Market Integrity Notice

Amendment Approval

February 26, 2007
No. 2007-002

Key Topics

- Best Ask Price
- Best Bid Price
- Best Execution
- Best Price Obligation
- Client-Principal Trading
- Client Priority
- Closing Price Order
- Consolidated Market Display
- Intentional Cross
- Internal Cross
- Last Sale Price
- Market-on-Close Order
- Multiple Marketplaces
- Opening Order
- Order Exposure
- Principal Market
- Short Sale
- Special Terms Order
- Trading Increment

UMIR Provisions Referenced

- Rule 1.1 – Definitions
- Rule 2.1 – Just and Equitable Principles
- Rule 3.1 – Restrictions on Short Selling
- Rule 5.1 – Best Execution of Client Orders

PROVISIONS RESPECTING COMPETITIVE MARKETPLACES

Summary

This Market Integrity Notice provides notice of the approval by the applicable securities regulatory authorities, effective March 9, 2007, of amendments to the Universal Market Integrity Rules to accommodate the introduction of multiple marketplaces trading the same securities. The amendments include revisions to the provisions governing client priority such that a Participant can not enter on a marketplace a principal order or non-client order that the Participant, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order:

- for the same security;
- at the same or an inferior price; and
- on the same side of the market.

The approved amendments have been revised from proposals contained in Market Integrity Notice 2006-019 – *Request for Comments – Provisions Respecting Competitive Marketplaces* (October 6, 2006).

Questions / Further Information

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- Rule 5.2 – Best Price Obligation
- Rule 5.3 – Client Priority
- Rule 6.1 – Entry of Orders to a Marketplace
- Rule 6.2 – Designation and Identifiers
- Rule 6.3 – Exposure of Client Orders
- Rule 7.7 – Trading During Certain Securities Transactions
- Rule 8.1 – Client-Principal Trading
- Rule 10.9 – Powers of Market Integrity Officials

Market Integrity Notices Referenced

- Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting "Off-Marketplace" Trades* (April 29, 2005)
- Market Integrity Notice 2005-018 – *Request for Comments – Definition of "Applicable Market Display"* (June 10, 2005)
- Market Integrity Notice 2005-019 – *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* (June 10, 2005)
- Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006)
- Market Integrity Notice 2006-019 – *Request for Comments – Provisions Respecting Competitive Marketplaces* (October 6, 2006)

PROVISIONS RESPECTING COMPETITIVE MARKETPLACES

Summary

This Market Integrity Notice provides notice of the approval by the applicable securities regulatory authorities[1], effective March 9, 2007, of amendments to the Universal Market Integrity Rules to accommodate the introduction of multiple marketplaces trading the same securities (the "Amendments"). The Amendments include revisions to the provisions governing client priority such that a Participant can not enter on a marketplace a principal order or non-client order that the Participant, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order:

- for the same security;

- at the same or an inferior price; and

- on the same side of the market.

The Amendments have been revised from the proposals contained in Market Integrity Notice 2006-019 – *Request for Comments – Provisions Respecting Competitive Marketplaces* (October 6, 2006) (the "Original Competitive Marketplaces Proposal").

Background to the Amendments

UMIR was drafted to accommodate the market structure envisaged by the requirements of National Instrument 21-101 - *Marketplace Operation* ("Marketplace Operation Instrument") and National Instrument 23-101 – *Trading Rules* ("CSA Trading Rules") that became effective December 1, 2001. Effective January 4, 2004, a number of changes were made to Marketplace Operation Instrument and the CSA Trading Rules (the 2004 ATS Rule Amendments) including:

- the deletion of the requirement for a data consolidator and the substitution of the concept of an information processor or an "information vendor that meets the standards set by a regulation services provider";

- the deletion of the concept of the "principal market" for trading of a security; and

- the deletion of the requirement for marketplaces to maintain an electronic connection to every other marketplace trading the same securities.[2]

UMIR was also drafted in contemplation of the order types and trading facilities which existed on the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSXV") as of April 1,

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[1]   The Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, by the Autorité des marchés financiers (the "Recognizing Regulators").

[2]   Canadian Securities Administrators. *Notice of Amendments to National Instrument 21-101 Marketplace Operation* and Companion Policy 21-101CP and National Instrument 23-101 – *Trading Rules* and Companion Policy 23-101CP, (2003) 26 OSCB 7147.

2002. There was a need to ensure that the concepts used in UMIR not only reflected the 2004 ATS Rule Amendments but are flexible enough to apply to order types and trading facilities that have been developed, or are proposed, by other competitive marketplaces.

The Original Competitive Marketplaces Proposal set out a series of proposed amendments to UMIR to facilitate the introduction of multiple marketplaces trading the same securities which incorporated revisions to various amendment proposals originally published in:

- Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting "Off-Marketplace" Trades* (April 29, 2005);

- Market Integrity Notice 2005-018 – *Request for Comments – Definition of "Applicable Market Display"* (June 10, 2005); and

- Market Integrity Notice 2005-019 – *Request for Comments – Provisions to Accommodate the Introduction of Multiple Marketplaces* (June 10, 2005).

On December 15, 2006, the Canadian Securities Administrators ("CSA") published notice of approved amendments to the Marketplace Operation Instrument and the CSA Trading Rules[3] (the "2006 ATS Rule Amendments"). The 2006 ATS Rule Amendments clarified the CSA requirements by amending Companion Policy 23-101CP to add the following subsection:

> In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all marketplaces (not just marketplaces where a dealer is a participant). This does not necessarily mean that a dealer must have access to real-time data feeds from each marketplace but that it should establish reasonable policies and procedures for best execution that include taking into account order and/or trade information from all appropriate marketplaces in the particular circumstances. The policies and procedures should be monitored on a regular basis. A dealer should also take steps, where appropriate, to access orders which may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.[4]

The Amendments conform UMIR to the requirements of the CSA as set out in the 2006 ATS Rule Amendments regarding the obligation of a Participant to consider, if appropriate, information from all marketplaces trading a particular security. The Amendments recognize that not all marketplaces:

- provide transparency for orders entered on that marketplace;

- have the same means of providing post-trade transparency;

- may be accessed by either Participants or Access Persons; and

- provide fully-automated order matching and trade execution.

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[3] Canadian Securities Administrators. *Notice of Amendments to National Instrument 21-101 Marketplace Operation* and Companion Policy 21-101CP and National Instrument 23-101 – *Trading Rules* and Companion Policy 23-101CP, (2006) 29 OSCB 9731.

[4] Companion Policy 23-101CP, ss 4.1(8).

These differences in data dissemination, marketplace access and market structure impact on the steps which a Participant or Access Person must take in order to comply with various provisions of UMIR including:

- Rule 3.1 – Restrictions on Short Sales;

- Rule 5.1 – Best Execution of Client Orders;

- Rule 5.2 – Best Price Obligation;

- Rule 5.3 – Client Priority;

- Rule 7.7 – Restrictions on Trading During Certain Securities Transactions; and

- Rule 8.1 – Client-Principal Trading.

RS issued Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplace*s (September 1, 2006) to provide additional guidance on the application and interpretation of these rules in the current multiple marketplace environment. The Amendments incorporate directly into the Rules and Policies certain aspects of the guidance provided in that Market Integrity Notice regarding the obligations of a Participant or Access Person to consider order or trade information from marketplaces. The guidance set out in Market Integrity Notice 2006-017 continues to be applicable following the adoption of the Amendments except that the change to the client priority rule made by the Amendments requires that the guidance provided on the application of the client priority rule be modified.[5]

In the notice which accompanied the proposed 2006 ATS Rule Amendments, the CSA confirmed their ongoing review of "trade-through" and "best execution" obligations.[6] The provisions of UMIR and their interpretation and application will be modified to conform to the positions adopted by the CSA. Upon the publication of any proposed amendments to the Marketplace Operation Instrument and CSA Trading Rules respecting trade-through or best execution obligations, RS will issue additional Market Integrity Notices to request comments on proposed consequential amendments to UMIR and to provide further guidance on trading practices that may be required as a direct consequence of the final position adopted by the CSA with respect to trade-through obligations.

The Recognizing Regulators continue their review of proposed amendments to UMIR published in Market Integrity Notice 2005-012 – *Request for Comments – Provisions Respecting "Off-*

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[5]   See "Variation of Client Priority Obligations" on pages 14 to 16. With the adoption of the Amendments, the guidance provided in the second and third sentence of the first paragraph under the heading "Rule 5.3 – Client Priority" in Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplace*s (September 1, 2006) should be varied to read as follows:

As a general requirement, a Participant shall not enter on a marketplace or an organized regulated market a principal order or non-client order that, based on information known or reasonably available to the Participant, the Participant knows will execute or has a reasonable likelihood of executing in priority to a client order received prior to the entry of the principal order or non-client order and the client order is at the same or better price than the principal or non-client order. In particular, a Participant can never intentionally trade ahead of a client order that is either a market order or a tradeable limit order received prior to the entry of the principal or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client.

[6]   See Concept Paper 23-402 – *Best Execution and Soft Dollar Arrangements,* (2005) 28 OSCB 1362 and Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations*, (2005) 28 OSCB 6190.

Marketplace" Trades (April 29, 2005). With the exception of the changes to Rule and Policy 6.1 – Entry of Orders to a Marketplace that were included in the Amendments, RS expects that the balance of these proposed amendments will be dealt with by the Recognizing Regulators in conjunction with the CSA proposals on trade-through and best execution obligations.

Summary of the Amendments

The following is a summary of the most significant aspects of the Amendments:

Definition of "Best Ask Price" and "Best Bid Price"

Prior to the Amendments, the definition of "best ask price" and "best bid price" excluded any price that may be displayed for a Special Terms Order, but did not exclude "specialty orders". While existing marketplaces do not display order information for various "specialty" orders, new marketplaces could in fact decide to do so with respect to such orders entered on their marketplace. Because of the "specialty" nature of such orders, the price for such orders to the extent that the price may be publicly available should not be part of the price discovery mechanism. The Amendments provide that the determination of the "best ask price" and "best bid price" exclude the price of any order that is:

- a Basis Order;
- a Call Market Order;
- a Closing Price Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; and
- a Volume-Weighted Average Price Order.

