



## 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.

<b>Final Amendments (Changes to the Proposed Amendments Highlighted)</b>	<b>Commentator and Summary of Comment</b>	<b>IIROC Response to Commentator and Additional IIROC Commentary</b>
<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.		
<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.		



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>		



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<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>		



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<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>		



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<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>		



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<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>



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<b>OTHER</b>	<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>



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		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”.
	<b>IIAC</b> - Dealer Members should not be required to access unprotected markets to satisfy their Best Execution obligations.	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.