

## 5.2 Best Price Obligation – Repealed

### POLICY 5.2 – BEST PRICE OBLIGATION – Repealed

<b>Regulatory History:</b>	<p>Effective April 8, 2005, the applicable securities commissions approved an amendment to confirm that the best price obligation does not apply to Basis Orders. See Market Integrity Notice <a href="#">2005-010</a> – “Provisions Regarding a “Basis Order”” (April 8, 2005).</p> <p>Effective March 9, 2007, the applicable securities commissions approved an amendment to confirm that the best price obligation does not apply to Closing Price Orders, and to change the factors that may be considered in Part 1 of Policy 5.2 (“Qualification of Obligation”). See Market Integrity Notice <a href="#">2007-002</a> – “Provisions Respecting Competitive Marketplaces” (February 26, 2007).</p> <p>Effective May 16, 2008, the applicable securities commissions approved amendments to Rule and Policy 5.2 to account for off-marketplace trades. See Market Integrity Notice <a href="#">2008-008</a> – “Provisions Respecting “Off-Marketplace” Trades” (May 16, 2008).</p> <p>Effective May 16, 2008 (retroactively), the applicable securities commissions approved amendments to Rule 5.2 to repeal the reference to transaction fees and to Policy 5.2 to revise Part 1 – Qualification of Obligation. See IIROC Notice <a href="#">09-0107</a> – “Provisions Respecting the “Best Price” Obligation” (April 17, 2009).</p> <p>Effective February 1, 2011, the applicable securities commissions approved amendments to repeal Rule 5.2 and Policy 5.2. See IIROC Notice <a href="#">11-0036</a> – “Provisions Respecting the Implementation of the Order Protection Rule” (January 28, 2011).</p>
<b>Repealed Guidance:</b>	<p>See Market Integrity Notice <a href="#">2005-015</a> – “Complying with “Best Price” Obligations” (May 12, 2005). This Market Integrity Notice was repealed and replaced by Market Integrity Notice <a href="#">2006-017</a> – “Securities Trading on Multiple Marketplaces” (September 1, 2006).</p>
<b>Repealed Guidance:</b>	<p>See Market Integrity Notice <a href="#">2005-023</a> – “Securities Trading on Multiple Marketplaces” (July 29, 2005). This Market Integrity Notice was repealed and replaced by Market Integrity Notice <a href="#">2006-017</a> – “Securities Trading on Multiple Marketplaces” (September 1, 2006).</p>
<b>Partially Repealed Guidance:</b>	<p>See Market Integrity Notice <a href="#">2006-017</a> – “Guidance – Securities Trading on Multiple Marketplaces” (September 1, 2006). Sections of this Market Integrity Notice relating to UMIR 5.2 were repealed by Market Integrity Notice <a href="#">2008-010</a> – Guidance – “Complying with “Best Price” Obligations” (May 16, 2008).</p>
<b>Partially Repealed Guidance:</b>	<p>See Market Integrity Notice <a href="#">2007-015</a> – “Guidance – Specific Questions Related to Trading on Multiple Marketplaces” (August 10, 2007). Questions 5, 8, 9 and 12 in MIN 2007-015 were repealed and replaced effective May 16, 2008 by Market Integrity Notice <a href="#">2008-010</a> – “Guidance – Complying with “Best Price” Obligations” (May 16, 2008).</p>
<b>Guidance:</b>	<p>See Market Integrity Notice <a href="#">2007-019</a> – “Entering Client Orders on Non-Transparent Marketplaces and Facilities” (September 21, 2007).</p>
<b>Repealed Guidance:</b>	<p>See Market Integrity Notice <a href="#">2007-021</a> – “Expectations Regarding “Best Price” Obligations” (October 24, 2007). This Market Integrity Notice was repealed and replaced by Market Integrity <a href="#">2008-010</a> – “Complying with “Best Price” Obligations” (May 16, 2008).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">2008-010</a> – “Complying with “Best Price” Obligations” (May 16, 2008).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">08-0028</a> – “Entering Orders on a Protected Marketplace that supports Hidden Order Types” (July 14, 2008).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">09-0108</a> – “Specific Questions Related To The ‘Best Price’ Obligation” (April 17, 2009).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">09-0224</a> – “Procedures For Handling Certain Designated Trades As Principal” (July 30, 2009).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">09-0244</a> – “Best Execution” and “Best Price” Obligations For Securities Listed On TSX Venture Exchange” (August 27, 2009).</p>
<b>Guidance:</b>	<p>See IIROC Notice <a href="#">11-0043</a> – “Guidance on “Locked” and “Crossed” Markets” (February 1, 2011).</p>
<b>Disciplinary Proceedings:</b>	<p>Rule 5.2 was considered <b>in the Matter of Gerald Douglas Phillips (“Phillips”)</b> (February 26,</p>

2004) SA 2004-002. See Disciplinary Proceedings under 2.1.

