been entered for "spoofing" contrary to Rule 2.2 of UMIR (such as the entry of an order or orders which are not intended to be executed and are entered for the purpose of determining the depth of the market, checking for the presence of an "iceberg" order, affecting a calculated opening price or other similar improper purpose); • orders that have been entered on a marketplace and trades that have executed for the creation of an "artificial price" contrary to Rule 2.2 of UMIR; • orders that have been entered on one or more marketplaces with the intention of "quote stuffing" (intentionally submitting a high volume of orders or messages for the purpose of interfering with the timely execution of trades or dissemination of order and trade data) contrary to Rule 2.2 of UMIR; • orders that have been entered which seek to abuse the minimum guaranteed fill facility of a person with Marketplace Trading Obligations; • orders that have been entered at unreasonable prices; • "wash trading" (particularly if the person with third-party electronic access has more than one account with the Participant); and • trades for failure to deliver or settle. As required by Rule 7.1, any special compliance procedures employed for trading by persons with third-party electronic access to a marketplace must be in writing and must contain detailed guidance on how testing of orders and trades is to be conducted. Part 5 of Policy 7.1 requires that the procedures adopted by a Participant address the steps to be taken to monitor the trading activity of any person who has multiple accounts with the Participant including other accounts in which the person has an interest or over which the person has direction or control.	

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
~~10~~11. What are the obligations if a client sends orders directly to a smart order router offered by the Participant? If a client has direct access to a smart order router offered by the Participant (such that an order from the client does not pass through the systems of the Participant), the client will be considered to have received "direct electronic access" from the Participant and would be subject to the requirements of Rule 7.13 of UMIR. In this case, the identifier assigned to a direct electronic access client will be in the "User ID" field. However, it should also be noted that in accordance with the requirement of National Instrument 23-103 *Electronic Trading Rule* and Part 7 of Policy 7.1 of UMIR, each order must be subject to examination prior to entry on a marketplace by automated controls to prevent the entry of an order which would result in: • the Participant exceeding pre-determined credit or capital thresholds; • a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client; or • the Participant or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities. As such, any order entered to a smart order router must be subject to the automated controls of the Participant before the smart order router transmits the order to a marketplace.	

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
12. What are the obligations if a client sends orders directly to an algorithm (such as a "VWAP algo") offered by the Participant? If a client sends orders directly to an algorithm offered by the Participant, the Participant is intermediating the client's order flow as the Participant provides input into the programming and management of the algorithm. The provisions respecting DEA and routing arrangements are accordingly not applicable to the entry of orders on a marketplace that are intermediated by the Participant through the algorithm it offers to the client. However, it should also be similarly noted that in accordance with the requirements of National Instrument 23-103 *Electronic Trading and Direct Electronic Trading Access to Marketplaces* and Part 7 of Policy 7.1 of UMIR, each order must be subject to examination prior to entry on a marketplace by automated controls to prevent the entry of an order which would result in: • the Participant exceeding pre-determined credit or capital thresholds; • a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client; or • the Participant or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities.	New question to clarify that regulatory framework related to DEA and routing arrangements does not apply to client order flow that is intermediated by a Participant's algorithm.
3. Impact on Existing Guidance This Rules Notice repeals and replaces, effective ~~the date the CSA Access Rule and the Amendments become effective~~ **March 1, 2014** the guidance set out in: • Market Integrity Notice 2005-003 - *Guidance – Marking Jitney Orders* (March 4, 2005); • Market Integrity Notice 2005-006 – *Guidance - Obligations of an "Access Person" and Supervision of Persons with "Direct Access"* (March 4, 2005); • Market Integrity Notice 2007-004 - *Guidance – Marking Orders Received from Other Dealers* (February 28, 2007); and • Market Integrity Notice 2007-010 – *Guidance - Compliance Requirements for Dealer Sponsored Access* (April 20, 2007~~); and~~ • ~~Market Integrity Notice 2007-011 – *Guidance – Compliance Requirements for Order Execution Services* (April 20, 2007)~~.	

Appendix D – Text of Dealer Member Rules with blacklined Amendments

BLACKLINED RULE 1300

SUPERVISION OF ACCOUNTS

1300.1.

Identity and Creditworthiness

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

(b) When opening an initial account for a corporation or similar entity, the Dealer Member shall:

(i) ascertain the identity of any individual who is the beneficial owner of, or exercises direct or indirect control or direction over, more than 10% of the corporation or similar entity, including the name, address, citizenship, occupation and employer of each such beneficial owner, and whether any such beneficial owner is an insider or controlling shareholder of a publicly traded corporation or similar entity; and

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(c) Subsection (b) does not apply to:

(i) a corporation or similar entity that is or is an affiliate of a bank, trust or loan company, credit union, caisse populaire, insurance company, mutual fund, mutual fund management company, pension fund, securities dealer or broker, investment manager or similar financial institution subject to a satisfactory regulatory regime in the country in which it is located

(ii) a corporation or similar entity whose securities are publicly traded or an affiliate thereof.