Definition of "Closing Price Order"

The Marketplace Operation Instrument requires that each marketplace establish operating hours for their marketplace. The Marketplace Operation Instrument does not require that each marketplace adopt the "standard" operating hours of the current exchanges in Canada. In order to facilitate trading at the closing price, trades may be permitted in special facilities at the "closing" price.

The ability to execute trades at the last sale price of a trading session facilitates index rebalancing at the closing price and other types of special transactions, such as the execution of swaps based on closing prices. In order to accommodate such trading, the Amendments provide that a "Closing Price Order" be defined as an order that is subject to the conditions that it trade at the closing sale price of the security in a trade on the marketplace on that trading day and that the trade is executed subsequent to the establishment of the closing price. Given that prices disclosed in the consolidated market display may continue to vary during the period of

time following the entry on a particular marketplace of the "Closing Price Order" and up to and including the execution of the order, it is necessary to provide exemptions for this type of order from:

- Rule 3.1 – Restrictions on Short Sales;

- Rule 5.2 - Best Price Obligation;

- Rule 5.3 – Client Priority;

- Rule 6.3 – Exposure of Client Orders; and

- Rule 8.1 - Client-Principal Trading.

While the provisions for a "Closing Price Order" accommodate trading in the Special Trading Session of the TSX, the definition of "Closing Price Order" is generic and any marketplace, including an ATS, is able to establish a session or facility to accommodate trades at the closing prices on that marketplace.

Definition of "Consolidated Market Display"

The definition of "consolidated market display" adopted by the Amendments differs from the previous definition of the term by:

- eliminating the requirement that the consolidated feed produced by an information processor or the information on orders and trades produced by an information vendor contain information on orders or trades for a particular security from the "principal market" for that security; and

- providing that, if there is not an information processor, information provided by one or more information vendors may be relied upon as a "consolidated market display" only if provided to the information vendors in accordance with the Marketplace Operation Instrument.

The 2006 ATS Rule Amendments confirmed the CSA requirements that, in handling an order for a security that trades on multiple marketplaces, a "dealer should consider information from all marketplaces (not just marketplaces where a dealer is a participant)".[7] The Amendments conform the definition of "consolidated market display" to the requirements of the CSA as set out in the 2006 ATS Rule Amendments such that the consolidated market display will contain order information for a particular security from each marketplace that disseminates order information to the information processor or an information vendor and will contain trade information for a particular security from each marketplace trading the particular security. As previously noted, Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplace*s (September 1, 2006) provided additional guidance regarding the obligations of a Participant or Access Person to consider order or trade information from particular marketplaces based on differences in data dissemination, marketplace access and market structure.

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[7] Companion Policy 23-101CP, ss 4.1(8).

Definition of "Intentional Cross" and "Internal Cross"

The definition of "intentional cross" has been amended to recognize that a subscriber to an ATS is capable of entering an intentional cross.[8] Similarly, the definition of "internal cross" has been amended to recognize that a subscriber to an ATS that is a portfolio manager is capable of entering an internal cross. As previously drafted, the definitions of "intentional cross" and "internal cross" were limited in application to a Participant handling a client order. Since intentional crosses or internal crosses are often excluded from the calculation of volume-weighted average prices or obligations for "in line with volume" orders, the Amendments will help to insure that trades executed on ATSs that are in fact an "intentional cross" or an "internal cross" do not distort trading decisions.

Definition of "Last Sale Price"

While the price at which an Opening Order or a Market-on-Close Order executes may be considered to have properly established the market price of a security at the time of execution, other types of "specialty" orders also reflect terms and conditions that should be excluded from the determination of "last sale price" (which is used principally to determine the price at which a short sale may be made under Rule 3.1 and the price at which market stabilization and market balancing may be undertaken under Rule 7.7). Under the Amendments, the execution of a Special Terms Order would be able to establish the last sale price only if the Special Terms Order executed with an order or orders other than a Special Terms Order.

Definition of "Market-on-Close Order"

The Amendments clarify the difference between a "Market-on-Close Order" and a "Closing Price Order" by amending the definition of a "Market-on-Close Order" to require that the order be entered for the purpose of not just executing at the closing price but also participating in the calculation of that closing price.

Definition of "Opening Order"

Previously, an order entered on a marketplace to execute at the opening price of the security on that marketplace continued to qualify as an Opening Order even if the order did not participate in the initial trades for the security on that marketplace. An Opening Order is exempt from various UMIR requirements, including the "best price" obligation under Rule 5.2 and the client-principal trading requirements under Rule 8.1, since the price at which the order will trade is not known at the time of the entry of the order. The Amendments provide that an order ceases to qualify as an "Opening Order" if the order does not participate in the initial trades in the security on that marketplace. The Amendments also clarify that for an order to qualify as an "Opening Order", it must be entered on the marketplace prior to the opening of trading on that marketplace.

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[8]   For example, if a foreign dealer is a subscriber to an ATS that dealer may be capable of entering an "intentional cross" between two of its clients or between itself as principal and a client.

Definition of "Special Terms Order"

Prior to the Amendments, UMIR defined a "Special Terms Order" as an order to purchase or sell:

- less than a standard trading unit;

- that is subject to a condition other than price or date of settlement; or

- that on execution would settle other than the third business day following execution or other date stipulated for settlement by a direction of a recognized exchange ("Exchange") or a recognized quotation and trade reporting system ("QTRS").

In addition, UMIR defines a number of "specialty" orders such as a Basis Order, Call Market Order, Market-on-Close Order, Opening Order and Volume-Weighted Average Price Order. As outlined above, the Amendments added a definition of "Closing Price Order". Each of these order types could be considered to be a "Special Terms Order". However, a "Special Terms Order" is not exempt from Rule 8.1 dealing with Client-Principal Trading (which requires a "better price" when a Participant executes the trade as principal against the client order that is a Special Terms Order) and is exempt from the "best price obligation" under Rule 5.2 only if certain additional conditions are met. In order to clarify the requirements applying to order types on future marketplaces, the Amendments vary the definition of a "Special Terms Order" to specifically exclude the "specialty" order types.

In drafting UMIR, it was anticipated that the "conditions" that would be added to a Special Terms Order would be ones that were added by the client or person entering the order. It was not anticipated that "conditions" imposed by a marketplace on the entry of an order (such as the order being of a minimum size) would qualify an order to be treated as a "Special Terms Order". The Amendments clarify that conditions imposed by the marketplace on order entry or order execution will not make the order a "Special Terms Order" for the purposes of UMIR.

Abuse of a Market Maker

Prior to the Amendments, one of the examples given in Policy 2.1 of unacceptable activity that would constitute a violation of Rule 2.1 on just and equitable principles is order splitting to take advantage of the market maker obligations in respect of odd lot trades on the TSX and TSXV. Given that another Exchange, including CNQ, or a QTRS may have market making systems and provide for different obligations on the market makers, the Amendments make the language of the Policy more generic. The Amendments indicate that entering orders to take advantage of or abuse market makers would be an example of an activity that would be considered contrary to the requirements to conduct business openly and fairly and in accordance with just and equitable principles of trade. The primary obligation for monitoring for compliance with this requirement will be on the marketplaces that provide for market maker obligations. If abusive behaviour is detected by a marketplace, RS will be in a position to undertake disciplinary proceedings, in accordance with the provisions of UMIR, against a Participant or Access Person that has engaged in such activities.

Best Execution Obligation

The obligation to monitor information respecting orders entered on and trades executed on marketplaces trading the same security falls to the Participant handling the client order. Neither UMIR nor the CSA Trading Rules requires a Participant necessarily to maintain trading access to every Canadian marketplace on which a security may trade or to have real-time data feeds from each marketplace. However, the 2006 ATS Rule Amendments confirmed the CSA requirement that each Participant should take into account order and trade information from all marketplaces that trade the same securities when discharging their best execution obligations. As set out in the 2006 ATS Rule Amendments, the CSA expects that a Participant will make arrangements with another dealer who is a participant of a particular marketplace or will route an order to a particular marketplace, where appropriate. In the view of RS, a Participant would be expected to make such arrangements if the particular marketplace had demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for a specific security relative to the size of the client order.

RS is also of the view that a Participant, in discharging its best execution obligation, should consider possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:

- the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client; and

- the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.

RS set out this guidance on the interpretation of the "best execution" obligation in Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplace*s (September 1, 2006). The Amendments incorporate this aspect of that guidance into Part 2 of Policy 5.1. In the view of RS, these requirements are the minimum that a Participant should do in obtaining best execution. For example, if a non-transparent marketplace has been structured to provide price improvement over the best ask price or best bid price, the Participant may wish to consider possible trading opportunities on that marketplace if the non-transparent marketplace has demonstrated that there is a reasonable likelihood that it will have liquidity for the specific security

In addition, the Amendments provide that RS would consider two additional factors when determining whether a Participant has diligently pursued the best execution of a client order, namely:

- any specific client instructions regarding the timeliness of the execution of the order; and

- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada).

Prior to the Amendments, the existence of specific client instructions on timeliness of execution was listed in Policy 5.2 as one of the factors to be taken into account in determining whether a Participant has fulfilled its "best price obligation". In the view of RS, this factor is more

appropriate for best execution since a client can not consent to the Participant trading at an inferior price on another marketplace. 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.[9] (Even if 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.)[10]

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. Prior to the Amendments, this obligation was qualified by a number of factors set out in Part 1 of Policy 5.2 including:

- the information available to the Participant from the information processor or information vendor;

- whether the Participant is a member, user or subscriber of the marketplace with the best price;

- any specific client instructions regarding the timeliness of the execution of the order; and

- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada).

In accordance with the requirements of the CSA as set out in the 2006 ATS Rule Amendments that would apply when a Participant is trading a security that is not subject to UMIR, a Participant must take into account order information from all marketplaces trading a particular security (and not just marketplaces for which the Participant is a member, user or subscriber). 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. In order to conform to the requirements of the CSA, the Amendments delete as considerations the information available to the Participant and whether the Participant is a member, user or subscriber of the marketplace with the best price. In addition, as set out above under the heading "Best Execution Obligation", the Amendments delete as considerations for determining compliance with the "best price obligation" any specific client instructions regarding the timeliness of the execution of the order and whether markets outside of Canada have been considered and move these two factors to be taken into account in determining compliance with the "best execution" obligation.