**Disciplinary Proceedings: In the Matter of Magna Partners Ltd. ("Magna") (November 16, 2010) DN 10-0295**

*Facts* – Between October 2008 and May 2010, Magna failed to make reasonable efforts to meet its best price obligations as it did not make reasonable efforts to have access to all protected marketplaces, in particular Alpha, CNSX, Omega and Chi X. After determining that the costs of becoming a member of each protected marketplace were too great, Magna did not make inquiries into any of the other methods of accessing the various marketplaces, such as by way of jitney or Smart Order Router, until following the commencement of an IROC investigation in July, 2009. Magna further failed to maintain adequate policies and procedures, including to test for "trade throughs" and to monitor and document the levels of trading on each marketplace, in order to ensure reasonable efforts were made to execute orders at the best price.

*Disposition* – Magna admitted that it breached UMIR when it failed to make reasonable efforts to meet its best price obligations by connecting to all available "protected marketplaces" and in failing to have adequate policies and procedures in place to address best price obligations. The best price obligation set out in UMIR 5.2 is a general duty owed to the market as a whole to ensure fairness to all market participants and to promote competition, efficiency, and transparency while maintaining investor confidence in the market. UMIR Policy 5.2 requires IROC regulated member firms to adopt policies and procedures that will ensure compliance with their ongoing best price obligations and reflect changes in the trading environment and market structure.

*Requirements Considered* – Rule 5.2, 7.1 and Policy 5.2.

*Sanction* - A Hearing Panel imposed a fine of \$100,000 and costs in the amount of \$10,000 against Magna.

*Review* – Further to review by the Ontario Securities Commission, the Commission substituted its own penalty decision for that of the IROC Hearing Panel and reduced the fine to \$30,000.

**Disciplinary Proceedings: In the Matter of BMO Nesbitt Burns ("BMONB") (August 25, 2010) DN 10-0228**

*Facts* – In November 2008, BMONB was advised by IROC of "a larger than average" number of "trade through" alerts which identify possible "best price" violations. At that time, BMONB had not yet connected to two protected marketplaces, namely Chi-X or Omega ATS ("Omega"). In late February 2009, IROC Staff again raised this issue, noting that there had not been any significant improvement. While having thereafter connected to Chi-X, BMONB did not sign a subscription agreement with Omega until October 14, 2009. Despite the requirement of Rule 5.2, BMONB relied on three factors which are not considerations under Policy 5.2 in determining when it would connect to Omega: (i) Omega's launch process; (ii) technological challenges in connecting to Omega; and (iii) Omega's liquidity levels. BMONB also relied on availability of Omega's market data as a consideration relevant to connection.

*Disposition* – A Participant has an obligation to execute against better-priced orders on protected marketplaces before executing at an inferior price on any marketplace or foreign organized regulatory market. Under the terms of a Settlement Agreement, BMONB admitted that between October 2008 and October 2009, it breached UMIR when it failed to make reasonable efforts to meet its best price obligations by connecting to all available "protected marketplaces" and, in particular, Omega ATS, an alternative trading system for Canadian exchange listed equities.

*Requirements Considered* – Rule 5.2 and Policy 5.2.

*Sanction* - BMONB agreed to a \$250,000 fine and \$15,000 in costs.

