

# IIROC NOTICE

## **Rules Notice Notice of Approval**

UMIR

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**15-0211**

**September 18, 2015**

## **Provisions Respecting Unprotected Transparent Marketplaces and the Order Protection Rule**

### **Executive Summary**

On September 18, 2015, the applicable securities regulatory authorities approved amendments to UMIR (the “Amendments”) respecting unprotected transparent marketplaces and the Order Protection Rule. The Amendments accommodate the terms and conditions under which the Ontario Securities Commission (“OSC”) approved amendments to Alpha Exchange Inc.’s (“Alpha”) trading policies to include a systematic order processing delay (“speed bump”) on all orders other than “post-only” orders.<sup>1</sup> Specifically, the OSC imposed a condition (“OSC Condition”) that orders displayed in the Alpha order book will not be considered to be protected under the Order Protection Rule (“OPR”) in Part 6 of National Instrument 23-101 *Trading Rules* (“Trading Rules”).<sup>2</sup> The Amendments also align to proposed

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<sup>1</sup> OSC Staff Notice – Notice of Commission Approval of Proposed Changes to Alpha Exchange Inc. published on April 23, 2015 at (2015) 38 OSCB 4045 (“OSC Staff Notice”).

<sup>2</sup> IIROC Notice [14-0124](#) – Rules Notice – Request for Comment – *Proposed Provisions Respecting the Order Protection Rule* (May 14, 2014) outlined proposed changes to UMIR that would align with amendments to the Trading Rules proposed by the CSA regarding order protection found at (2014) 37 OSCB 487 (“Proposed CSA OPR Amendments”). The Proposed CSA OPR Amendments, among other



amendments by the Canadian Securities Administrators (“CSA”) to Companion Policy 23-101CP regarding the interpretation of “protected order” (“Proposed CSA Amendments”) that were published for comment on June 12, 2015.<sup>3</sup>

For the first time, as a result of the OSC Condition, there will be a marketplace that displays orders that would not be considered to be protected from trade-through under the OPR.

In order to accommodate this change, the Amendments:

- revise the definition of “protected marketplace” to be a marketplace that displays “protected orders” as defined under the Trading Rules. This revision accommodates any future changes the CSA may implement with respect to the determination of whether an order is considered a “protected order” under the Trading Rules;
- provide that the “best ask price” and “best bid price” would be determined by reference to orders displayed on a protected marketplace;
- confirm that a “bypass order” could be entered on any marketplace that displays orders and not just on a protected marketplace;
- confirm that a Participant should consider, *if known or available*, displayed orders on a marketplace that is not protected when determining if a client-principal trade will occur at the “best available price”;
- make several consequential amendments to certain provisions; and
- make an editorial change to allow marketplaces to rely on the last sale price on the listing market of a security when determining the standard trading unit size for a security.

The most significant impact of the Amendments is that a Participant or Access Person may take account only of displayed orders on protected marketplaces when determining compliance with a UMIR requirement that makes reference to “best ask price”, “best bid price” or “better price” except in two specific circumstances related to:

- best execution (see Section 2.5 of this Notice); and
- client-principal trading (see Section 1.3 of this Notice).

The Amendments are effective immediately.

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things, proposed that visible orders entered on a marketplace that meets or exceeds a market share threshold set by the CSA would be protected. The proposed changes in IROC Notice 14-0124 are similar to the Amendments and therefore IROC has withdrawn the changes proposed in IROC Notice 14-0124.

<sup>3</sup> CSA Staff Notice – Proposed Amendments to Companion Policy to National Instrument 23-101 *Trading Rules: Application of the Order Protection Rule to Marketplaces Imposing Systematic Order Processing Delays* (2015) 38 OSCB 5551



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## **1. Discussion of Amendments**

### **1.1 Summary of Amendments**

As a result of the OSC Condition, Alpha will be the first transparent marketplace in Canada to display orders that will not be considered to be “protected” under the OPR. The Amendments ensure that UMIR appropriately accommodates this change primarily by:

- aligning the definition of “protected marketplace” to reflect those marketplaces that display “protected orders” as defined under the Trading Rules; and
- amending the definitions of “best ask price” and “best bid price” to limit their determination to orders displayed on a “protected marketplace”.

### **1.2 Definitions**

#### *1.2.1 Definitions of “best ask price” and “best bid price”*

Previously, UMIR defined both “best ask price” and “best bid price” in reference to prices on any marketplace as displayed in a consolidated market display. In light of the OSC Condition and the Proposed CSA Amendments, it is appropriate to limit the determination of “best ask price” and “best bid price” to orders displayed on a “protected marketplace” as those are the orders which a Participant or Access Person must take into account for preventing a trade-through.

The terms “best ask price” and “best bid price” are used throughout UMIR including:

- a. in the following definitions:
  - “best independent bid price” (which is used for determining permitted market stabilization activities under Rule 7.7);
  - “better price”;<sup>4</sup>
  - “connected security”;
  - “designated trade”;
  - “market order”
- b. in the following provisions:
  - executing a pre-arranged trade or intentional cross under Part 2 of Policy 2.1;
  - client priority under Policy 5.3;

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<sup>4</sup> For the purposes of UMIR, “better price” means, in respect of each trade resulting from an order for a particular security:

- (a) in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and
- (b) in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher.