(d) The Corporation may, at its discretion, direct Dealer Members that the exemption in subsection (c) does not apply to some or all types of financial institutions located in a particular country.

(e) When opening an initial account for a trust, a Dealer Member shall:

(i) ascertain the identity of the settlor of the trust and, as far as is reasonable, of any known beneficiaries of more than 10% of the trust, including the name, address, citizenship, occupation and employer of each such settlor and beneficiary and whether any is an insider or controlling shareholder of a publicly traded corporation or similar entity.

(ii) as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account, verify the identity of each individual identified in (i) using such methods as enable the Dealer Member to form a reasonable belief that

it knows the true identity of each individual and that are in compliance with any applicable legislation and regulations of the Government of Canada or any province.

(f) Subsection (e) does not apply to a testamentary trust or a trust whose units are publicly traded.

(g) If a Dealer Member, on inquiry, is unable to obtain the information required under subsections (b)(i) and (e)(i), the Dealer Member shall not open the account.

(h) If a Dealer Member is unable to verify the identities of individuals as required under subsections (b)(ii) and (e)(ii) within six months of opening the account, the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities only until such time as the verification is completed.

(i) No Dealer Member shall open or maintain an account for a shell bank.

(j) For the purposes of section (i) a shell bank is a bank that does not have a physical presence in any country.

(k) Subsection (i) does not apply to a bank which is an affiliate of a bank, loan or trust company, credit union, other depository institution that maintains a physical presence in Canada or a foreign country in which the affiliated bank, loan or trust company, credit union, other depository institution is subject to supervision by a banking or similar regulatory authority.

(l) Any Dealer Member having an account for a corporation, similar entity or trust other than those exempt under subsections (c) and (f) and which does not have the information regarding the account required in subsections (b)(i) and (e)(i) at the date of implementation of those subsections shall obtain the information within one year from date of implementation of subsections (b) and (e).

(m) If the Dealer Member does not or cannot obtain the information required under subsection (l) the Dealer Member shall restrict the account to liquidating trades and transfers, payments or deliveries out of funds or securities until such time as the required information has been obtained.

(n) Dealer Members must maintain records of all information obtained and verification procedures conducted under this Rule 1300.1 in a form accessible to the Corporation for a period of five years after the closing of the account to which they relate.

Business Conduct

(o) Each Dealer Member shall use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice.

Suitability determination required when accepting order

(p) Subject to Rules 1300.1(t), 1300.1(u) and 1300.1(~~u~~v), each Dealer Member shall use due diligence to ensure that the acceptance of any order from a client is suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level. If the order received from a client is not suitable, the client must, at a minimum, be advised against proceeding with the order.

Suitability determination required when recommendation provided

(q) Each Dealer Member, when recommending to a client the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level.

Suitability determination required for account positions held when certain events occur

(r) Each Dealer Member shall, subject to Rules 1300.1(t), 1300.1(u) and 1300.1(~~u~~v), use due diligence to ensure that the positions held in a client's account or accounts are suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or account(s)' current investment portfolio composition and risk level whenever one or more of the following trigger events occurs:

(i) Securities are received into the client's account by way of deposit or transfer; or

(ii) There is a change in the registered representative or portfolio manager responsible for the account; or

(iii) There has been a material change to the client's life circumstances or objectives that has resulted in revisions to the client's "know your client" information as maintained by the Dealer Member.

Suitability of investments in client accounts

(s) To comply with the requirements under Rules 1300.1(p), 1300.1(q) and 1300.1(r), the Dealer Member must use due diligence to ensure that:

(i) The suitability of all positions in the client's account is reviewed whenever a suitability determination is required; and

(ii) The client receives appropriate advice in response to the suitability review that has been conducted.

~~**Suitability determination not required**~~

Exemptions from the suitability assessment requirements

(t) Each Dealer Member that has applied for and received approval from the Corporation pursuant to Rule 1300.1(~~v~~w), is not required to comply with Rules 1300.1(p), 1300.1(r) and 1300.1(s), when accepting orders from a client where no recommendation is provided, to make a determination that the order is suitable for such client.

(u) Each Dealer Member that executes a trade on the instructions of another Dealer Member, portfolio manager, investment counsel, limited market dealer, bank, trust company or insurer, pursuant to Section I.3 of Rule 2700 is not required to comply with Rule 1300.1(p).

