

Market Integrity Notice |

Guidance

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Suggested Routing

- Trading
- Legal and Compliance

Key Topics

- Artificial Price
- Best Execution
- Best Price Obligation
- Designated Offshore Securities Market
- “Guaranteed” Volume-Weighted Average Price
- Multiple Marketplaces
- Principal Market
- Regulation S
- Short Sale
- Special Terms Order

UMIR Provisions Referenced

- Rule 3.1 – Restrictions on Short Selling
- Rule 5.1 – Best Execution Obligation
- Rule 5.2 – Best Price Obligation

Market Integrity Notices Referenced

- Market Integrity Notice 2005-015 – *Guidance – Complying with “Best Price” Obligations* (May 12, 2005)
- Market Integrity Notice 2005-028 – *Guidance – Sales of Securities Subject to Transfer Restrictions Only in the United States* (July 29, 2005)

SPECIFIC QUESTIONS RELATED TO TRADING ON MULTIPLE MARKETPLACES

Summary

This Market Integrity Notice provides guidance on specific questions related to the obligations of a Participant or Access Person under the the Universal Market Integrity Rules with respect to trading on multiple marketplaces.

Questions / Further Information

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- Market Integrity Notice 2006-005 – *Guidance – Guarantee By a Participant of a Trade Price* (February 10, 2006)
- Market Integrity Notice 2006-006 – *Guidance – Sale of Securities Subject to Certain United States Securities Laws* (February 17, 2006)
- Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006)
- Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements for Trading on Multiple Marketplaces* (October 30, 2006)
- Market Integrity Notice 2007-002 – *Amendment Approval – Provisions Respecting Competitive Marketplaces* (February 26, 2007)
- Market Integrity Notice 2007-007 – *Request for Comments – Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to a Marketplace* (April 20, 2007)
- Market Integrity Notice 2007-014 – *Guidance – Exemption of Certain Inter-Listed Securities from Price Restrictions on Short Sales* (July 6, 2007)

SPECIFIC QUESTIONS RELATED TO TRADING ON MULTIPLE MARKETPLACES

Summary

This Market Integrity Notice provides guidance on specific questions related to the obligations of a Participant or Access Person under the rules and policies of the Universal Market Integrity Rules (“UMIR”) with respect to trading on multiple marketplaces.

Background

Market Regulation Services Inc. (“RS”) issued Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006) which provides general guidance on the obligations of a Participant or Access Person under UMIR with respect to trading activity in a security that trades on more than one marketplace. In particular, that Notice provides guidance on:

- the determination of “last sale price” for the purpose of Rule 3.1 of UMIR (and “last independent sale price” for the purpose of Rule 7.7 of UMIR) and the lowest price at which a Participant or Access Person may make a short sale;
- the best execution obligation of a Participant under Rule 5.1 of UMIR and when a Participant is expected to consider possible liquidity on a marketplace that does not provide pre-trade transparency;
- the best price obligation of a Participant under Rule 5.2 of UMIR, including marketplaces that must be considered in determining “best price”; and
- compliance with the client priority rule under Rule 5.3 of UMIR.

RS also issued Market Integrity Notice – 2006-020 – *Guidance - Compliance Requirements for Trading on Multiple Marketplaces* (October 30, 2006) which provided guidance on the various compliance requirements of a Participant under UMIR with respect to the handling of orders and trades in a security that trades on more than one marketplace. In particular, that Notice provided guidance on:

- audit trail requirements for orders transmitted to a “manual” marketplace;
- compliance testing for orders entered and trades executed on multiple marketplaces;
- handling of “Day”, “Good Till Cancelled” and “Market” orders in the context of different hours of operation of marketplaces;
- entry of client orders that are not immediately tradable;
- whether a Participant is required to consider orders on a marketplace that is not then open for trading;
- order marking requirements on marketplaces that do not support certain marker type;

- the “best price” obligation of a Participant with respect to orders entered by a client with “direct market access”; and
- the obligation of a Participant to monitor marketplaces for trading opportunities that have historically not provided liquidity for a particular security.

This Market Integrity Notice addresses specific questions related to trading on multiple marketplaces and supplements the guidance already provided in these two Market Integrity Notices.

Questions and Answers

The following is a list of questions regarding the obligations of a Participant or an Access Person with respect to trading in a security that trades on more than one marketplace. UMIR defines a marketplace as a recognized exchange (“Exchange”), a recognized quotation and trade reporting system (“QTRS”) or an alternative trading system (“ATS”) that carries on business in Canada.