- price improvement by Dark Orders under Rule 6.6;
  - the official record of an order under Rule 7.4;
  - client-principal trading under Policy 8.1;
- c. in determining the value of an order for the purposes of:
- Rule 6.3 (Order Exposure);
  - Rule 6.4 (Trades to be on a Marketplace);
  - Rule 8.1 (Client-Principal Trading); and
- d. in interpreting “best ask price” and “best bid price” under Rule 1.2(8) (Interpretation).

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

A bypass order is designed not to execute against non-transparent liquidity on a marketplace or liquidity on the marketplace provided by various “specialty orders”. A bypass order may be part of a designated trade or used to satisfy requirements under UMIR (which includes by incorporation the OPR requirement not to trade through). The Amendments specifically recognize that a bypass order can be executed on a transparent marketplace other than a “protected marketplace”. While no obligation under the OPR is owed to orders displayed on a non-protected marketplace, a designated trade could be executed on such a marketplace. Under the Amendments, when executing on such a non-protected marketplace, the order would need to trade against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.

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

Under the Amendments, the definition of “protected marketplace” is revised to apply to marketplaces that display “protected orders” as defined under the Trading Rules. This revision more closely reflects those marketplaces that display orders that fall under the definition of “protected orders” in the Trading Rules. This revision also accommodates any future changes the CSA may implement with respect to the determination of whether an order is considered a “protected order” under the Trading Rules.

### **1.3 Client-Principal Trading**

Under Rule 8.1 of UMIR, subject to certain exceptions, a client order for 50 standard trading units or less with a value of \$100,000 or less may execute with a principal order or non-client order of the Participant at a better price “provided the Participant has taken reasonable steps to ensure that the price is the best available price for the client under prevailing market conditions”.

The Amendments require a Participant, when determining the “best available price”, to consider the price and size of orders displayed on marketplaces other than protected



marketplaces *if such information is available or known to the Participant*. When determining what information is “available or known” to a Participant, we have clarified that an employee of a Participant is expected to use all order price information that is available or known to that employee when determining the “best available price”. For example, a Participant will not be considered to have complied with Rule 8.1 if:

- an employee executes a client order against a principal or non-client order at a “better price” as determined from orders displayed on protected markets which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace; and
- an employee executes, in whole or in part, as principal or non-client, with the order on the unprotected marketplace (at a price which is better than provided to the client).

#### **1.4 Consequential Amendments**

The Amendments make several consequential amendments including:

##### *1.4.1 Interpretation of “best ask price” and “best bid price”*

Rule 1.2(8) (Interpretation) of UMIR provides that for the purposes of determining the “best ask price” or the “best bid price” at any particular time, reference is to be made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on the marketplace has not been:

- halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or
- halted, suspended or delayed in accordance with a marketplace rule or a requirement of the marketplace.

For consistency purposes, the Amendments clarify that reference need only be made to orders on a “protected marketplace”.

##### *1.4.2 Clarification of Power of Market Integrity Official*

Under the OPR, each marketplace has the obligation to prevent trade-throughs on that marketplace. If a Participant marks an order as a “directed-action order” the marketplace obligation to prevent a trade-through shifts to the Participant that has entered the order. The changes to Rule 10.9 clarify that the power of a Market Integrity Official includes requiring a Participant or Access Person to satisfy any outstanding orders included in the disclosed volume that were traded through when the Participant or Access Person did not comply with the requirements under section 6.4 of the OPR to prevent a trade-through.



### 1.4.3 Clarification on Executing a Pre-arranged Trade or Intentional Cross

Part 2 of Policy 2.1 sets out the process for executing a pre-arranged trade or intentional cross as a “designated trade”.<sup>5</sup> The example of how a designated trade would be handled is premised on every transparent marketplace being a “protected marketplace”. The Amendments clarify the applicable requirements for the execution of a designated trade, whether the designated trade is executed on a “protected marketplace” or any other marketplace that displays order information in a consolidated market display. Specifically, the example in Part 2 of Policy 2.1 is revised to clarify that a designated trade may execute on a marketplace if: (i) better-priced orders displayed on that marketplace are filled prior to the execution of the designated trade and (ii) better-priced orders in the disclosed volume of protected marketplaces are filled concurrent with or immediately following the execution of the designated trade.

### 1.4.4 Client Priority

The Amendments revise Part 4 of UMIR Policy 5.3 to state that only “better-priced” orders on a *protected* marketplace would need to be filled prior to the execution of the client order.

## **1.5 Price for Determination of “standard trading units”**

Previously, Rule 1.2(5) of UMIR provided that the determination of the price at which a security is trading for the purposes of the definition of a “standard trading unit” is by reference to the last sale price of the security on the trading day prior to the determination. The last sale price previously could be established by a trade on any marketplace and could include trades that were executed outside of the core trading hours of 9:30 a.m. to 4:00 p.m. ET.