(v) A Dealer Member is not required to comply with rules 1300.1(p), 1300.1(r) and 1300.1(s), when accepting or transmitting orders for a client who has been provided with direct electronic access within the meaning of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*, if the Dealer Member:

(i) Determines that the direct electronic access service offering is suitable for the client;

(ii) Does not provide recommendations to any Retail Customers who have been provided with direct electronic access; and

(iii) Complies with the Universal Market Integrity Rule requirements applicable to the direct electronic access service offering and the requirements of NI 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*.

Corporation approval

(~~v~~w) The Corporation, in its discretion, shall only grant such approval where the Corporation is satisfied that the Dealer Member will comply with the policies and procedures outlined in Rule 3200. The application for approval shall be accompanied by a copy of the policies and procedures of the Dealer Member. Following such approval, any material changes in the policies and procedures of the Dealer Member shall promptly be submitted to the Corporation.

BLACKLINED RULE 3200

MINIMUM REQUIREMENTS FOR DEALER MEMBERS SEEKING APPROVAL UNDER RULE 1300.1(T) ~~FOR SUITABILITY RELIEF FOR TRADES NOT RECOMMENDED BY THE MEMBER~~TO OFFER AN ORDER-EXECUTION ONLY SERVICE

The following Rule sets forth the documentary, procedural and systems requirements for Dealer Members to receive approval to accept orders from a customer without a suitability determination where no recommendation was provided by the Dealer Member.

In this Rule, "order-execution only service" means the acceptance and execution of orders from customers for trades that the Dealer Member has not recommended and for which the Dealer Member takes no responsibility as to the appropriateness or suitability of ~~the trades to the customers' financial situation, investment knowledge, investment objectives and risk tolerance.~~orders accepted or account positions held.

In this Rule "automated order system" has the same meaning as defined in National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces.*

A. Minimum requirements for Dealer Members offering solely an order-execution only service, either as the Dealer Member's only business or through a separate business unit of the Dealer Member

1. Business Structure and Compensation

(a) The Dealer Member must operate either as a legal entity or a separate business unit which provides order-execution only services.

(b) The legal entity or separate business unit of the Dealer Member offering an order execution only service must not allow its order execution only service clients to:

(i) use their own automated order system to generate orders to be sent to the Dealer Member or send order to the Dealer Member on a pre-determined basis; or

(ii) manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.

~~b~~(c) If operated as a separate business unit of the Dealer Member, the order-execution only service must have separate letterhead, accounts, registered representatives and investment representatives and account documentation.

~~c~~(d) The registered representatives and investment representatives of the Dealer Member or separate business unit of the Dealer Member shall not be compensated on the basis of transactional revenues.

2. Written Policies and Procedures

(a) The Dealer Member or separate business unit of the Dealer Member must have written policies and procedures covering all of the matters outlined in this Rule.

(b) The Dealer Member or separate business unit of the Dealer Member must have a program for communicating those policies and procedures to all its registered representatives and investment representatives and ensuring that the policies and procedures are understood and implemented.

3. Account Opening

(a) At the time an account is opened, the Dealer Member or separate business unit of the Dealer Member must make a written disclosure to the customer advising that the Dealer Member or separate business unit of the Dealer Member will not provide any recommendations to the customer and will not be responsible for making a suitability determination of trades when accepting orders from the customer. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Dealer Member will not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer.

(b) At the time an account is opened, the Dealer Member or separate business unit of the Dealer Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Dealer Member must obtain an acknowledgement from all beneficial owners.

(c) Prior to operating any existing accounts under the approval, the Dealer Member or separate business unit of the Dealer Member must provide the disclosure

described in Paragraph 3(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).

(d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Dealer Member in an accessible form. Possible forms of the acknowledgement are:

(i) The customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;

(ii) The clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;

(iii) The tape recording of a verbal acknowledgement made by telephone.

4. Supervision

(a) The Dealer Member or separate business unit of the Dealer Member must have written procedures for the supervision of trading reasonably designed to ensure that customers are not provided with recommendations as a result of the customer having an account with the separate business unit of the Dealer Member and with another separate business unit of the Dealer Member or with the Dealer Member itself.

(b) The Dealer Member or separate business unit of the Dealer Member must have written procedures and systems in place to review customer trading and accounts for those concerns listed in Rule 2500 other than those related solely to suitability.

(c) The Dealer Member or separate business unit of the Dealer Member must maintain an audit trail of supervisory reviews as required in Rule 2500.

(d) The Dealer Member or separate business unit of the Dealer Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Rule.

5. Systems and Books and Records

(a) The order-entry systems and records of the Dealer Member or separate business unit of the Dealer Member must be capable of labeling all account documentation relating to customers, including monthly statements and confirmations, as "order-execution only accounts" or some variant thereof.

(b) The monthly statements of a separate business unit of a Dealer Member shall not be consolidated with the account statements of any other business unit of the Dealer Member or of the Dealer Member itself.