1. What are the procedures for the sale of a security that is subject to transfer restrictions in the United States on a marketplace that does not qualify as a “designated offshore securities market” under Regulation S of the United States Securities Act of 1933?

Rule 904 under Regulation S (“Regulation S”) of the *Securities Act of 1933* (United States) provides that, subject to certain conditions, the offer, sale or resale of securities made in an “offshore transaction” are exempt from registration with the SEC. Under Rule 904, an “offshore transaction” includes a transaction in which no offer is made to a person in the United States and the transaction is executed through the facilities of a “designated offshore securities market” provided neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States. Currently, the Toronto Stock Exchange (“TSX”) and the TSX Venture Exchange (“TSXV”) are the marketplaces in Canada that qualify as a “designated offshore securities market” for the purposes of Regulation S.

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill certain better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace. (Reference should be made to Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006) and Market Integrity Notice 2007-002 – *Amendment Approval – Provisions Respecting Competitive Marketplaces* (February 26, 2007) for a discussion of the circumstances when the “best price” obligation arises.) In the context of a Participant facilitating the sale of a US Restricted Security that trades on more than one marketplace, the Participant handling the order has an obligation to execute the trade on a marketplace with the better-priced orders before executing a trade at an inferior price on a marketplace that qualifies as a “designated offshore securities market” under Regulation S.

To the extent that a Participant trades with orders on a marketplace that does not qualify as a “designated offshore securities market”, a Participant must comply with the procedures set out in Market Integrity Notice 2005-028 – *Sale of Securities Subject to Transfer Restrictions Only in the United States* (July 29, 2005). As set out in that notice, an order for the sale of a US Restricted Security may be entered on a marketplace as:

- part of an intentional cross at a price between the best ask price and the best bid price when the Participant knows that the purchaser is not a resident of the United States or otherwise subject to the transfer restrictions; or
- a Special Terms Order (that is subject to the condition that the purchaser not be a resident of the United States).

Orders entered as an intentional cross at a price between the best ask price and the best bid price as indicated in a consolidated market display may be executed on a marketplace without concern about potential interference by a party who may not be qualified to acquire the securities.

If the order is entered as a Special Terms Order at a price below “better-priced” orders in a consolidated market display in respect of which the Participant owes a “best price” obligation under Rule 5.2, the Participant must contact each Participant and Access Person who has disclosed orders at a better price than the price of the Special Terms Order and offer to satisfy their orders up to the volume of the Special Terms Order provided the Participant or Access Person is eligible to purchase the US Restricted Security. If each Participant or Access Person with a better-priced order is either unwilling or unable to acquire the U.S. Restricted Security, the Special Terms Order may be executed at an inferior price with a party that is able to acquire the US Restricted Security. Reference should be made to Market Integrity Notice 2006-006 – *Guidance - Sale of Securities Subject to Certain United States Securities Laws* (February 17, 2006) for additional guidance on “offshore transactions” under Rule 904 of Regulation S and order marking requirements under UMIR for orders involving the sale of a U.S. Restricted Security.

2. How is a Participant to test for potential “high closing” and artificial bids or offers when marketplaces have differing hours of operation?

Part 7.1 of UMIR requires that a Participant adopt policies and procedures that are adequate to ensure compliance with the requirements of UMIR. In accordance with Policy 7.1, a Participant must determine the level and nature of testing which is appropriate based on the size and type of business conducted by the Participant. “High closing” and the entry of an ask price or bid price on a marketplace that is not justified by the real demand or supply in a security are examples of artificial pricing. One of the relevant considerations in determining whether a price is artificial is if the Participant, Access Person or account involved in the order has a motivation to establish an artificial price. For example, if the valuation of a particular portfolio is based on the closing sale or bid prices of the “principal marketplace”, RS would expect that the compliance testing appropriate for that account would be to monitor sales or orders on the “principal

marketplace”, since orders or trades, as applicable, on that marketplace may be susceptible to artificial pricing. Similarly, if margin requirements are based on the closing sale price on the marketplace that last trades a particular security, RS would expect that a Participant would have appropriate compliance testing of last sale prices on the “last marketplace”.