IIFROC is aware that marketplaces generally rely on the last sale price on the listing market when determining the standard trading unit size for a security and the Amendments specifically allow for this practice.

## **2. Background**

### **2.1 OSC Approval of Alpha Changes**

On April 16, 2015, the OSC approved amendments to Alpha’s trading policies subject to certain terms and conditions. The amendments relate to the implementation of a speed

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<sup>5</sup> As part of the proposed consolidation of IIFROC Rules (see IIFROC Notice [13-0275](#) – *Republication of Proposed Consolidation of IIFROC Enforcement, Procedural, Examination and Approval Rules* (November 14, 2013)) (“Consolidated Enforcement Rules”), Rule and Policy 2.1 of UMIR would be repealed and replaced with: (i) a new Consolidated Rule 1400 that would incorporate the existing Dealer Member Rule 29.1; and (ii) a new Rule 2.1 of UMIR. The new Rule 2.1 of UMIR would move certain specific examples of unacceptable activities, currently set out in Policy 2.1, into Rule 2.1 of UMIR. The portions of Part 2 of Policy 2.1 that are changed under the Amendments provide detail that is not included in the proposed Rule 2.1 set out in IIFROC Notice 13-0275. Thus, the changes to Policy 2.1 under the Amendments will ultimately be replaced by less detailed language in Rule 2.1 of UMIR when the Consolidated Enforcement Rules come into force.



bump on all orders other than “post-only” orders that are received by Alpha. One of the conditions imposed by the OSC is that orders displayed in the Alpha order book will not be considered to be “protected” under the OPR. The OPR requires marketplaces to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. The OPR also imposes a similar requirement on marketplace participants that have taken on the responsibility of the OPR compliance through the use of directed-action orders. As stated in the OSC Staff Notice, OSC staff’s view is that the policies and procedures of a marketplace or a marketplace participant would be considered to be “reasonably designed” to prevent trade-throughs if the policies and procedures indicated that orders would not be routed to execute against better-priced orders displayed on Alpha when the speed bump is implemented. As a result of the OSC Condition, Alpha will be the first transparent marketplace in Canada to display orders that will not be considered to be “protected” under the OPR. The Amendments ensure UMIR appropriately accommodates a market environment with both protected and unprotected transparent marketplaces.

## **2.2 Proposed CSA Amendments**

The Proposed CSA Amendments would amend Companion Policy 23-101CP to include an interpretation related to the application of the OPR with respect to marketplaces that impose a speed bump on orders received by the marketplace. Specifically, the Proposed CSA Amendments would clarify that a marketplace does not provide “automated functionality” where it has implemented a speed bump in order processing (whether for all orders or only certain orders) that prevents an order entered on that marketplace to immediately execute against displayed volume. As a result, upon implementation of the Proposed CSA Amendments, none of the orders on a marketplace that has implemented a systematic order processing delay would be considered to be “protected orders” under the Trading Rules. As in the case of the OSC Condition, the Proposed CSA Amendments would allow for the existence of a transparent, unprotected marketplace and the Amendments would amend UMIR to appropriately accommodate for such a scenario.

## **2.3 UMIR Exemption**

The OSC Condition required that Alpha not be considered to be displaying “protected orders”, and pursuant to the OSC Notice of Approval<sup>6</sup>, the OSC would view the policies and procedures of a marketplace or marketplace participant to be “reasonably designed to prevent trade-throughs” if orders are not routed to execute against better-priced orders displayed on Alpha.

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<sup>6</sup> OSC Staff Notice – Notice of Commission Approval of Proposed Changes to Alpha Exchange Inc. published on April 23, 2015 at (2015) 38 OSCB 4045 (“OSC Staff Notice”).



However, until such time as the proposed CSA Amendments are implemented, orders on Alpha would still be considered to be protected by the CSA. Therefore, as an interim measure to accommodate the OSC Condition specific to Alpha, IIROC sought an exemption under UMIR 11.1(2) from its Recognizing Regulators to exempt a class of transactions from all applicable provisions of UMIR. Specifically, all transactions resulting from all orders by Participants required to be sent to Alpha to satisfy their OPR obligations under the Trading Rules are exempted from all applicable provisions of UMIR related to a “protected marketplace”. This exemption was approved by all Recognizing Regulators on September 18, 2015 and is in effect until the earlier of:

- (i) the approval of the Proposed CSA Amendments, and
- (ii) one year from the date the exemption was granted.

The effect of this exemption is that Participants are fully relieved from treating Alpha as a protected marketplace under UMIR.

#### ***2.4 Order Exposure Implications***

The Amendments do not alter the order exposure obligations of a Participant for certain client orders under Rule 6.3 of UMIR. Under that Rule, a Participant shall immediately enter for display on a marketplace that displays orders in accordance with Part 7 of National Instrument 21-101 *Marketplace Operation* a client order to purchase or sell 50 standard trading units or less of a listed security. Under the Amendments, orders may continue to be entered on any marketplace that displays orders whether or not that marketplace meets the definition of “protected marketplace”.