In the view of RS, the "best ask price" and "best bid price" can only be determined by reference to orders on marketplaces that provide pre-trade transparency and only with respect to that portion of any order that is "visible" in the consolidated market display. In order for a Participant

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[9]   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 also consider whether it would be appropriate in the particular circumstances to look at markets outside of Canada.

[10]   UMIR Policy 5.2 – Best Price Obligation, Part 2 – Trade-Through of Marketplaces.

to demonstrate that it had made "reasonable efforts" to execute a client order at the best price, RS expects the Participant will deal with "better-priced" orders on another marketplace if that marketplace:

- disseminates order data in real-time and electronically through one or more information vendors;

- permits dealers to have access to trading in the capacity as agent;

- provides fully-automated electronic order entry; and

- provides fully-automated order matching and trade execution.

RS set out this guidance on the interpretation of the "best price" obligation in Market Integrity Notice 2006-017 - *Guidance – Trading Securities on Multiple Marketplace*s (September 1, 2006). The Amendments incorporate this guidance into Part 1 of Policy 5.2. Additional changes to the "best price" obligation under Rule 5.2 of UMIR should be anticipated if there are any amendments to the Marketplace Operation Instrument or the CSA Trading Rules respecting the trade-through obligation.[11]

Client Priority

The provisions of UMIR governing "client priority" have been subject to a number of amendments and proposals. The following sections outline a summary of:

- the prior amendments to the client priority rule that were effective May 26, 2006;

- the additional exemption to the client priority rule as proposed in the Original Competitive Marketplaces Proposal as further expanded in the Amendments; and

- the variation of the "client priority" obligation as made by the Amendments.

Prior Amendments

Effective May 26, 2006[12], Rule 5.3 of UMIR was amended to provide that a Participant must give priority to a client order over all principal orders and non-client orders that are entered on a marketplace after the receipt of the client order:

- for the same security;
- at the same or better price;
- on the same side of the market; and
- on the same conditions and settlement terms.

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[11] Reference should be made to Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations*, (2005) 28 OSCB 6190.

[12] Reference should be made to Market Integrity Notice 2006-012 – *Amendment Approval – Provisions Respecting Client Priority* (May 26, 2006).

The changes to Rule 5.3 that were effective May 26, 2006 varied a number of exceptions to the requirement to provide client priority including the circumstances under which a Participant could rely on the allocations made by the trading system of a marketplace in certain circumstances. In particular, these changes recognized that if there are multiple marketplaces trading the same securities and each marketplace has distinct allocation algorithms, the interests of a client could be affected intentionally or unintentionally based on the marketplace on which either the client order or the principal order or non-client order is entered. The changes to Rule 5.3 that became effective on May 26, 2006 provided a Participant could only rely on the trading system exemption if:

- the security which is the subject of the orders trades on a single marketplace;

- the principal order or non-client is a Call Market Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order; or

- each of the client order and the principal order or non-client order was entered on the same marketplace.

In each case, the ability to rely on the trading system allocation was subject to the additional requirements that the client order was entered on a marketplace upon receipt and was not varied subsequent to entry on the marketplace except on the specific instructions of the client.

Additional Exemptions and Exceptions

The Amendments further expand the circumstances in which a Participant can rely on the allocation made by the trading systems of the marketplaces to include:

- *Client-Instructed Destination* - The Participant would not have to provide priority to a client order received prior to the entry of a principal order or non-client order entered on a marketplace if the client has instructed the Participant with respect to the marketplace on which the client order is to be entered. Clients may provide specific or standing instructions that orders which are not immediately tradable are to be entered on a particular marketplace. (If a client order would be immediately tradable as against orders displayed in a consolidated market display, the "best price" obligation under Rule 5.2 would require that the Participant send orders to the other marketplace sufficient to satisfy the better-priced orders prior to or concurrent with the execution of the client order.) With the client selecting the marketplace on which its order is entered, the Participant has not prejudiced the interests of the client by entering a principal order or non-client order on another marketplace. "Best price" and trade-through obligations will preclude the possibility that the principal order or non-client order will trade at an "inferior price" ahead of the client order though the principal or non-client order may be executed at the same price as the client order. This exemption had been proposed as part of the Original Competitive Marketplaces Proposal.

- *Anonymous Client Orders* – The Participant would not be obligated to provide priority to a prior client order if the client had instructed the Participant that the order be entered as an "anonymous" order on a marketplace such that the identifier of the Participant would not be disclosed in the order information disseminated to information vendors. RS

concluded that such an exemption was justified in order to facilitate compliance efforts by Participants particularly since many persons entering principal or non-client orders would not be able to ascertain that the order on a marketplace was in fact the order of a client of the Participant.

The Amendments further expanded the circumstances in which a principal order or a non-client order entered by a Participant would not have to provide priority to a client order previously entered on a marketplace to include:

- *Automated Principal Trading* – With the significant growth in algorithmic trading, RS concluded that principal orders that were automatically generated by a system operated by the Participant or on behalf of the Participant based on pre-determined order and trading parameters established, programmed and enabled for trading prior to the receipt of the client order should be exempt from the application of the client priority rule.

- *Managed Accounts* – RS concluded that a Participant should not have to provide priority to a client order if the principal order or non-client order was for a managed account and the client order is also for a managed account under the direction of the same person and in respect of which executions are allocated between the various managed accounts on an equitable basis in accordance with the established practices of the Participant. In part, the allocations of the executions for the purchases by managed accounts will be governed by the policies established by the Investment Dealers Association in the handling of managed accounts.

Variation of Client Priority Obligation

Following the publication of the Original Competitive Marketplaces Proposal, Participants continued to point out the practical difficulties that they would face in attempting to monitor for compliance with the client priority rule. The difficulties were particularly evident for the Participants having multiple independent trading platforms that preclude the sharing of information on client orders within the firm. If a Participant entered a client order on the most liquid marketplace, the Participant could then enter a principal order on a second marketplace with traditionally less liquidity. If, due to the vagaries of trading activity, the principal order traded ahead of the client order, the Participant would have be required to give that fill up to the client. In effect, the Participant, while acting in the best interests of the client in exposing the client order to the marketplace that traditionally displays the most liquidity, becomes the "guarantor" of the execution of the client order if the Participant enters an order on any other marketplace.

Perhaps one of the unintended consequences of the client priority provisions as approved on May 26, 2006 was that a Participant would be able to comply with the rule if all orders which are not immediately executable are booked onto a single marketplace. Complying with client priority requirements might therefore come at the expense of "best execution" and be proffered as the rationale for avoiding marketplaces other than the principal market. The resulting effect of such behaviour may be a rule that is more "anti-competitive" (in terms of the development of multiple competitive marketplaces) than protective of the interests of a client, particularly if

innovative features of other marketplaces are bypassed in order to ensure strict compliance with client priority requirements.

RS recognizes that many Participants have limited resources with which to accommodate the introduction of multiple marketplaces. RS would prefer that those resources be devoted to complying with "best execution" and "best price" obligations. If those two obligations are fulfilled, the impact of client priority should be "incidental".

In response to these comments and concerns, RS has revised the Original Competitive Marketplaces Proposal to provide an alternative test for client priority that would preclude a Participant from "knowingly" trading ahead of or alongside a client. A Participant would be required to take into account information which was known or "reasonably available". For example, if a trader for a Participant could have easily verified that a particular order on a marketplace was a client order of the Participant, the entry of a principal order or non-client order on another marketplace that the trader knows or reasonably expects would trade prior to the clientorder will result in the Participant owing the client a fill should the principal order or non-client order in fact trade in priority to the client order unless a specific exemption from the client priority requirements otherwise applies.

While the rule as adopted on May 26, 2006 protected each client order, the reformulation of client priority set out in Rule 5.1(1) of UMIR under the Amendments would provide general protection against "intentional abuses" while at the same time accepting that there will be incidences when a subsequent principal order or non-client order will trade in priority to that of a comparable client order entered previously on a marketplace simply due to the vagaries of the multiple marketplace environment in what might be termed "inadvertent" breaches of the principle of client priority. Since the Participant could not have known that the principal order or non-client order would trade or be reasonably expected to trade in priority to a prior client order, the Participant would not be under an obligation to re-allocate any fill of the principal order or non-client order to the outstanding client order.

Part 2 of Policy 5.3 provides that a Participant can never intentionally trade ahead of a client order that is either a market order or tradeable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client. Examples of "intentional trades" include, but are not limited to:

- withholding a client order from entry on a marketplace (or removing an order already entered on a marketplace) to permit the entry of a competing principal or non-client order ahead of the client order;

- entering a client order in a relatively illiquid market (other than on the instructions of the client) and entering a principal or non-client order in a more liquid marketplace where the principal or non-client order is likely to obtain faster execution;

- adding terms or conditions to a client order (other than on the instructions of the client) so that the client order ranks behind principal or non-client orders at that price;

- putting terms or conditions on a principal or non-client order for the purpose of differentiating the principal or non-client order from a client order that would otherwise have priority at that price; and

- entering a principal order or non-client order as an "anonymous order" (without the identifier of the Participant) which results in an execution in priority to a previously entered client order that discloses the identifier of the Participant.

Rule 5.3 as adopted on May 26, 2006 contained four exceptions to client priority that required the director, officer, partner, employee or agent of the Participant who entered the principal order or the non-client order to be unaware that the client order had either not been entered or that an entered order was a client order. The exceptions wee:

- the client specifically instructs the Participant to withhold entry of the order;

- the client specifically grants discretion to the Participant with respect to the entry of the order;

- the Participant withholds the client order from entry in accordance with Rule 6.3 in a bona fide attempt to get better execution for the client; and

- the client enters the order directly on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display.

With the reformulation of the basic charging provision of Rule 5.3(1) to include "knowledge" as a component, there was no longer a need to retain these four exemptions in their present form (and the first three were repealed outright). However, under the Amendments, a Participant would be able to enter a principal order or non-client order that the Participant knew or should have known would trade ahead of a client order if the client order had been entered directly by the client on a marketplace. By assuming responsibility for the entry of the order, the client also assumes certain of the risk regarding the timeliness of the execution of the order.