3. *What is the lowest price at which a Participant or Access Person may make a short sale of securities which are inter-listed on an exchange in the United States?*

On June 13, 2007, the SEC approved amendments to Rule 10a-1 and Regulation SHO that will remove price restrictions on short sales as set out in Rule 10a-1 as well as any short sale price test of any self-regulatory organization. In addition, the amendments will prohibit any self-regulatory organization from having a price test. These amendments became effective July 3, 2007 with a compliance date of July 6, 2007.

In light of the decision of the SEC to remove price restrictions on short sales, RS published Market Integrity 2007-014 – *Guidance – Exemption of Certain Inter-Listed Securities from Price Restrictions on Short Sales* (July 6, 2007) which granted, effective July 6, 2007, an exemption from the price restrictions on a short sale under Rule 3.1 of UMIR in respect of securities which are inter-listed on an exchange in the United States. For the purposes of UMIR, the Toronto Stock Exchange (“TSX”), TSX Venture Exchange (“TSXV”) and CNQ currently qualify as an “Exchange”. If a security is listed on an Exchange and is also listed on an exchange in the United States, a short sale of the security may be entered on any marketplace, including an ATS, which trades the security and permits the use of a “short exempt” marker. Securities which trade on an ECN in the United States but are not otherwise listed on an exchange¹ in the United States do not qualify for the exemption.

If a particular marketplace does not support the “short exempt” marker provided for under Rule 6.2 of UMIR, the order must be marked “short”. In this circumstance, if the marketplace system enforces compliance with the price restrictions on short sales, the marketplace may suspend the automatic enforcement of the price restrictions on securities covered by the exemption. If a marketplace is unable to suspend the automatic enforcement of the price restrictions on securities covered by the exemption, short sales of exempt securities on that marketplace will continue to be executed at a price not less than the last sale price of the security (see question 4 below).

4. *What is the lowest price at which a Participant or Access Person may make a short sale of securities which are not inter-listed on an exchange in the United States?*

Rule 3.1 of UMIR provides that, subject to certain exemptions, neither a Participant nor an Access Person may make a short sale below the “last sale” price. In turn, the term

¹ An exchange is a market that is registered as an “exchange” under the *Exchange Act of 1933* (United States). In particular, it should be noted that an ECN, the Bulletin Board and the Pink Sheets are NOT an “exchange”.

“last sale price” is defined as the price of the last sale of at least one standard trading unit displayed in a “consolidated market display”. As set out in Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006), RS is of the view that, in the context of a security that trades on more than one marketplace, the lowest price at which a Participant or Access person may make a short sale will be the lesser of:

- the last sale price of the security on a principal market; or
- the last sale price of the security on the marketplace on which the Participant or Access Person enters the short sale order provided such trade occurred subsequent to the last sale on the principal market.

The following assumption and chart provides the basis for the two examples below:

Assume that a particular security is listed on an Exchange that is the “principal market” and on two ATSs.

Marketplace	Bid Price	Ask Price	Last Sale	Time of Last Sale
Principal Market	\$9.90	\$10.10	\$10.00	11:15 a.m.
ATS 1	\$9.90	\$10.20	\$9.90	11:05 a.m.
ATS 2	\$9.89	\$10.20	\$10.05	10:15 a.m.

Example 1: *A Participant wishes to enter an order to sell shares “short” at the lowest possible price.*

The lowest price at which a Participant or Access Person would be able to enter a short sale on any of the above marketplaces would be \$10.00 (being the “last sale price” on the Principal Market). The “last sale prices” on ATS 1 and ATS 2 were established prior to the last sale on the Principal Market, and as such, do not set the short sale price.

Example 2: *Assume that all factors remain unchanged, however the last sale on ATS 1 (\$9.90) is more recent (11:20 a.m.).*

A Participant or Access Person would be able to enter a short sale on:

- *the Principal Market at \$10.00 (being the “last sale price” on that marketplace);*
- *ATS 1 at \$9.90 (as the last sale price on ATS 1 was established subsequent to the last sale on the Principal Market); and*
- *ATS 2 at \$10.00 (as the \$10.05 last sale on ATS 2 was prior to the \$10.00 last sale on the Principal Market).*

5. When entering a short sale order on a marketplace what obligation does a Participant have to “better-priced” orders on another marketplace?

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace. A Participant will be considered to have undertaken “reasonable efforts” if the Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace.

The following assumption and chart provides the basis for the two examples below:

Assume that a particular security is listed on an Exchange that is the “principal market” and on two ATSs.