#### ***2.5 Best Execution Implications***

Whether a marketplace is “protected” for the purposes of the OPR is separate and distinct from the determination by a Participant of whether a marketplace needs to be considered for the purposes of achieving best execution of client orders in accordance with Rule 5.1 of UMIR.

Best execution will be achieved by a Participant adhering to the policies and procedures which the Participant has adopted to pursue “the execution of each client order on the most advantageous execution terms reasonably available under the circumstances”.<sup>7</sup> The policies and procedures must be reviewed at least annually and more frequently if circumstances warrant, such as when there have been changes in marketplaces or market structure. This review may rely on historic order and trade data from marketplaces, including those marketplaces for which the Participant does not receive real-time data nor otherwise have access as a member, user or subscriber.

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<sup>7</sup> We note that IIROC completed a survey of Participants and other investment dealers that execute or handle marketplace trades in listed securities on behalf of clients to gauge their practices employed to achieve best execution of client orders in 2013 and that we are using the results of the survey to develop proposed amendments related to best execution practices.



Part 2 of Policy 5.1 (Best Execution of Client Orders) specifies that one factor in determining whether a Participant has diligently pursued the best execution of a client order is whether the Participant has considered orders on a marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order. With the emergence of unprotected, transparent marketplaces, a Participant therefore needs to consider in its policies and procedures for best execution of a client order whether a transparent marketplace that is not a “protected marketplace” needs to be taken into account if that marketplace has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order.

Neither the Trading Rules nor UMIR requires a Participant, directly or indirectly, to access trading on all marketplaces – it is a decision to be made by the Participant in the context of obtaining best execution of client orders while complying with other applicable regulatory requirements including the OPR. Each Participant may have different business models and different types of clients and, as such, the policies and procedures may vary across business lines or trading desks of a Participant. Order routers used by a Participant or Access Person would not be required to take into account displayed orders on an unprotected marketplace when determining compliance with the OPR. However, if a Participant determines that compliance with best execution requires the Participant to access displayed orders on an unprotected marketplace, the order router would need to make its decisions including data of displayed orders on that unprotected marketplace.

### **3. Changes from the Proposed Amendments**

Non-material changes were made to the proposed changes published for comment on June 12, 2015. The changes are as follows:

- Drafting changes were made to clarify the meaning around “available or known to the Participant” in Part 3 of Policy 8.1. Specifically, language has been added in Policy 8.1 Part 3 to explain that the information “available or known to the Participant” can be interpreted to mean the information available or known to an employee of a Participant rather than to the Participant as a whole. The Amendments now include IIROC’s expectation that an employee of a Participant use all order price information that is available or known to that employee when determining the “best available price”.
- The proposed definition of “protected marketplace” was revised from “a marketplace that displays orders, that for the purposes of the Trading Rules, are considered to be ‘protected orders’” to “a marketplace that displays ‘protected orders’ as defined under the Trading Rules”. This amendment ensures that the UMIR definition fully aligns with the definition in the Trading Rules.



## **4. Summary of the Impacts of the Amendments**

### **4.1 Participant and Access Person Impacts**

The most significant impact of the adoption of the Amendments on Participants and Access Persons is to allow a Participant or Access Person, except in two specific circumstances related to best execution and client-principal trading,<sup>8</sup> to take account only of displayed orders on protected marketplaces when determining compliance with a UMIR requirement that makes reference to “best ask price”, “best bid price” or “better price”.<sup>9</sup>

Generally speaking, a Participant or Access Person may modify its systems, including automated order systems, to take account only of displayed orders on protected marketplaces. However, depending on the business of the Participant and the available liquidity in particular securities on a marketplace that is not protected, a Participant may determine that it needs to continue to consider orders on a non-protected marketplace to meet its best execution obligations. In addition, if a Participant is executing a client order with a principal order or non-client order, the Participant should consider the price and size of orders displayed on marketplaces other than protected marketplaces, if available or known to an employee of the Participant, when determining whether the client is receiving the “best available price”.

### **4.2 Marketplace Impacts**

The most significant impact of the Amendments on marketplaces would be that the UMIR definition of “protected marketplace” would specifically align to the definition of “protected orders” under the Trading Rules. The operation of unprotected, transparent marketplaces will cause each marketplace to review and modify the policies and procedures it has established to reasonably prevent trade-throughs.

### **4.3 Other Impacts**

IIROC must make compliance and surveillance system changes to address the operation of transparent, unprotected marketplaces.

## **5. Implementation**

The Amendments have been approved by the applicable securities regulatory authorities as of the date of this Rules Notice. The Amendments are effective immediately.

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<sup>8</sup> In particular, reference should be made to:

- Section 2.5 of this Notice regarding Rule 5.1 of UMIR dealing with the best execution obligation; and
- Section 1.3 of this Notice regarding Rule 8.1 of UMIR dealing with client-principal trading.

<sup>9</sup> For example, price improvement requirements under rules related to exposure of client orders and trading of Dark Orders will no longer be based on the best bid/best ask derived from every transparent marketplace but by reference solely to orders on protected marketplaces.