The reformulation of client priority set out in Rule 5.3(1) of UMIR under the Amendments has been introduced on a trial basis for a period of at least one year following the date of this Market Integrity Notice. During the period, RS will monitor the incidences of "inadvertent" breaches of client priority and the findings will be reported to the Board, and if requested, to the applicable securities commissions. Based on the results of this trial, the Board will at the end of the trial period be asked to confirm the changes to Rule 5.3 or to adopt additional requirements to reduce the incidences of inadvertent breaches. At the time that the Board considers the results of the trial, Participants will have had at least twelve months to adjust to the requirements of a multiple marketplace environment and to become accustomed to the trading patterns of particular securities between the competitive visible marketplaces.

Trading Increments

Under the Amendments, Rule 6.1 sets out the minimum trading increment as one cent for orders with a price of $0.50 or more and one-half cent for orders less than $0.50. The standardization of minimum trading increments will permit the direct comparison of whether an order on a particular marketplace is a "better-priced" order and allow a Participant to determine

whether a period of time to move the market is required in order to execute an intentional cross or prearranged trade. The Amendments provide that trades resulting from Basis Orders, Call Market Orders or Volume-Weighted Average Price Orders are to be reported to the information processor or an information vendor at the closest trading increment unless otherwise permitted by the information processor or information vendor. Notwithstanding the price reported to the information processor or information vendor, the trade may be confirmed to the parties to the trade at whatever fraction of a trading increment is permitted by the marketplace on which the traded is executed.

Designation and Identifiers

The Amendments introduced the concept of a "Closing Price Order". To accommodate the introduction of this order type, the Amendments also expanded Rule 6.2 to provide that a Closing Price Order must contain a designation acceptable to the Market Regulator. A Closing Price Order that is properly designated will be exempt from the application of certain UMIR provisions. (See "Definition of Closing Price Order" above.)

Requirement to Expose Client Orders on a Transparent Marketplace

Rule 6.3 requires, subject to certain enumerated exceptions, that client orders to purchase or sell 50 standard trading units or less of a security be immediately entered on a marketplace. The purpose of the rule was to ensure that client orders were exposed to the market. The exposure of such client orders contributes to the operating of the price discovery mechanism to establish the "best bid price" and "best ask price" used in various UMIR provisions including the best price obligation.

The Marketplace Operation Instrument provides that a marketplace need not distribute order information to an information vendor if the marketplace does not make details of orders available to persons other than those retained to assist in the operation of the marketplace. The policy objectives behind Rule 6.3 are not met if the client order is entered on a marketplace that does not provide information on the order to an information vendor for inclusion in a consolidated market display. The Amendments to Rule 6.3 require the entry of the client order on a marketplace that discloses order information in a consolidated market display.

In the view of RS, client orders which are routed to a non-transparent marketplace to determine if liquidity is available on that marketplace at prices that are the same or better than displayed in a consolidated market display would comply with the rule if any unexecuted portion of the client order was then immediately entered on a marketplace that did provide order transparency. As set out in Market Integrity Notice 2006-017 – *Guidance – Securities Trading in Multiple Marketplaces* (September 1, 2006), a Participant may have a "best execution" obligation under Rule 5.1 to consider non-transparent marketplaces in certain circumstances when handling a client order.

Powers of Market Integrity Officials

As a result of revisions to the client priority requirements made by the Amendments, the Amendments also expanded the power of Market Integrity Officials to order the satisfaction of a client order at a price and up to the volume of a trade of a principal order or non-client order that has executed without complying with the requirements of Rule 5.3 with respect to the provision of client priority.   Prior to the Amendments, Rule 5.3 mandated that priority be given to client orders in certain circumstances and a Participant was expected to reallocate executions in order to comply with those requirements. Under the provisions introduced by the Amendments, there would not be a ready remedy for a breach of the client priority requirements without a consequential amendment to Rule 10.9 to specifically provide a Market Integrity Official with the power to order the satisfaction of a client order when Rule 5.3 has not been complied with.

The Amendments also made a minor housekeeping amendment to another provision of Rule 10.9 to replace the word "disallow" with "vary" in clause (d) so that a Market Integrity Official may vary or cancel any trade which, in the opinion of such Market Integrity Official, is unreasonable or not in compliance with the Rules or any Policy. With this change, clause (d) parallels the language in clause (e) which permits a Market Integrity Official to vary or cancel a trade, in certain circumstances, upon the application of the buyer and seller.

Summary of the Revisions from the Original Competitive Marketplaces Proposal

Based on comments received in response to the Request for Comments on the Original Competitive Marketplaces Proposal, the Original Competitive Marketplaces Proposal was revised prior to the approval of the Amendments. The changes to the Original Competitive Marketplaces Proposal are highlighted in Appendix "B" and may be categorized as either "Revisions to Client Priority" or "General Clarifications" as follows:

Revisions to Client Priority

The Amendments varied the application of the client priority rule such that an obligation is owed if, based on information known or reasonably available to the Participant, the Participant enters a principal or non-client order that the Participant knows or should have known will execute or has a reasonable likelihood of executing in priority to a prior client order that is at the same or better price than the principal or non-client order.   With "knowledge" becoming a component of the basic charging provision respecting client priority, certain of the previous exemptions from client priority that were based on knowledge have either been deleted or varied. With the change in the requirements of the client priority rule, the Amendments also made a change in the provisions of UMIR governing the power of Market Integrity Officials to specifically authorize a Market Integrity Official to direct that an outstanding client order be satisfied if there was not compliance by the Participant with the requirements of the client priority rule.

The Amendments also expanded the exceptions to the application of client priority from that proposed in the Original Competitive Marketplaces Proposal. The additional exceptions would permit a Participant to:

- *Anonymous Client Orders and Client-Instructed Destination -* rely on the allocation made by the trading system of a marketplace when the client has specifically instructed that the client order be entered on a particular marketplace or be entered as an anonymous order;

- *Automated Principal Trading -* operate algorithmic or automated trading systems that have been programmed and enabled prior to the receipt of the client order; and

- *Managed Accounts -* enter orders on behalf of managed accounts if the client order is also on behalf of a managed account provided allocations between the managed accounts are made on an equitable basis in accordance with the established practices of the Participant.

General Clarifications

The Amendment made a number of minor clarifications to the Original Competitive Marketplaces Proposal including:

- *Definition of "consolidated market display"* – An editorial revision has been to the definition to delete the phrase "that meets the standards set". Part 7 of the Marketplace Operation Instrument may establish various requirements but there may not necessarily be a provision for an information vendor to meet established standards.

- *Definition of "Closing Price Order"* – The definition has been revised to clarify that closing price referenced is the "closing sale price".

- *Definition of "last sale price"* – The definition has been revised to specifically exclude a special terms order from setting the last sale price unless the special terms order executed with an order or orders that were not special terms orders. If a special terms order trades outside the prevailing market, it should not set the last sale price.

- *Definition of "Opening Order"* – The definition has been revised to clarify that to qualify as an "opening order" an order must be entered prior to the general opening of trading on the particular marketplace.

- *Power of Market Integrity Official* – A housekeeping revision is proposed to clause 10.9(1)(d) to replace the word "disallow" with "vary" in order that the structure of the provision parallels the language used in clause 10.9(1)(e).

- *Entry of Orders to a Marketplace* – The policy governing the reporting of trade prices for a Basis Order, Call Market Order or Volume-Weighted Average Price Order would be revised to permit the trade price to be other than a standard trading increment if the marketplace is able to report such a price to the information processor or information vendor.

Summary of the Impact of the Amendments

The principal impacts of the Amendments are to:

- vary the application of the client priority rule such that an obligation is owed if, based on information known or reasonably available to the Participant, the Participant enters a principal or non-client order that the Participant knows or should have known will execute or has a reasonable likelihood of executing in priority to a prior client order that is at the same or better price than the principal or non-client order;

- expand the exceptions to the client priority rule to permit a Participant to:

  o rely on the allocation made by the trading system of a marketplace when the client has specifically instructed that the client order be entered on a particular marketplace or be entered as an anonymous order,

  o operate algorithmic or automated trading systems that have been programmed and enabled prior to the receipt of the client order, and

  o enter orders on behalf of managed accounts if the client order is also on behalf of a managed account provided allocations between the managed accounts are made on an equitable basis in accordance with the established practices of the Participant;

- clarify the application of various concepts in UMIR to facilities that may be offered by ATSs and other marketplaces;

- require a minimum one cent trading increment for orders entered at $0.50 or more (while permitting a Basis Order, Call Market Order or a Volume-Weighted Average Price Order to execute at the price increment permitted by the marketplace on which the trade is executed);

- permit certain "specialty trades" (such as trades resulting from a Call Market Order or a Volume-Weighted Average Price Order) to execute at non-standard trading increments provided the trade price is reported to an information vendor is rounded to the nearest trading increment unless the information vendor permits the trade to be reported at a price that is a non-standard trading increment;

- limit the marketplaces on which a client order for 50 standard trading units or less may be exposed to a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument;

- remove access to a marketplace and availability of information as considerations to be taken into account in determining whether a Participant has satisfied its "best price" obligation; and

- clarify the factors to be taken into account in determining whether a Participant has satisfied its "best execution" and "best price" obligations.

Appendices

- Appendix "A" sets out the text of the Amendments to the Rules and Policies respecting competitive marketplaces; and

- Appendix "B" sets out a summary of the comment letters received in response to the Request for Comments on the Original Competitive Marketplaces Proposal set out in Market Integrity Notice 2006-019 - *Request for Comments – Provisions Respecting Competitive Marketplaces* (October 6, 2006). Appendix "B" also sets out the response of RS to the comments received and provides additional commentary on the revisions the Amendments made to the Original Competitive Marketplaces Proposal. Appendix "B" also contains the text of the relevant provisions of the Rules and Policies as they read on the adoption of the Amendments. The text has been marked to indicate changes from the Original Competitive Marketplaces Proposal.

Questions / Further Information

For further information or questions concerning this notice contact:

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Appendix "A"

Provisions Respecting Competitive Marketplaces

The Universal Market Integrity Rules are amended as follows:

1. Rule 1.1 is amended by:

    (a) deleting in the definition of "best ask price" the phrase "Special Terms Order" and substituting "Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order".

    (b) deleting in the definition of "best bid price" the phrase "Special Terms Order" and substituting "Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order".