**Disciplinary Proceedings: In the Matter of Beacon Securities Limited. ("Beacon") (April 8, 2011) DN 11-0120**

*Facts* – From December 2008 to November 2010, Beacon traded on the TSX through a third party trading platform and jitneyed all TSX-Venture trades. Beacon did not, however, directly connect to the remaining protected marketplaces although Beacon always had access to all protected marketplaces via its ongoing jitney relationship, but this had never been used in practice prior to April, 2010 for institutional clients. Following a trade desk review in August 2009, IROC noted that Beacon was connected to the TSX and TSX-Venture, but was not directly connected to the other protected markets and deficiencies were found in Beacon's written policies and procedures to ensure "trade throughs" did not occur. In March 2010, Beacon updated its policies and procedures regarding trading supervision. In October 2010, IROC advised Beacon that between November, 2008 to April 2010, Beacon generated 899 trade through alerts which could indicate violations and that random sampling showed certain trade through violations. In November, 2010, Beacon upgraded its trading platform to include the Smart Order Router to become directly connected to the remaining protected marketplaces for its institutional transactional activity.

*Disposition* – Pursuant to a Settlement Agreement, Beacon admitted that between December 2008 until November 2010, the firm failed to make reasonable efforts to ensure that orders were executed

at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and from December 2008 until March 2010, the firm failed to have adequate policies and procedures in place in order to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1.

Requirements Considered – Rule 5.2, 7.1 and Policy 5.2, and 7.1.

Sanction – Beacon agreed to pay a fine of \$70,000 costs in the amount of \$5,000.

**Disciplinary Proceedings: In the Matter of Maison Placements Canada Inc. (“MPCI”) (April 13, 2011) DN 11-0124**

Facts – Between December 2008 and January 2011 (the “relevant period”), MPCI was not connected to all of the six protected marketplaces, but only to the TSX and TSXV. MPCI did not use an acceptable order router nor did it did not provide the order to another Participant for entry on a marketplace. As a result, MPCI did not consider orders on any of the protected marketplaces other than the TSX or TSXV. During the period October 2007 to March 2008, MPCI informed its clients that it would execute trades on the TSX or TSXV only. During the period between December, 2008 and October, 2010, MPCI generated trade through alerts; however the percentage of trade through alerts generated was small relative to MPCI’s overall trading volume. During the relevant period, MPCI did not monitor or review its order flow for compliance with the “best price” obligation and did not set out the steps or process to be followed to make “reasonable efforts” to ensure that orders receive the “best price” when executed on a marketplace.

Disposition – Pursuant to a Settlement Agreement, MPCI admitted that it breached UMIR 5.2 and UMIR Policy 5.2 as it did not make reasonable efforts during the relevant period to ensure orders were executed at the “best price.” UMIR Requirements make it clear that despite client consent or instruction a Participant cannot trade-through a better bid or offer on a protected marketplace by making a trade at an inferior price. In addition, MPCI failed to have adequate policies and procedures in place to ensure compliance with its “best price” obligation, contrary to UMIR 7.1 and UMIR Policy 7.1.

Requirements Considered – Rule 5.2, 7.1 and Policy 5.2, and 7.1.

Sanction – MPCI agreed to pay a fine of \$95,000 and costs in the amount of \$5,000.

**Disciplinary Proceedings: In the Matter of Pope & Company Limited (“Pope”) (March 14, 2012) DN 12-0095**

Facts – Between December 2008 and January, 2011, (the “Relevant Period”) Pope, an institutional investment firm, was not connected to all protected marketplaces, only to the Toronto Stock Exchange (TSX) and TSX Venture Exchange (TSXV). In addition, Pope did not use an acceptable order router or provide the order to another Participant for entry on a marketplace. As a result, Pope did not consider orders on any of the protected marketplaces other than the TSX or TSXV in respect of the “best price” obligation. Pope judged that the costs of subscribing to all protected marketplaces was too high and that it was not feasible to provide its orders to another Participant for entry on a marketplace as this would result in a transaction costs it believed its clients would find unacceptable. Pope ultimately subscribed to the TSX Smart Order Router and entered a jitney service agreement to route orders to the firm’s jitney provider if the best price was available on a marketplace where the firm was not subscribed. During the Relevant Period, “trade-through” alerts were generated by Pope but they were a small percentage relative to its overall trading volume.

Disposition – Pursuant to a Settlement Agreement, Pope admitted that in the Relevant Period it failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2 and failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and Policy 7.1.

Requirements Considered – Rule 5.2, 7.1 and Policy 5.2, 7.1.

Sanction – Pope agreed to pay a fine of \$30,000 and to pay costs in the amount of \$5,000.