Marketplace	Undisclosed Bid Size	Disclosed Bid Size	Bid Price	Ask Price	Disclosed Ask Price	Last Sale	Time of Last Sale
Principal Market	10,000	1,000	\$10.00	\$10.10	3,000	\$10.10	11:15 a.m.
ATS 1		5,000	\$9.90	\$10.20	4,000	\$9.90	11:20 a.m.
ATS 2		1,000	\$9.89	\$10.05	4,000	\$10.05	10:15 a.m.

Example 3: A Participant wishes to enter a market order to sell 7,000 shares “short”.

A Participant or Access Person would be able to enter the short sale on:

- *the Principal Market at \$10.10 (being the “last sale price” on that marketplace);*
- *ATS 1 at \$9.90 (as the last sale on ATS 1 was established subsequent to the last sale on the Principal Market); and*
- *ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).*

However, if a Participant executed the short sale on ATS 1, the Participant would owe an obligation to the “better-priced” orders disclosed in the consolidated market display. Rule 5.2 of UMIR would require a Participant to immediately enter an order on the Principal Market to execute against the better-priced visible order (\$10.00 for 1,000 shares).

Since the order entered on the Principal Market by the Participant to satisfy its displacement obligation would be a “short sale”, the Participant may have to enter the order as “short exempt” in order to ensure that it trades (as the trading system of the Principal Market may be programmed not to permit a short sale below the last sale price on that market). Since the short sale was properly executed on ATS 1, orders entered by the Participant on the Principal Market to meet “best price” obligations under Rule 5.2 will not be considered to be a violation of price restrictions on short sales for the

purposes of Rule 3.1. While there was another 10,000 shares at a better price on the Principal Market, that volume was not “visible” in the consolidated market display and, as such, the Participant would not have a “best price” obligation to such undisclosed volume.

Example 4: Same scenario as above, however the better-priced bid on the Principal Market is fully disclosed (\$10.00 for 10,000 shares).

A Participant would be able to enter the short sale on:

- *the Principal Market at \$10.10 (being the “last sale price” on that marketplace);*
- *ATS 1 at \$10.00 (to avoid trading-through the better-priced order on the Principal Market); and*
- *ATS 2 at \$10.10 (as the \$10.05 last sale on ATS 2 was prior to the \$10.10 last sale on the Principal Market).*

As set out in example 3 above, a Participant will be considered to have made “reasonable efforts” to comply with its best price obligations if a Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such order(s) have a sufficient volume and are at price that will fill the volume of better-priced orders in the consolidated market display at the time of the trade. In this example, while the last sale of the security on ATS 1 was subsequent to the last sale on the principal market, because the volume of the proposed short sale (7,000 shares) if executed, is not of sufficient volume to fill the volume of better-priced orders in the consolidated market display (10,000 shares) a Participant may not enter a short sale on ATS 1.

6. *If a Participant has agreed to trade at a “guaranteed” Volume-Weighted Average Price, may a Participant rely for the purposes of calculating the price on trades on a marketplace other than the marketplace on which the trade will be executed?*

A Participant may rely on any combination of marketplaces in calculating a “guaranteed” Volume-Weighted Average Price (“VWAP”), including marketplaces that do not have a facility to handle VWAP trades or that do not disseminate trade information in a readily useable format. A “guaranteed” VWAP may be executed on any marketplace that allows for such trades irrespective of whether or not data from that marketplace has been used in the calculation of the VWAP. When handling an order to “approximate VWAP” on behalf of a client, a Participant must ensure that the client is aware of any limitations (e.g. data from more than one marketplace will be included in the calculation) in arriving at the approximated VWAP.

Immediately upon a Participant agreeing to guarantee the price of a trade to a client, the Participant must provide written notice to RS. The written notice must indicate, among other things:

- the security;

- whether the trade will be a purchase or sale by the Participant;
- the volume of the trade;
- the method of determining the price which the Participant will be guaranteeing, including identification of the marketplace or combination of marketplaces used to determine the price and the time period over which the price will be determined;
- the details of any profit sharing arrangement to be entered into between the Participant and the client with respect to the trade; and
- the time and the marketplace on which the trade will be executed.

Participants should refer to Market Integrity Notice 2006-005 – *Guidance – Guarantee By a Participant of a Trade Price* (February 10, 2006) for additional guidance on the procedures to be followed by a Participant when executing a “guaranteed” VWAP trade.