## Appendix A - UMIR Amendments

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by:
  - (a) in the definition of “best ask price”, inserting the word “protected” before the word “marketplace”;
  - (b) in the definition of “best bid price”, inserting the word “protected” before the word “marketplace”;
  - (c) deleting the definition of “bypass order” and substituting the following:

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

    - (a) part of a designated trade; or
    - (b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy and that is entered on:
    - (c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or
    - (d) a marketplace that is not a protected marketplace but that displays orders in a consolidated market display, to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.
  - (d) deleting the definition of “protected marketplace” and substituting the following:

**“protected marketplace”** means a marketplace that displays “protected orders” as defined under the Trading Rules.
2. Rule 1.2 is amended by:
  - (a) inserting at the end of subsection (5) the phrase “on the Exchange on which the security is listed or the QTRS on which the security is quoted”; and
  - (b) deleting in subsection (8) the phrase “a marketplace” and inserting “a protected marketplace”.



3. Clause (g) of subsection (1) of Rule 10.9 is deleted and the following substituted:
  - (g) require the Participant or Access Person to satisfy any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules.

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

1. Part 2 of Policy 2.1 is amended by:
  - (a) deleting in the first paragraph the phrase “in accordance with the “best price” obligations under Rule 5.2,”;
  - (b) deleting the last two bullets and substituting the following:
    - better-priced orders displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and
    - the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill better-priced orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following, the execution of the designated trade.
2. Policy 5.3 is amended by adding in the second paragraph of Part 4, the word “protected” before the word “marketplace”.
3. Part 3 of Policy 8.1 is amended by adding the following as the third paragraph:

In determining the “best available price”, Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. Specifically, we expect an employee of a Participant to use all order price information that is available or known to that employee when determining the “best available price”. For example, an employee that has access to price information from both protected and unprotected marketplaces would be in compliance with the requirement to determine the “best available price” only if all price information from both protected and unprotected marketplaces was considered when executing a principal or non-client order with a client order.



However, a Participant will be considered not to have complied with Rule 8.1 if an employee executes a principal or non-client order with a client order at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the employee executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace.



## Appendix B - Text of UMIR to Reflect Amendments

Text of UMIR Provisions Following Adoption of Amendments	Text of UMIR Provisions Market To Reflect Adoption of Amendments
<p><b>1.1 Definitions</b></p> <p><b>“best ask price”</b> means the lowest price of an order on any protected marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>	<p><b>1.1 Definitions</b></p> <p><b>“best ask price”</b> means the lowest price of an order on any <u>protected</u> marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>
<p><b>1.1 Definitions</b></p> <p><b>“best bid price”</b> means the highest price of an order on any protected marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>	<p><b>1.1 Definitions</b></p> <p><b>“best bid price”</b> means the highest price of an order on any <u>protected</u> marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>
<p><b>1.1 Definitions</b></p> <p><b>“bypass order”</b> means an order that is:</p> <ul style="list-style-type: none"> <li>(a) part of a designated trade; or</li> <li>(b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy</li> </ul> <p>and that is entered on:</p> <ul style="list-style-type: none"> <li>(c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or</li> <li>(d) a marketplace that is not a protected marketplace but that displays orders in a consolidated market display, to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.</li> </ul>	<p><b>1.1 Definitions</b></p> <p><b>“bypass order”</b> means an order that is:</p> <ul style="list-style-type: none"> <li>(a) part of a designated trade; or</li> <li>(b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy</li> </ul> <p>and that is entered on:</p> <ul style="list-style-type: none"> <li><u>(c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or</u></li> <li><u>(d) a marketplace that is not a protected marketplace but that displays orders in a consolidated market display, to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.</u></li> </ul>
<p><b>1.1 Definitions</b></p> <p><b>“protected marketplace”</b> means a marketplace that displays “protected orders” as defined under the Trading Rules.</p>	<p><b>1.1 Definitions</b></p> <p><b>“protected marketplace”</b> means a marketplace that</p> <ul style="list-style-type: none"> <li><del>(a) disseminates order data in real time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;</del></li> <li><del>(b) permits dealers to have access to trading in the capacity as agent;</del></li> <li><del>(c) provides fully automated electronic order entry; and</del></li> <li><del>(d) provides fully automated order matching and trade execution</del></li> </ul> <p><u>displays “protected orders” as defined under the Trading Rules.</u></p>