    (c) adding the following definition of "Closing Price Order":

    > **"Closing Price Order"** means an order for the purchase or sale of a listed security or a quoted security entered on a marketplace and subject to the conditions that the order trade at the closing sale price of that security on that marketplace for that trading day and that the trade is executed subsequent to the establishment of the closing price.

    (d) replacing the definition of "consolidated market display" with the following:

    > **"consolidated market display"** means, in respect of a particular security, information on orders or trades from each marketplace on which such particular security trades that has been:
    >
    > (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or
    >
    > (b) if there is no information processor, produced by an information vendor in accordance with Part 7 of the Marketplace Operation Instrument.

    (e) inserting in the definition of "intentional cross" the phrase "or Access Person" after the first occurrence of the word "Participant".

    (f) replacing the definition of "internal cross" with the following:

    > **"internal cross"** means an intentional cross between two accounts which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the holders of the accounts and includes a trade in respect of which the Participant or Access

Person is acting as a portfolio manager in authorizing the trade between the two accounts.

(g)   deleting the definition of "last sale price" and substituting the following:

> **"last sale price"** means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is:
>
> (a)   a Basis Order;
>
> (b)   a Call Market Order;
>
> (c)   a Closing Price Order;
>
> (d)   a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or
>
> (e)   a Volume-Weighted Average Price Order.

(h)   inserting in the definition of "Market-on-Close Order" the phrase "calculating and" prior to "executing".

(i)   deleting definition of "Opening Order" and substituting the following:

> **"Opening Order"** means an order for the purchase or sale of a security entered on a marketplace prior to the opening of trading on that marketplace on a trading day for the purpose of calculating and executing at the opening price of the security on that marketplace on that trading day provided an order shall cease to be an Opening Order if the order does not trade at the opening of trading of that security on that marketplace on that trading day.

(f)   replacing the definition of "Special Terms Order" with the following:

> **"Special Terms Order"** means an order for the purchase or sale of a security:
>
> (a)   for less than a standard trading unit;
>
> (b)   the execution of which is subject to a condition other than as:
>
> > (i)   to price,
> >
> > (ii)   to the date of settlement; or
> >
> > (iii)   imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or
>
> (c)   that on execution would be settled on a date other than:

(i)   the third business day following the date of the trade, or

(ii)   any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS,

but does not include an order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.

2.   Clause (f) of subsection (2) of Rule 3.1 is amended by:

(a)   deleting the word "or" at the end of subclause (iii);

(b)   inserting the phrase ", or" after the word "Order" in subclause (iv); and

(c)   adding the following as subclause (v):

(v)   a Closing Price Order.

3.   Clause (c) of subsection (2) of Rule 5.2 is amended by:

(a)   deleting the word "or" at the end of subclause (iv);

(b)   inserting the phrase ", or" after the word "Order" in subclause (v); and

(c)   adding the following as subclause (vi):

(vi)   a Closing Price Order.

4.   Rule 5.3 is deleted and the following substituted:

5.3   Client Priority

(1)   A Participant shall not enter on a marketplace or an organized regulated market a principal order or a non-client order of the Participant that, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order for the same security that is:

(a)   at the same price or a lower price than the client order in the case of a purchase or the same or a higher price than the client order in the case of a sale; and

(b)   on the same side of the market.

(2)   Despite subsection (1) but subject to Rule 4.1, a Participant is not required to give priority to a client order if:

(a)   the client specifically has consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same settlement terms;

(b)   the principal order or non-client order is:

(i)   automatically generated by the trading system of an Exchange or QTRS in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations,

(ii)   automatically generated by a system operated by the Participant or on behalf of the Participant based on pre-determined order and trading parameters established, programmed and enabled for trading prior to the receipt of the client order,

(iii) for a managed account and the client order is for a managed account under the direction of the same person and in respect of which executions are allocated between the various managed accounts on an equitable basis in accordance with the established practices of the Participant, or

(iv)   a Basis Order;

(c)   the client order has been entered directly by the client of the Participant on a marketplace;

(d)   the principal order or non-client order is executed pursuant to an allocation by the trading system of a marketplace and:

(i)   either:

(A)   the security which is the subject of the order trades on no marketplace other than that marketplace,

(B)   the principal order or non-client order is a Call Market Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order,

(C)   each of the client order and the principal order or non-client order was entered on the same marketplace,

(D) the client has instructed the Participant to enter the client order on a particular marketplace, or

(E) the client has instructed the Participant to enter the client order in a manner that does not disclose the identifier of the Participant in a consolidated market display,

(ii) the client order was entered by the Participant on that marketplace immediately upon receipt by the Participant, and

(iii) if the client order was varied or changed by the Participant at any time after entry, the variation or change was on the specific instructions of the client;

(e) either the client order or the principal order or non-client order is a Special Terms Order and the client order would not have executed in the transaction or transactions involving the principal order or non-client order due to the terms and conditions of at least one Special Terms Order; or

(f) a Market Integrity Official requires or permits the principal order or non-client order to be executed in priority to a client order.

(3) For the purposes of clause (2)(a), a client shall be deemed to have consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same conditions and settlement terms if the client order, in accordance with the specific instructions of the client, is to be executed in part at various times during the trading day or at various prices during the trading day.

5. Subsection (1) of Rule 6.1 is amended by adding at the end of the subsection the phrase "in respect of an order with a price of less than $0.50".

6. Clause (b) of subsection (1) of Rule 6.2 is amended by adding the following as subclause (v.2):

(v.2) a Closing Price Order.

7.   Subsection (1) of Rule 6.3 is amended by inserting the phrase "that displays orders in accordance with Part 7 of the Marketplace Operation Instrument" after the first occurrence of the word "marketplace".

8.   Clause (h) of subsection (1) of Rule 6.3 is amended by:

   (a)   deleting the word "or" at the end of subclause (v);

   (b)   inserting the phrase ", or" after the word "Order" in subclause (vi); and

   (c)   adding the following as subclause (vii):

      (vii)   a Closing Price Order.

9.   Subsection (2) of Rule 8.1 is amended by:

   (a)   deleting the word "or" at the end of clause (d);

   (b)   inserting the phrase "; or" after the word "Order" in clause (e); and

   (c)   adding the following as clause (f):

      (f)   a Closing Price Order.

10.   Subsection (1) of Rule 10.9 is amended by:

   (a)   deleting in clause (d) the word "disallow" and substituting "vary";

   (b)   adding the following as clause (g.1):

      (g.1)   in respect of any trade of a principal order or non-client order that has not complied with the requirements of Rule 5.3, require the Participant to satisfy the client order at the price and up to the volume of the trade which failed to comply with the requirements of Rule 5.3.

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

1.   Clause (d) at the end of Part 1 of Policy 2.1 is deleted and the following substituted:

      (d)   when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to:

         (i)   execute with one or more of the orders, or

         (ii)   purchase at a higher price or sell at a lower price with one or more of the orders

in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.

2. Policy 5.1 is amended by adding the following as Part 2:

Part 2 – Factors to be Considered

In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:

- any specific client instructions regarding the timeliness of the execution of the order;

- whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada);

- 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; and

- whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:

    o the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and

    o the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.

3. Part 1 of Policy 5.2 is amended by:

(a) deleting the first, third, fourth and fifth bullet points; and

(b) adding the phrase "; and" and the end of the second bullet point; and

(c) adding the following bullet point:

- whether a "better-priced" order is on another marketplace that:

    o disseminates order data in real-time and electronically through one or more information vendors,

    o permits dealers to have access to trading in the capacity as agent,

    o   provides fully-automated electronic order entry, and

    o   provides fully-automated order matching and trade execution

4.   Part 2 of Policy 5.3 is deleted and the following substituted:

Part 2 – Prohibition on Intentional Trading Ahead

A Participant can never intentionally trade ahead of a client order that is either a market order or tradeable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client. Examples of "intentional trades" include, but are not limited to:

- withholding a client order from entry on a marketplace (or removing an order already entered on a marketplace) to permit the entry of a competing principal or non-client order ahead of the client order;

- entering a client order on a relatively illiquid market (other than on the instructions of the client) and entering a principal or non-client order on a more liquid marketplace where the principal or non-client order is likely to obtain faster execution;

- adding terms or conditions to a client order (other than on the instructions of the client) so that the client order ranks behind principal or non-client orders at that price;

- putting terms or conditions on a principal or non-client order for the purpose of differentiating the principal or non-client order from a client order that would otherwise have priority at that price; and

- entering a principal order or non-client order as an "anonymous order" (without the identifier of the Participant) which results in an execution in priority to a previously entered client order that discloses the identifier of the Participant.

5.   Part 3 of Policy 5.3 is deleted and the following substituted:

Part 3 – No Knowledge of Client Order

The Participant must have reasonable procedures in place to ensure that information concerning client orders is not used improperly within the firm. These procedures will vary from firm to firm and no one procedure will work for all firms. If a firm does not have reasonable procedures in place, it cannot rely on the exceptions. Reference should be made to Policy 7.1

– Policy on Trading Supervision Obligations, and in particular Part 4 – Specific Procedures Respecting Client Priority and Best Execution.

If a client has instructed a Participant to withhold an order or has granted a Participant discretion with respect to the entry of an order, details of the instruction or grant of discretion must be retained for a period of seven years from the date of the instruction or grant of discretion and, for the first two years, the consent must be kept in a readily accessible location.

6.   The following be added as Part 1 of Policy 6.1:

Part 1 – Exceptions for Certain Types of Orders

Notwithstanding that all orders for a security at a price of $0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Basis Order, Call Market Order or a Volume-Weighted Average Price Order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment.