7. Is a Participant required to consider organized regulated markets outside of Canada as part of “best execution” obligation?

RS published Market Integrity Notice 2007-002 – Amendment Approval – *Provisions Respecting Competitive Marketplaces* (February 26, 2007) which contained a series of amendments to UMIR, including additional factors that RS would consider when determining whether a Participant has diligently pursued the best execution of a client order. One of the additional factors to be considered is whether a Participant has considered organized regulated markets outside of Canada (particularly if the principal market for the security is outside of Canada) in handling of a client order. The addition of the factor to consider organized regulated markets outside of Canada as part of best execution of a client order parallels a provision on best execution contained in the Companion Policy to the CSA Trading Rules.²

To the extent that a foreign market is considered in order to provide a client with “best execution” in accordance with Rule 5.1, the Participant would nonetheless have an obligation to better-priced orders on Canadian marketplaces under the “best price” obligation under Rule 5.2.

8. Is a Participant required to consider orders in a special terms book of a marketplace as part of its “best price” obligation?

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace or a foreign market. Under UMIR, the determination of the “best ask price”

² Companion Policy 23-101CP, ss 4.1(3). The text of that subsection provides:

For inter-listed securities, the Canadian securities regulatory authorities are of the view that in making reasonable efforts, a dealer should consider whether it would be appropriate in the particular circumstances to look at markets outside of Canada.

and “best bid price” excludes the price of any order that is a Special Terms Order and a number of “specialty” orders such as Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order and Volume-Weighted Average Price Order. While a Participant is not required to consider Special Terms Orders in determining best price, a Participant may be required to consider execution opportunities in the special terms book of a marketplace in accordance with its best execution obligation under Rule 5.1 of UMIR.

9. *If a Participant executes a trade on a marketplace at an inferior price, and immediately thereafter attempts to displace a specific better-priced order on another marketplace that is cancelled before the Participant is able to enter the order, is a Participant obligated to displace other orders at that same price and volume?*

Under Rule 5.2, a Participant has an obligation to make reasonable efforts to fill better-priced orders on a marketplace before executing a trade at an inferior price on another marketplace. As originally set out in Market Integrity Notice 2005-015 – Guidance – *Complying with “Best Price” Obligations* (May 12, 2005), RS is of the opinion that a Participant will be considered to have undertaken reasonable efforts if the Participant enters orders on another marketplace concurrent with, or immediately following, the trade on a particular marketplace and such orders have a sufficient volume and are at a price that will fill the volume of the better-priced orders on that other marketplace that are visible at the time of the trade on the particular marketplace. To the extent that the better-priced orders visible at the time of the trade are “immediately” replaced with another order or orders the Participant has an obligation to trade with such other order(s) even though it will trade with a different order(s) than intended. The volume of the order to be entered is determined solely by the visible volume of the better-priced order(s) at the time of the trade on the particular marketplace.

In the view of RS, an order entered by a Participant on a marketplace to satisfy its displacement obligation must be entered concurrently with, or immediately following the trade on another marketplace, regardless of whether the order(s) that gave rise to the displacement obligation continue to be “available”. As such, a Participant may wish to enter an order to satisfy its displacement obligation in a manner that ensures that the order trades only with the volume of better-priced orders that are then “available”, and that any unfilled portion of the order may be “killed” to prevent the unfilled portion of the order from being “booked” on the other marketplace.

10. *What are the specific risks to a Participant in accepting an “All-or-None” client order in a multiple marketplace environment?*

Rule 5.1 of UMIR requires a Participant to diligently pursue the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions. To the extent that a Participant accepts “All-or-None” orders from clients, RS expects a Participant to adopt policies and procedures

with respect to the handling of such client orders and inform its clients of such policy, including the implications and risks (i.e. partial fills) associated with the use of an “All-or-None” order. If a Participant has not informed clients of the Participant’s policy on the handling of “All-or-None” orders, RS would expect that the Participant will handle an “All-or-None” order in conformity with client instructions.

If a Participant, in handling an “All-or-None” order assumes the risk of a partial fill, that is, any unfilled portion of the client order is filled to the client out of the Participant’s error account, or the partial fill is re-allocated into the Participant’s error account, such orders continue to be considered a client order, and must continue to be properly marked “client”.