Text of UMIR Provisions Following Adoption of Amendments	Text of UMIR Provisions Market To Reflect Adoption of Amendments
<p><b>1.2 Interpretation</b></p> <p>(5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a “standard trading unit”, the price shall be the last sale price of the particular security on the immediately preceding trading day on the Exchange on which the security is listed or the QTRS on which the security is quoted.</p>	<p><b>1.2 Interpretation</b></p> <p>(5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a “standard trading unit”, the price shall be the last sale price of the particular security on the immediately preceding trading day <u>on the Exchange on which the security is listed or the QTRS on which the security is quoted.</u></p>
<p><b>1.2 Interpretation</b></p> <p>(8) For the purposes of determining the “best ask price” or the “best bid price” at any particular time reference is made to orders contained in a consolidated market display for a protected marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:</p> <p>(a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or</p> <p>(b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.</p>	<p><b>1.2 Interpretation</b></p> <p>(8) For the purposes of determining the “best ask price” or the “best bid price” at any particular time reference is made to orders contained in a consolidated market display for a <u>protected</u> marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:</p> <p>(a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or</p> <p>(b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace</p>
<p><b>10.9 Power of Market Integrity Officials</b></p> <p>(1) A Market Integrity Official may, in governing trading in securities on the marketplace:</p> <p>...</p> <p>(g) require the Participant or Access Person to satisfy any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules;</p> <p>...</p>	<p><b>10.9 Power of Market Integrity Officials</b></p> <p>(1) A Market Integrity Official may, in governing trading in securities on the marketplace:</p> <p>...</p> <p>(g) require the Participant <u>or Access Person</u> to satisfy <u>any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules</u><del>the better bid or offer up to the disclosed volume if the trade failed to comply with the requirements of Part 5;</del></p> <p>...</p>
<p><b>Policy 2.1 – Just and Equitable Principles</b></p> <p><b>Part 2 – Executing a Pre-arranged Trade or Intentional Cross</b></p> <p>....</p> <p>A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps, prior to or on the execution of the pre-arranged trade or intentional cross to ensure that any “better-priced” order on any protected marketplace is filled.</p> <p>....</p> <p>If the price at which the pre-arranged trade or the intentional cross is to be made:</p> <ul style="list-style-type: none"> <li>• will <b>not</b> be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and</li> <li>• will <b>not</b> be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,</li> </ul>	<p><b>Policy 2.1 – Just and Equitable Principles</b></p> <p><b>Part 2 – Executing a Pre-arranged Trade or Intentional Cross</b></p> <p>....</p> <p>A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps, <del>in accordance with the “best price” obligations under Rule 5.2;</del> prior to or on the execution of the pre-arranged trade or intentional cross to ensure that any “better-priced” order on any protected marketplace is filled.</p> <p>....</p> <p>If the price at which the pre-arranged trade or the intentional cross is to be made:</p> <ul style="list-style-type: none"> <li>• will <b>not</b> be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and</li> <li>• will <b>not</b> be more than the greater of 105% of the best ask price and the best ask price plus 10 trading</li> </ul>



Text of UMIR Provisions Following Adoption of Amendments	Text of UMIR Provisions Market To Reflect Adoption of Amendments
<p>the orders will be considered to be part of a “designated trade” and on entry may be marked as a “bypass order”. As a designated trade, the trade may execute on a marketplace if:</p> <ul style="list-style-type: none"> <li>• better-priced orders displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and</li> <li>• the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill better-priced orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade.</li> </ul> <p>....</p>	<p>increments,</p> <p>the orders will be considered to be part of a “designated trade” and on entry may be marked as a “bypass order”. As a designated trade, the trade may execute on a marketplace if:</p> <ul style="list-style-type: none"> <li>• <del>better-priced orders included in the disclosed volume displayed</del> on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and</li> <li>• <del>subject to any qualification of the “best price” obligation in accordance with Part 1 of Policy 5.2;</del> the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill better-priced orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade.</li> </ul> <p>....</p>
<p><b>Policy 5.3 – Client Priority</b> <b>Part 4 – Client Consent</b></p> <p>If the client order is part of a pre-arranged trade that is to be completed at a price below the best bid price or above the best ask price as indicated on a consolidated market display, the Participant will be under an obligation to ensure that “better-priced” orders on a protected marketplace are filled prior to the execution of the client order.</p>	<p><b>Policy 5.3 – Client Priority</b> <b>Part 4 – Client Consent</b></p> <p>If the client order is part of a pre-arranged trade that is to be completed at a price below the best bid price or above the best ask price as indicated on a consolidated market display, the Participant will be under an obligation to ensure that “better-priced” orders on a <u>protected</u> marketplace are filled prior to the execution of the client order.</p>
<p><b>Policy 8.1 – Client-Principal Trading</b> <b>Part 3 - Factors in Determining “Best Available Price”</b></p> <p>The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as:</p> <ul style="list-style-type: none"> <li>• prices and volumes of the last sale and previous trades;</li> <li>• direction of the market for the security;</li> <li>• posted size on the bid and offer;</li> <li>• the size of the spread; and</li> <li>• liquidity of the security.</li> </ul> <p>For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.</p> <p>In determining the “best available price”, Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available</p>	<p><b>Policy 8.1 – Client-Principal Trading</b> <b>Part 3 - Factors in Determining “Best Available Price”</b></p> <p>The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as:</p> <ul style="list-style-type: none"> <li>• prices and volumes of the last sale and previous trades;</li> <li>• direction of the market for the security;</li> <li>• posted size on the bid and offer;</li> <li>• the size of the spread; and</li> <li>• liquidity of the security.</li> </ul> <p>For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.</p> <p><u>In determining the “best available price”, Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available</u></p>