Appendix "B"

Comments Received in Response to

Market Integrity Notice 2006-019 – *Request for Comments -*

Provisions Respecting Competitive Marketplaces

On October 6, 2006, RS issued Market Integrity Notice 2006-019 requesting comments on proposed amendments to UMIR respecting competitive marketplaces ("Original Competitive Marketplaces Proposal"). In response to that Market Integrity Notice, RS received comments from:

BMO Nesbitt Burns Inc. ("BMO")
Canaccord Capital Corporation ("Canaccord")
Canadian Security Traders Association, Inc. ("CSTA")
Canadian Trading and Quotation System Inc. ("CNQ")
CIBC World Markets Inc. ("CIBC")
Global Financial Group ("egX")
GMP Securities L.P. ("GMP")
Investment Industry Association of Canada ("IIAC")
ITG Canada Corp. ("ITG")
National Bank Financial Inc. ("NBF")
Paradigm Capital Inc. ("PCI")
Perimeter Financial Corp. ("Perimeter")
Raymond James Ltd. ("RJ")
RBC Dominion Securities Inc. ("RBC")
Scotia Capital Inc. ("Scotia")
Shorcan ATS Limited ("Shorcan")
TD Newcrest ("TD")
Torys LLP on behalf of various dealers ("Torys")
TriAct Canada Marketplace LP ("TriAct")
TSX Markets ("TSX")

The following table presents a summary of the comments received together with the response of RS to those comments. Column 1 of the table highlights the revisions to the Original Competitive Marketplaces Proposal made by RS in the Amendments in response to these comments and the comments of the Recognizing Regulators. Due to the extensive revisions made in the Amendments to the previous provisions related to "client priority", the full text of Rule 5.3 and Policy 5.3 have been included.

Text of Provisions Following Adoption of the Amendments (Changes from the Original Competitive Marketplaces Proposal Highlighted)	Commentator and Summary of Comment	RS Response to Comment and Additional RS Commentary
1.1 Definitions **"best ask price"** means the lowest price of an order on any 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.		
"best bid price" means the highest price of an order on any 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.		
"Closing Price Order" means an order for the purchase or sale of a listed security or a quoted security entered on a marketplace and subject to the conditions that the order trade at the closing sale price of that security on that marketplace for that trading day and that the trade is executed subsequent to the establishment of the closing price.	**NBF –** Definition of "Closing Price Order" should specify whether is pegged to the "last sale price", "last bid" or "last ask".	While the concept of "closing price" is generally understood to be pegged to sales, RS would nonetheless propose to clarify the definition by the addition of the word "sale".
"consolidated market display" means, in respect of a particular security, information on orders or trades from each marketplace on which such particular security trades that has been: (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or (b) if there is no information processor, produced by an information vendor ~~that meets the standards set~~ in accordance with Part 7 of the Marketplace Operation Instrument.		An editorial revision has been to the definition to delete the phrase "that meets the standards set". Part 7 of the Marketplace Operation Instrument may establish various requirements but there may not necessarily be a provision for an information vendor to meet established standards.
"intentional cross" means a trade resulting from the entry by a Participant or Access Person of both the order to purchase and the order to sell a security, but does not include a trade in which the Participant has entered one of the orders as a jitney order.	**NBF –** More detail is required with respect to the difference between an intentional and internal cross.	An "internal cross" is an "intentional cross" that meets the additional criteria. The overlapping definition is intentional. The suggested change in the definition of "intentional cross" and "internal cross" is meant to recognize that a subscriber to an ATS may be capable of entering an intentional cross and that a subscriber to an ATS that is a portfolio manager may be capable of entering an internal cross.
"internal cross" means an intentional cross between two accounts which are managed by a single firm acting as a portfolio manager with discretionary authority to manage the investment portfolio granted by each of the holders of the accounts and includes a trade in respect of which the Participant or Access Person is acting as a portfolio manager in authorizing the trade between the two accounts.		

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"last sale price" means the price of the last sale of at least one standard trading unit of a particular security displayed in a consolidated market display but does not include the price of a sale resulting from an order that is: (a) a Basis Order; (b) a Call Market Order; (c) a Closing Price Order; (d) a Special Terms Order unless the Special Terms Order has executed with an order or orders other than a Special Terms Order; or (e) a Volume-Weighted Average Price Order.	**GMP –** Seeks clarification of its understanding that trades executed in TriAct do not set last sale but trades in ATX, to the extent that they are not "wash" trades, are eligible to set the "last sale price". Also, believes that dark pools should not have the ability to set "last sale price" on a principal marketplace. Only those marketplaces with visible quotes should be able to set "last sale price".	ATX will be a "matching" facility of the TSX and does not operate as a marketplace for the purposes of either UMIR or the Marketplace Operation Instrument (since ATX will not "execute" trades). "Intents" that are "matched" on ATX are sent to the central limit order book of the TSX for execution. As such, ATX will not set "last sale price". The Marketplace Operation Instrument requires each marketplace to provide accurate and timely information of each trade executed on its marketplace to the information processor or a data vendor. As all marketplaces are required to display trade information, it follows that all marketplaces should be equally entitled to set the last sale price for a particular security. As detailed in Market Integrity Notice 2006-017 - *Guidance - Securities Trading on Multiple Marketplaces* (September 1, 2006), RS is of the view that, to the extent that trade information disseminated by certain marketplaces is not readily incorporated into data feeds provided by information vendors, a Participant or Access Person when determining the "last sale price" may rely on trade information from the "principal market" for the trading of that security.
	TSX – A Special Terms Order should only be used to establish the last sale price if such order has executed in the central order book of a marketplace.	RS believes that it is to exclude a Special Terms Order from setting the last sale price except in circumstances when the Special Terms Order has executed with "regular" orders. The Amendments therefore revised the proposed definition of "last sale price". The CSA has indicated that further amendments to the ATS Rules may be proposed on the completion of the study following Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations* published by the CSA on July 22, 2005. The treatment of Special Terms Orders under UMIR (including the "best price obligation" under Rule 5.3) will be considered as part of any proposal governing trade-through requirements.
"Market-on-Close Order" means an order for the purchase or sale of a security entered on a marketplace on a trading day for the purpose of calculating and executing at the closing price of the security on that marketplace on that trading day.		
"Opening Order" means an order for the purchase or sale of a security entered on a marketplace prior to the opening of trading on that marketplace on a trading day for the purpose of calculating and executing at the opening price		The Amendments made a further revision to the definition to clarify that an "Opening Order" must be entered on a marketplace prior to the opening of trading on that marketplace on a trading day.

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of the security on that marketplace on that trading day provided an order shall cease to be an Opening Order if the order does not trade at the opening of trading of that security on that marketplace on that trading day.		

"Special Terms Order" means an order for the purchase or sale of a security:
(a) for less than a standard trading unit;
(b) the execution of which is subject to a condition other than as:
  (i) to price,
  (ii) to the date of settlement, or
  (iii) imposed by the marketplace on which the order is entered as a condition for the entry or execution of the order; or
(c) that on execution would be settled on a date other than:
  (i) the third business day following the date of the trade, or
  (ii) any settlement date specified in a special rule or direction referred to in subsection (2) of Rule 6.1 that is issued by an Exchange or a QTRS,
but does not include an order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order or Volume-Weighted Average Price Order.
	NBF – Believes that minimum order size requirements (as mandated by certain marketplaces in order to access them) should be considered a special term.	Presently, all marketplaces have established minimum order size requirements for orders entered on their marketplaces (i.e. TSX board lot). RS is of the view that conditions imposed by a marketplace on the entry of an order, such as a minimum volume for the entry of an order, do not make the order a "Special Terms Order" for the purposes of UMIR. A condition that applies to every order on a marketplace cannot be a "Special Terms Order" on that marketplace.

3.1 Restriction on Short Selling
(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:
…
  (f) the result of:
    (i) a Call Market Order,
    (ii) a Market-on-Close Order,
    (iii) a Volume-Weighted Average Price Order,
    (iv) a Basis Order, or
    (v) a Closing Price Order; or
….
	BMO – RS should provide guidance with illustrative examples of how a Participant is to comply with the "tick" test in the context of multiple marketplaces.	Market Integrity Notice 2006-*017 – Guidance - Securities Trading on Multiple Marketplaces* (September 1, 2006) provides that in the absence of an information processor a Participant when determining the "last sale price" for the purpose of Rule 3.1 may rely on trade information from the "principal market" for the trading of that security (see Notice for definition of "principal market"). In the view of RS, 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 the 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.

	Scotia – Without a centralized integrator, it will be difficult to monitor short orders entered into	See response to BMO comment above. RS is a member of a Joint CSA/SRO Working Group on Short Selling Issues which is currently

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	the non-primary market for compliance with "tick" rules. RS should consider a regulatory review on the effectiveness of short sale regulation in Canada.	examining issues related to short sale regulation in Canada. RS understands that the trading system of each marketplace that permits short sales will be capable of executing short sales in compliance with the standards set out in Market Integrity Notice 2006-017 either by pegging the execution of short sales to the last sale price on the principal market or including the last sale on their marketplace if it occurs after the last sale on the principal market.
	RBC – How will the principal market be determined? Could the principal market be outside of Canada and therefore subject to different short sale rules?	Market Integrity Notice 2006-017 – *Securities Trading on Multiple Marketplaces* (September 1, 2006) provides that RS would consider a marketplace to be the "principal market" for the trading of a security if: • trade data from the marketplace is disseminated in real-time and electronically through one or more information vendors; • in the previous calendar year, the marketplace had the largest trading volume for that security as among the marketplaces that disseminated trade data in real-time and electronically through one or more information vendors; and • the security continues to be traded on that marketplace If the security has not traded on any marketplace for at least one calendar year, RS would consider the "principal market" to be: • in the case of a listed or quoted security, the marketplace on which the security was first listed or quoted and on which the security continues to trade; or • in the case of a security other than a listed or quoted security, the marketplace on which the security was first traded and continues to trade. For the purposes of UMIR, a "marketplace" is defined as a Canadian Exchange, QTRS or ATS.
5.2 Best Price Obligation (2) Subsection (1) does not apply to the execution of an order which is: … (c) directed or consented to by the client to be entered on a marketplace as: (i) a Call Market Order,	**Perimeter –** Currently dealers are required to respect displayed orders at the "closing price", yet "Closing Price Orders" may trade through displayed liquidity on another marketplace. Favour uniform application whereby orders are able to trade through "Closing Price Orders" in the same manner as "Closing Price Orders" may trade through other orders.	The ability to execute trades at the "last sale price" of a trading session accommodates index rebalancing at the closing price. For example, the value of the S&P/TSX 60 Index is calculated based on the price of the constituent securities on the TSX and does not take into account the prices of trades on other marketplaces even when those other marketplaces may open earlier or later than the regular trading session on the TSX. Various Exchange-traded Funds, mutual funds and other financial instruments which are designed to

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(ii) a Volume-Weighted Average Price Order,
 	
   (iii) a Market-on-Close Order,
 	
   (iv) an Opening Order,
 	
   (v) a Basis Order, or
 	
   (vi) a Closing Price Order.
		track certain indices therefore need to execute trades in the index-constituent securities at the closing prices used to calculate the underlying index. In order accommodate such "indexing" it is necessary to provide an exemption from Rule 5.2 for a "Closing Price Order". Other orders, particularly those of retail investors, in the market at the same time are seeking the "best available" price. Participants handling such other orders must therefore consider a "Closing Price Order" if the "Closing Price Order" represents the best price against which to execute their client orders.