If an “All-or-None” order is “triggered” and trades-through a better-priced order on a marketplace, RS would consider the trade to be a violation of Rule 5.2. A violation of Rule 5.2 would occur even if the marketplace with the better-priced order does not display sufficient volume at a better price to fully satisfy the “All-or-None” order. In light of the risk of “best price” obligations posed by the use of “All-or-None” orders, RS expects a Participant to have a clear understanding of the manner in which the marketplace handles “All-or-None” orders and that the Participant will take appropriate steps to fulfill any “best price” obligations.

11. What is a Participant expected to do with an “on-stop” order entered on a marketplace that, once triggered, trades-through a better-priced order on another marketplace?

An “on-stop” order entered by a Participant on a marketplace can only be “triggered” once the security that is subject of the “on-stop” order trades at a specified price on a marketplace. One way for an “on-stop” to be triggered and immediately trade-through another marketplace is if the trade that triggered the “on-stop” was itself a trade-through (others include rapidly moving quotations, commonly known as “flickering quotes”, and instances of a marketplace experiencing technical difficulties). To the extent that reasonable efforts were made to execute a trade at the best available price, RS would not hold a Participant liable for technical occurrences of trade-throughs in the circumstances described above.

Presently, all marketplaces that operate an “on-stop” facility employ a similar allocation methodology with respect to “on-stop” orders such that, once triggered, an “on-stop” order becomes a “limit” order which may trade with any order on that marketplace. With the introduction of new marketplaces, it is possible that a marketplace may employ a different allocation methodology with respect to “on-stop” orders (i.e. triggered “on-stop” orders convert to a “market” order). Should such a marketplace emerge, RS will provide guidance on a Participant’s “best price” obligation taking into the consideration the specifics of such marketplace.

12. Can a Participant factor in connectivity costs or other fees related to accessing a marketplace in determining “best price”?

Rule 5.2 of UMIR requires that a Participant make reasonable efforts prior to the execution of a client order to ensure that the client order is executed at the best available price. Transaction costs and other costs (including access fees and settlement charges) associated with executing a trade on a marketplace may be considered in determining whether a Participant has made “reasonable efforts”. In order to undertake “reasonable efforts” to effect a trade at the best price, a Participant must take appropriate steps to access orders on any marketplace trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber).

If a Participant has a specific arrangement with a client or generally charges clients (either as a separate fee or increased commission) transaction costs related to accessing a particular marketplace, a Participant may consider such transaction costs in determining the marketplace with the “best price”. For example, if fees charged directly to a client to access a marketplace with the “best price” result in a client receiving a net price for the trade (trade price less costs related to accessing the particular marketplace) that is inferior to the price that the client would have received had the Participant executed the trade on another marketplace, a Participant may trade with orders on such other marketplace. To the extent that a Participant does not directly charge “access” costs to a client (i.e. the Participant does not charge a separate fee or increased commission to execute a trade on a particular marketplace), a Participant must direct a client order to the marketplace with the best available price as determined from information in a consolidated market display.

Presently, a marketplace is allowed to establish fees to access its marketplace without limitation. While differences in access fees charged by marketplaces is allowed, the regulation of access fees is currently the subject of a proposal by the Canadian Securities Administrators (“CSA”), which among other things, proposes to establish a maximum amount that a visible marketplace can charge for access to a quote. Reference should be made to Market Integrity Notice 2007-007 – *Request for Comments - Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* (April 20, 2007) for a discussion of CSA “trade-through” proposal. The provisions of UMIR and their interpretation and application would be modified to conform to the position adopted by the CSA.

13. What information must be disclosed on the trade confirmation if a Participant executes a client order for a particular security at an average price on more than one marketplace?

Under section 36 of the *Securities Act* (Ontario) and comparable provisions of the securities legislation of other jurisdictions, a Participant is required to send a trade confirmation to the client. In accordance with Part 3 of the policy adopted under Rule

7.1 of UMIR, a Participant is required to have appropriate policies and procedures to ensure compliance with these requirements.

If a client order for the purchase or sale of a particular security is executed at an average price on more than one marketplace, the trade confirmation may disclose that the order has been executed at an average price on multiple marketplaces. However, the confirmation must also disclose that details of each trade are available upon request. A Participant must provide the details of each trade at no charge. If a client order has been filled at multiple prices on a single marketplace, the trade confirmation must continue to identify the marketplace on which the client order was executed.

Questions / Further Information

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