<b>Text of UMIR Provisions Following Adoption of Amendments</b>	<b>Text of UMIR Provisions Market To Reflect Adoption of Amendments</b>
<p>or known to the Participant. Specifically, we expect an employee of a Participant to use all order price information that is available or known to that employee when determining the “best available price”. For example, an employee that has access to price information from both protected and unprotected marketplaces would be in compliance with the requirement to determine the “best available price” only if all price information from both protected and unprotected marketplaces was considered when executing a principal or non-client order with a client order.</p> <p>However, a Participant will be considered not to have complied with Rule 8.1 if an employee executes a principal or non-client order with a client order at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the employee executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace.</p> <p>Of course, if a client expressly consents to a principal trade on a fully-informed basis, following the client’s instructions will be reasonable.</p>	<p><u>or known to the Participant. Specifically, we expect an employee of a Participant to use all order price information that is available or known to that employee when determining the “best available price”. For example, an employee that has access to price information from both protected and unprotected marketplaces would be in compliance with the requirement to determine the “best available price” only if all price information from both protected and unprotected marketplaces was considered when executing a principal or non-client order with a client order.</u></p> <p><u>However, a Participant will be considered not to have complied with Rule 8.1 if an employee executes a principal or non-client order with a client order at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the employee executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace.</u></p> <p>Of course, if a client expressly consents to a principal trade on a fully-informed basis, following the client’s instructions will be reasonable.</p>



Appendix C

**Comments Received in Response to IIROC Notice 15-0129 – Rules Notice - Request For Comments – UMIR  
Proposed Amendments Respecting Unprotected Transparent Marketplaces and the Order Protection Rule**

On June 12, 2015, IIROC issued Notice 15-0129 requesting comments on Proposed Amendments Respecting Unprotected Transparent Marketplaces and the Order Protection Rule (“Proposed Amendments”). IIROC received comments on the Proposed Amendments from:

Investment Industry Association of Canada (“IIAC”)  
Scotiabank (“Scotia”)

A copy of the comment letters received in response to the Proposed Amendments is publicly available on the website of IIROC ([www.iiroc.ca](http://www.iiroc.ca)). The following table presents a summary of the comments received on the Proposed Amendments together with the responses of IIROC to those comments. There were no revisions made to the Proposed Amendments in response to the comments received.

Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>1.1 Definitions</b>  <b>“best ask price”</b> means the lowest price of an order on any protected marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>		
<p><b>1.1 Definitions</b>  <b>“best bid price”</b> means the highest price of an order on any protected marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.</p>		



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>1.1 Definitions</b></p> <p><b>“bypass order”</b> means an order that is:</p> <ul style="list-style-type: none"> <li>(a) part of a designated trade; or</li> <li>(b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy</li> </ul> <p>and that is entered on:</p> <ul style="list-style-type: none"> <li>(c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or</li> <li>(d) a marketplace that is not a protected marketplace but that displays orders in a consolidated market display, to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.</li> </ul>		



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>1.1 Definitions</b></p> <p><b>“protected marketplace”</b> means a marketplace that displays <del>orders, that for the purposes of the Trading Rules, are considered to be “protected orders”</del> “protected orders” as defined under the Trading Rules.</p>		<p>The amended language better aligns to the definition of “protected order” under the Trading Rules.</p>
<p><b>1.2 Interpretation</b></p> <p>(5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a “standard trading unit”, the price shall be the last sale price of the particular security on the immediately preceding trading day on the Exchange on which the security is listed or the QTRS on which the security is quoted.</p>		



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>1.2 Interpretation</b></p> <p>(8) For the purposes of determining the “best ask price” or the “best bid price” at any particular time reference is made to orders contained in a consolidated market display for a protected marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:</p> <p>(a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or</p> <p>(b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.</p>		
<p><b>10.9 Power of Market Integrity Officials</b></p> <p>(1) A Market Integrity Official may, in governing trading in securities on the marketplace:</p> <p>...</p> <p>(g) require the Participant or Access Person to satisfy any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules;</p> <p>...</p>		
<p><b>Policy 2.1 – Just and Equitable Principles</b></p> <p><b>Part 2 – Executing a Pre-arranged Trade or Intentional Cross</b></p> <p>....</p> <p>A Participant or Access Person intending to execute a pre-arranged trade or an intentional cross is expected to take reasonable steps, prior to or on the execution of the pre-arranged trade or intentional cross to ensure that any “better-priced” order on any protected marketplace is filled.</p> <p>....</p> <p>If the price at which the pre-arranged trade or the intentional cross is to be</p>		



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>made:</p> <ul style="list-style-type: none"> <li>• will <b>not</b> be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and</li> <li>• will <b>not</b> be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,</li> </ul> <p>the orders will be considered to be part of a “designated trade” and on entry may be marked as a “bypass order”. As a designated trade, the trade may execute on a marketplace if:</p> <ul style="list-style-type: none"> <li>• better-priced orders displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and</li> <li>• the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill better-priced orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade.</li> </ul>		
<p><b>Policy 5.3 – Client Priority</b></p> <p><b>Part 4 – Client Consent</b></p> <p>If the client order is part of a pre-arranged trade that is to be completed at a price below the best bid price or above the best ask price as indicated on a consolidated market display, the Participant will be under an obligation to ensure that “better-priced” orders on a protected marketplace are filled prior to the execution of the client order.</p>		