5.3   Client Priority
 	
(1) A Participant shall <u>not enter on a marketplace or an organized regulated market a</u> –principal order <u>or a</u> non-client order of the Participant that<u>, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client</u> order for the same security that is:
 	
(a) at the same price or a <u>lower</u> price <u>than the client order</u> in the case of a purchase or the same or a <u>higher</u> price <u>than the client order</u> in the case of a sale; and
 	
(b) on the same side of the market.
 	
(2) Despite subsection (1) but subject to Rule 4.1, a Participant is not required to give priority to a client order if:
 	
(a) the client specifically has consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same settlement terms;
 	
(b) ~~the client order has not been entered on a marketplace as a result of:~~
 	
   (i) ~~the client specifically instructing the Participant to deal otherwise with the particular order,~~
 	
   (ii) ~~the client specifically granting discretion to the Participant with respect to entry of the order, or~~
 	
   (iii) ~~the Participant determining in accordance with Rule~~
	BMO – Concerned that with no electronic interconnected marketplaces and insufficient time to develop enterprise-wide smart order router the proposal to limit the " trading system allocation" exemption to securities trading on a single marketplace will result in a significant manual re-allocations, re-contracting and corrections. Also, clarification is required on how to deal with "give-ups" for inadvertent breaches of client priority across markets.	With the publication of Market Integrity Notice 2006-012 – *Amendment Approval – Provisions Respecting Client Priority* (May 26, 2006), RS provided notice of the approval by the applicable securities regulatory authorities of amendments (originally published for comment in June of 2005) to UMIR respecting client priority. The amendments provided a Participant the ability to rely on the allocations made by the trading system of a marketplace in certain circumstances. The Amendments further expand the circumstances in which a Participant could rely on the allocations of the trading systems of the marketplaces. In particular, a Participant would not have to provide priority to a client order received prior to the entry of a principal order or non-client order entered on a marketplace if the client has instructed the marketplace on which the client order is to be entered.
		
		The obligation to re-allocate shares to clients resulting from breaches of client priority is not a new requirement. (For example, under the rule in effect since the introduction of UMIR, a Participant could not rely on the trading system allocation if the client order had not been entered on a marketplace immediately upon receipt or if one of the orders has been executed on an organized regulated market outside of Canada.) As such, RS expects that a Participant already has in place adequate procedures for the "journaling" of re-allocations to clients. In light of the amendments to UMIR 5.3, Participants may need to revisit their policies to ensure that existing policies continue to be appropriate.

	Canaccord, CNQ, ITG, NBF and **RBC -** RS should focus on patterns of entering client orders on markets where they are not filled	Prior to the Amendments, Rule 5.3 provided that, subject to specific conditions and exemptions, a Participant was required to give priority to the execution to client orders over all principal orders and

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~~6.3(1)(e) that, based on market conditions, entering the order would not be in the best interests of the client,~~ ~~and no director, officer, partner, employee or agent of the Participant with knowledge that the client order has not been entered on a marketplace enters a principal order or a non-client order for the same security on the same side of the market on the same conditions and settlement terms;~~ (b~~c~~) the principal order or non-client order is: (i) automatically generated by the trading system of an Exchange or QTRS in accordance with the Marketplace Rules in respect of the applicable Market Maker Obligations, ~~or~~ (ii) <u>automatically generated by a system operated by the Participant or on behalf of the Participant based on pre-determined order and trading parameters established, programmed and enabled for trading prior to the receipt of the client order,</u> (iii) <u>for a managed account and the client order is for a managed account under the direction of the same person and in respect of which executions are allocated between the various managed accounts on an equitable basis in accordance with the established practices of the Participant, or</u> (iv~~ii~~)a Basis Order; (c~~d~~) the client order has been entered directly by the client of the Participant on a marketplace ~~that does not require the disclosure of the identifier of the Participant in a consolidated market display and the director, officer, partner, employee or agent of the Participant who enters a principal order or a non-client order does not have knowledge that the client order is from a client of the Participant until the execution of the client order~~; (d~~e~~) the principal order or non-client order is executed pursuant to an allocation by the trading system of a marketplace and: (i) either:	and entering pro orders on markets where they are and treat such systematic abuses as a best execution violations.	non-client orders of a Participant. Unlike "best execution" obligations, which require that a Participant "diligently" pursue best execution for its clients on the most advantageous terms for the client, client priority obligations were not qualified by a "reasonableness" standard and were enforced on a case-by-case basis. See response to Canaccord comment immediately below.
	Canaccord, ITG, NBF, RBC and **Scotia –** Believe that RS should go further by adding an exemption in cases where a Participant has demonstrated sufficient "information walls" to ensure that proprietary trading is conducted with no knowledge of client orders.	In light of the difficulties which a Participant may have in monitoring executions across marketplaces, the Amendments revised the basic charging provision to preclude a principal order or non-client order from being entered on a marketplace if, based on the information known or reasonably available to the person or persons originating or entering the principal order or non-client order, the Participant knows or should have known that the principal or non-client order will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal order or non-client order. Under the Amendments, a Participant would not be able to avoid providing client priority if information was "reasonably available" but the Participant did not avail itself of the information in a particular circumstance. Similarly, if the Participant knows or should have known that the principal or non-client order has a "reasonable likelihood" of executing in priority to the client order, the client will be entitled to the benefit. As the handling of the client order is within the control of the Participant and as such, the Participant has the burden of demonstrating that the client has not been disadvantaged. Under the provision prior to the Amendments, a Participant that entered a principal order after a client order had been entered on another marketplace became in part the "guarantor" of the execution of the client order even in circumstances when the client order had been entered on the most liquid marketplace with the greatest probability of early execution. Previously, the rule provided an exemption for "information walls" in circumstances where the client order has been withheld from entry on a marketplace or if the order had been entered directly by the client on a marketplace. With "knowledge" as a component of the basic charging provision, such knowledge-based exemptions became unnecessary and repealed as part of the revision.

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(A) the security which is the subject of the order trades on no marketplace other than that marketplace, (B) the principal order or non-client order is a Call Market Order, a Closing Price Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order, (C) each of the client order and the principal order or non-client order was entered on the same marketplace, ~~or~~ (D) the client has instructed the Participant to enter the client order on a particular marketplace, or (E) the client has instructed the Participant to enter the client order in a manner that does not disclose the identifier of the Participant in a consolidated market display, (ii) the client order was entered by the Participant on that marketplace immediately upon receipt by the Participant, and (iii) if the client order was varied or changed by the Participant at any time after entry, the variation or change was on the specific instructions of the client; (ef) either the client order or the principal order or non-client order is a Special Terms Order and the client order would not have executed in the transaction or transactions involving the principal order or non-client order due to the terms and conditions of at least one Special Terms Order; or (fg) a Market Integrity Official requires or permits the principal order or non-client order to be executed in priority to a client order. (3) For the purposes of clause (2)(a), a client shall be deemed to have consented to the Participant entering principal orders and non-client orders for the same security at the same price on the same side of the market on the same conditions and settlement terms if the client order, in accordance with the specific instructions of the client, is to be executed in part at various times during the trading day or at various prices during the trading day.	**CNQ** – Proposed Amendments to Rule 5.3 implicitly provide that a dealer must reallocate inventory/non-client fills to client orders entered previously on other marketplaces. This will prove unworkable as dealers do not have internal systems to monitor non-client fills and do reallocations. Dealers should be allowed to rely on the trading system allocation of the marketplace across all marketplaces. **RBC** – Believes that from a compliance perspective it may be difficult to monitor for client priority violations across multiple marketplaces. Use of anonymous makers will pose additional challenges especially when	RS acknowledges that an exemption for certain "automated trading" undertaken by principal or non-client accounts may be justified particularly if the parameters of such trading have been established prior to the receipt of a particular client order. Similarly, RS acknowledges that an exemption for orders for a managed non-client or principal accounts may be justified if the client order is also for a managed account and any executions are allocated between the various accounts in accordance with established practices. Exemptions to accommodate these circumstances have been added by the Amendments. See response to Canaccord comment immediately above. RS recognizes that the revised provisions for client priority will preclude "intentional" breaches of client priority but that there will be incidences of "inadvertent" principal or non-client executions in priority to client orders to the extent that trading activity for a particular security moves between marketplaces at various points in time during a trading day. RS also recognizes that few dealers presently have the capacity to monitor the "inadvertent" breaches and the extent of such breaches can not be estimated at this time. In the view of RS, the primary objective of Participants in adjusting to multiple marketplaces is to ensure that their systems and their policies and procedures are adequate to ensure "best execution" and "best price" when handling client orders. For these reasons, RS intends that the changes to Rule 5.3 be undertaken on a "trial" basis for a period of at least one year. During that year, RS will monitor and report on the incidences of principal orders or non-client orders trading ahead of previously entered client orders that did not constitute a breach of the revised Rule 5.3. If the study indicates that the trading patterns warrant additional action, RS would consider a reintroduction of the current client priority provisions following an appropriate period for Participants to modify their policies and procedures and trading systems to adjust to the stricter standard. RS acknowledges that the use of the anonymous marker complicates compliance and the Amendments have revised the provisions to allow the Participant to rely on a trading system allocation if the client has instructed that the order be entered with the "anonymous marker".

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	orders are routed by means of jitney. Significant systems changes will be required to cross reference retail and institutional order flow for compliance purposes.	See response to Canaccord comment above
6.1 Entry of Orders to a Marketplace (1) No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of cent other than an increment of one-half of one cent in respect of an order with a price of less than $0.50.		