B. Minimum requirements for Dealer Members offering both an advisory and an order-execution only service

1. Terminology

All references to the basis of trades in procedures, documents and reports under this Rule must use the terms "recommended" or "non-recommended". In particular, designating trades as solicited or unsolicited will not be accepted as complying with the requirements of this Rule.

2. Business Structure

The Dealer Member offering both an advisory and an order execution only service must not allow its order execution only service clients to:

(a) Use their own automated order system to generate orders to be sent to the Dealer Member or send orders to the Dealer Member on a pre-determined basis; or

(b) Manually send orders or generate orders to the Dealer Member that exceed the threshold on the number of orders as set by the Corporation from time to time.

3. Written Policies and Procedures

(a) The Dealer Member must have written policies and procedures covering all of the matters outlined in this Rule.

(b) The Dealer Member must have a program for communicating those policies and procedures to all its registered representatives and ensuring that the policies and procedures are understood and implemented.

~~3.~~4. Account Opening

(a) At the time an account is opened, the Dealer Member must make a written disclosure to the customer advising that the Dealer Member will not be responsible for making a suitability determination when accepting an order from the customer which was not recommended by the Dealer Member or a representative of the Dealer Member. Such disclosure shall clearly explain to the customer that the customer alone is responsible for his or her own investment decisions and that the Dealer Member will not consider the customer's financial situation, investment knowledge, investment objectives and risk tolerance when accepting orders from the customer. Such disclosure also shall include a brief description of what does or does not constitute a recommendation[1] and instructions on how the customer can report trades which have not been accurately designated as recommended or non-recommended.

[1] The language of the disclosure shall be the following: in general terms, a dealer is providing a recommendation to you, the client, when the dealer provides you with investment information or advice specifically and individually tailored to your financial situation, investment knowledge, investment objectives, past investments or risk tolerance. However, whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances.

(b) At the time an account is opened, the Dealer Member must obtain an acknowledgement from the customer that the customer has received and understood the disclosure described in Paragraph 3(a). For accounts such as joint and investment club accounts having more than one direct beneficial owner, the Dealer Member must obtain an acknowledgement from all beneficial owners.

(c) Prior to operating any existing accounts under the approval, the Dealer Member must provide the disclosure described in Paragraph 3(a) to the customer and obtain the acknowledgement described in Paragraph 3(b).

(d) The acknowledgements obtained under Paragraphs 3(b) and (c) must take the form of a positive act by the customer(s), a record of which must be maintained by the Dealer Member in an accessible form. Possible forms of the acknowledgement are:

ii) The customer's signature or initials on a new customer application form or similar document where the signature or initial specifically relates to the required disclosure and acknowledgement;

iii) The clicking of an appropriately labeled button on an electronic account application form, placed directly under the disclosure and acknowledgement text;

iv) The tape recording of a verbal acknowledgement made by telephone.

~~4.~~5. Supervision

(a) The Dealer Member must have written procedures for the supervision of trading reasonably designed to ensure that orders are marked accurately as recommended or non-recommended.

(b) The Dealer Member must have written procedures for the selection of accounts to be subject to a monthly review at least equal to those currently required by Rule 2500. The selection must not have regard to whether the trades in the account are marked as recommended or non-recommended. The account review must include a determination whether the overall composition of the customer's portfolio no longer conforms to the documented objectives and risk tolerance of the customer as a result of non-recommended trades and, when it does not, the procedures must specify the steps to be taken for dealing with the disparity.

(c) The Dealer Member must maintain an audit trail of supervisory reviews as required in Rule 2500.

(d) The Dealer Member must have sufficient supervisory resources allocated at head office and branch levels to effectively implement the supervisory procedures required under this Rule.

~~5.~~6. Systems and Books and Records

(a) The Dealer Member's order-entry systems and records must be capable of recording whether each order is being done on a recommended or non-recommended basis. If the Dealer Member permits customers to enter orders on-line for direct transmission to a trading system, the order entry system must require the customer to indicate whether the trade was recommended or non-recommended. If there is default marking, it must be "recommended."

(b) The Dealer Member must disclose on the confirmation for each trade by an account whether the transaction was recommended or non-recommended.

(c) The Dealer Member must disclose on the monthly statement whether each trade was executed on a recommended or non-recommended basis, but is not required to disclose on monthly statements which securities positions resulted from which type of trade.

(d) The Dealer Member must maintain records of complaints or requests from customers to change the designation of a trade as recommended or non-recommended.

(e) The Dealer Member must be able to generate reports enabling supervisors to supervise the accuracy of recommended/non-recommended disclosure on orders. Possible methods of meeting this requirement are included as Appendix A to this Rule.

(f) The Dealer Member's systems must be able to select accounts or generate exception reports to show accounts requiring review as specified in its policies and procedures and Rule 2500 without regard to whether the trades were marked as recommended or non-recommended.