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>Policy 8.1 – Client-Principal Trading</b>  <b>Part 3 - Factors in Determining “Best Available Price”</b></p> <p>The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as:</p> <ul style="list-style-type: none"> <li>• prices and volumes of the last sale and previous trades;</li> <li>• direction of the market for the security;</li> <li>• posted size on the bid and offer;</li> <li>• the size of the spread; and</li> <li>• liquidity of the security.</li> </ul> <p>For example, if the market is \$10 bid and \$10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at \$10.05 if the security has been trading heavily at \$10.50 and there is strong bidding for the security at \$10 compared to the number of securities being offered at \$10.50. The condition of the market suggests that the client should be able to sell at a better price than \$10.05. Accordingly, the Participant as agent for the client should post an offer at \$10.45 or even \$10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration.</p> <p>In determining the “best available price”, Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. <u>Specifically, we expect an employee of a Participant to use all order price information that is available or known to that employee when determining the “best available price”. For example, an employee that has access to price information from both protected and unprotected marketplaces would be in compliance with the requirement to determine the “best available price” only if all price information from both protected and unprotected marketplaces was considered when executing a principal or non-client order with a client order.</u> However, a Participant will be considered not to have complied with Rule 8.1 if <del>the Participant</del> <u>an employee</u> executes a principal or non-client order with a client <u>order</u> at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the <del>Participant</del> <u>employee</u> executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace.</p> <p>Of course, if a client expressly consents to a principal trade on a fully-informed basis, following the client’s instructions will be reasonable.</p>	<p><b>Scotia</b> – The language around “available or known to the Participant” should only apply if the specific trading desk has access to the unprotected market quote and not to the Participant as a whole.</p>	<p>We have clarified in Part 3 of Policy 8.1 that the language around “available or known to the Participant” applies to the information that is available or known to an employee of the Participant that executes a principal or non-client order with a client order.</p>



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p><b>OTHER</b></p>	<p><b>IIAC</b> – With respect to UMIR 5.3 Client Priority, recommends that IIROC provide additional guidance to ensure that Dealer Members are permitted to post agency orders on an unprotected market even if there was a similar order on a protected market for its proprietary trading book.</p>	<p>There is no specific prohibition on a Participant from posting agency orders on an unprotected marketplace while posting a similar proprietary or non-client order on a protected marketplace unless done in an inappropriate manner.</p> <p>For example, if a Participant posts agency orders on an unprotected marketplace and posts a similar proprietary or non-client order on a protected marketplace in order to avoid client priority requirements or to trade ahead of its client, this would be unacceptable and in contravention of UMIR.</p>
	<p><b>IIAC</b> – Suggests that dark pools be given the option, but not the obligation, to use quote information from unprotected markets for dark pool matching purposes.</p>	<p>There is no prohibition on dark pools from using quote information from unprotected markets for matching purposes. However, should a dark marketplace use quotes from unprotected marketplaces for such purposes, any trade executed must be at a price that:</p> <ul style="list-style-type: none"> <li>• is equal to or better than the “best bid price” or “best ask price”, and</li> <li>• if applicable, the provision of a “better price” is measured against the “best bid price” and “best ask price”.</li> </ul> <p>Pursuant to the amendments, “best bid price” and “best ask price” is derived solely from orders on protected marketplaces as displayed in a consolidated market display.</p>
	<p><b>IIAC</b> – Dealer Members require guidance regarding regulatory expectations on the locking and crossing of markets during the interim period when the Proposed Amendments come into effect and when the CSA issues new rules regarding locking and crossing of markets.</p>	<p>For further guidance regarding regulatory expectations on the locking and crossing of markets during the period between when the Proposed Amendments come into effect and when the CSA proposed changes come into effect, please see OSC Staff Notice – Notice of Commission Approval of Proposed Changes to Alpha Exchange Inc. published on April 23, 2015 at (2015), 38 OSCB 4045 (“Staff Notice”). Section 6.5 of National Instrument 23-101 prohibits a marketplace or a marketplace participant from intentionally locking or crossing a protected order displayed</p>



Final Amendments (Changes to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		<p>on a marketplace. The Staff Notice explains that OSC staff would not view orders entered on other marketplaces that lock or cross orders displayed on Alpha to be “intentional”.</p>
	<p><b>IIAC</b> - Dealer Members should not be required to access unprotected markets to satisfy their Best Execution obligations.</p>	<p>The obligation under the OPR to consider only protected marketplaces is separate from the determination by a Participant of whether a marketplace needs to be considered for the purposes of achieving best execution of client orders in accordance with UMIR 5.1. Specifically, a factor in determining whether a Participant has diligently pursued the best execution of a client order is whether the Participant has considered orders on any marketplace, including an unprotected marketplace that has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order. Therefore, in such an instance, a Participant would be required to access, either directly or indirectly, an unprotected marketplace in order to satisfy its best execution obligation.</p>