6.2 Designations and Identifiers
 	
(1) Each order entered on a marketplace shall contain:
 	
…
 	
(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:
 	
   (i) a Call Market Order,
 	
   (ii) an Opening Order,
 	
   (iii) a Market-on-Close Order,
 	
   (iv) a Special Terms Order,
 	
   (v) a Volume-Weighted Average Price Order,
 	
   (v.1) a Basis Order,
 	
   (v.2) a Closing Price Order,
 	
   (vi) part of a Program Trade,
 	
   (vii) part of an intentional cross or internal cross,
 	
   (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1,
 	
   (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1,
 	
   (x) a non-client order,
 	
   (xi) a principal order,
	TD – RS should require marketplaces to create a trade marker for trades that do not involve the transference of economic risk between parties (i.e. exchange for physicals, swaps and forward trades). Including such trades on the "tape" obscures true volume in a security and establishment of benchmarks (i.e. VWAP).	RS is currently working on a proposal to amend UMIR to include a mandatory "Riskless Trade" marker. Such a proposal is being considered in a broader context that includes short position reporting requirements. RS is a participant in the CSA/SRO Working Group on Short Sale Issues. Any proposal affecting UMIR arising from considerations of this group will be the subject of a "Request for Comments" to allow for industry-wide discussion.

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(xii)   a jitney order,
 	
    (xiii) for the account of a derivatives market maker,
 	
    (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order,
 	
    (xv)   for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or
 	
    (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation.		

6.3   Exposure of Client Orders
 	
 (1)   A Participant shall immediately enter on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a security unless:
 	
   …
 	
  (h) the client has directed or consented to the order being entered on a marketplace as:
 	
    (i)   a Call Market Order,
 	
    (ii) an Opening Order,
 	
    (iii) a Special Terms Order,
 	
    (iv) a Volume-Weighted Average Price Order,
 	
    (v)   a Market-on-Close Order,
 	
    (vi) a Basis Order, or
 	
    (vii) a Closing Price Order.
	Canaccord – Concerned that compliance with 6.3 will require a dealer to enter client orders received outside of traditional trading hours on marketplaces that are illiquid, and as such, may not provide best execution for client orders entered on such marketplaces.	In Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements For Trading on Multiple Marketplaces* (October 30, 2006), RS indicated that if a Participant has adopted a policy on the handling of "Day" orders, "Good Till Cancelled" orders and "market" orders (received outside of historic trading hours) and has informed its clients of its policy, a Participant would not be expected to continue to monitor trading opportunities on marketplaces that continue to trade the particular security outside of traditional trading hours. To the extent that a Participant has not informed clients of the Participant's policy on the handling of such orders, RS would expect that the Participant, in compliance with its "best execution" obligations under Rule 5.1 of UMIR, would continue to monitor trading opportunities on any marketplace that is then open for trading.

	NBF – If an order sent to a "dark" market where no liquidity is present and such order is sent back to the dealer, will a dealer be in violation of 6.3? Will dealers be required to provide price improvement in such cases?	Under the existing rule, one exception to immediate order exposure is the execution of the order at a better price. Checking a "dark" market to determine if there is a better price is consistent with this obligation. In Market Integrity Notice 2006-020 – *Guidance* – "*Compliance Requirements for Trading on Multiple Marketplace* (October 30, 2006), RS indicated that If the Participant immediately re-enters the client order (or an unexecuted portion of the client order) on a marketplace that provides order transparency, the Participant would be in compliance with proposed Rule 6.3. The purpose of the Amendment to Rule 6.3 is to preclude the small client order that does not immediately execute from continuing to reside on a "dark" marketplace.

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8.1 Client-Principal Trading (2) Subsection (1) does not apply if the client has directed or consented that the client order be: (a) a Call Market Order; (b) an Opening Order; (c) a Market-on-Close Order; (d) a Volume-Weighted Average Price Order; (e) a Basis Order; or (f) a Closing Price Order.		
10.9 Power of Market Integrity Officials (1) A Market Integrity Official may, in governing trading in securities on the marketplace: … (d) vary ~~disallow~~ or cancel any trade which, in the opinion of such Market Integrity Official, is unreasonable or not in compliance with these Rules or any Policy; … (g.1) in respect of any trade of a principal order or non-client order that has not complied with the requirements of Rule 5.3, require the Participant to satisfy the client order at the price and up to the volume of the trade which failed to comply with the requirements of Rule 5.3; …		The revision to Rule 10.9 under the Amendments is consequential to changes in the client priority rule. Under the changes, a Market Integrity Official would be able to order the satisfaction of a client order if the Participant has not complied with the client priority provisions. RS also took the opportunity to make a "housekeeping" change to replace the word "disallow" with "vary" in clause (d) so that the structure of the provision parallels the language used in clause (e).
Policy 2.1 – Just and Equitable Principles **Part 1 – Examples of Unacceptable Activity** … Without limiting the generality of the Rule, the following are example of activities that would be considered to be in violation of the obligation to conduct business openly and fairly or in accordance with just and equitable principles of trade:	**TSX –** Will RS be investigating and enforcing against POs of the TSX that violate Minimium Guaranteed Fill rules, and if so, what will be the scope of such investigation/enforcement?	To the extent that a marketplace has determined that a violation of its Marketplace Rules has occurred and requests that RS investigate that matter, RS will investigate the alleged violation and initiate an enforcement proceeding where appropriate. Unless retained to do so, RS does not monitor for compliance with Marketplace Rules.

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… (d) when trading a security on a marketplace that is subject to Market Maker Obligations, intentionally entering on that marketplace on a particular trading day two or more orders which would impose an obligation on the Market Maker to: (i) execute with one or more of the orders, or (ii) purchase at a higher price or sell at a lower price with one or more of the orders in accordance with the Market Maker Obligations that would not be imposed on the Market Maker if the orders had been entered on the marketplace as a single order or entered at the same time.		

Policy 5.1 – Best Execution of Client Orders
 	
Part 2 – Factors to be Considered
 	
In determining whether a Participant has diligently pursued the best execution of a client order, the Market Regulator will consider a number of factors including:
 	
• any specific client instructions regarding the timeliness of the execution of the order;
 	
• whether organized regulated markets outside of Canada have been considered (particularly if the principal market for the security is outside of Canada);
 	
• 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; and
 	
• whether the Participant has considered possible liquidity on marketplaces that do not provide transparency of orders in a consolidated market display if:
 	
  o the displayed volume in the consolidated market display is not adequate to fully execute the client order on advantageous terms for the client, and
 	
  o the non-transparent marketplace has demonstrated that there is a reasonable likelihood that the marketplace will have liquidity for the specific security.
	BMO and **GMP** – Best execution obligations should not extend to non-transparent marketplaces.	In the 2006 ATS Rule Amendments, the CSA confirmed its requirements that a dealer, in appropriate circumstances, is expected to take into account information from all marketplaces trading a particular security in order to meet its best execution obligations. The Amendment to Part 2 of Policy 5.1 of UMIR sets out the limited circumstances when a Participant should consider a non-transparent marketplace (basically, the client order can not be executed at an appropriate price on a transparent marketplace and the non-transparent marketplace has demonstrated a reasonable likelihood of liquidity.) Presently, if a Participant is unable to transact a client order against orders in the visible market the Participant either transacts as principal or attempts to source additional liquidity. The non-transparent marketplace is just another source of possible liquidity that should be sourced if its trading patterns warrant such consideration. The Amendment to UMIR is to conform to the requirements of the CSA.

	BMO, Canaccord, CSTA, GMP, IIAC, NBF and **Torys** – By expanding best execution obligations beyond markets to which a Participant has decided to access, dealers have no choice but to connect to all new marketplaces. In today's time sensitive electronic market a jitney arrangement for execution is not feasible.	UMIR recognizes that "best execution" is essentially the process by which a Participant diligently pursues "the execution of each client order on the most advantageous terms for the client as expeditiously as practicable under prevailing market conditions". Each Participant will assess the need to access a particular marketplace based on its business circumstances and the means by which that access is achieved. For example, it is important to note that while there are approximately 210 investment dealers in Canada, currently only 96 have direct trading access to the TSX and only 87 have direct trading access to the TSXV.

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	Canaccord – Dealer should be able to adopt a general policy stating they will not trade in specific marketplaces or outside of traditional trading hours.	Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements For Trading on Multiple Marketplaces* (October 30, 2006) provides that if a Participant has adopted a policy on the handling of "Day" orders, "Good Till Cancelled" orders and "market" orders (received outside of historic trading hours) and has informed its clients of its policy, a Participant would not be expected to continue to monitor trading opportunities on marketplaces that continue to trade the particular security outside of traditional trading hours. To the extent that a Participant has not informed clients of the Participant's policy on the handling of such orders, RS would expect that the Participant, in compliance with its "best execution" obligations under Rule 5.1 of UMIR, would continue to monitor trading opportunities on any marketplace that is then open for trading. Reference should also be made to Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006) with respect to the obligation of a Participant to take into account order and trade information for marketplaces trading the same security. A Participant is not able to simply adopt a policy to exclude its obligation to take into account order or trade information from a particular marketplace.
	Canaccord, CSTA, IIAC and **Scotia –** Extended trading hours of certain marketplaces will have major implications in relation to compensation and/or increased staffing requirements and "end of day" processes within the dealer.	See response to Canaccord comment immediately above.
	Canaccord, GMP, IIAC, Scotia and **Torys –** Until such time as there is a data consolidator, dealers should be allowed to inform their clients of which marketplaces they will be subscribers/ participants.	See response to Canaccord comment above. Neither UMIR nor the ATS Rules require a Participant to maintain trading access to every Canadian marketplace on which a security may trade. However, the CSA expects that a Participant will make arrangements with another dealer who is a participant of a particular marketplace or will route an order to a particular marketplace, where appropriate. Historically, Canadian exchanges required members to honour better-priced orders on other Canadian exchanges.

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	Canaccord, IIAC and **RJ –** Requiring dealer to check all relevant foreign markets on which stocks may be inter-listed forces dealers to purchase exchange feeds to view international markets in "real time" to verify, pre-trade, all pricing of a particular security on a global basis. The time required to undertake this review will introduce delays which work against best execution.	While consideration of organized regulated markets outside of Canada (particularly if the principal market for the security is outside of Canada) is "encouraged", a Participant is not required to consider foreign markets in all cases. In accordance with Rule 6.4 of UMIR, trades on markets outside of Canada may be undertaken but such trades are subject to the "best price" obligations of the Participant to orders on marketplaces in Canada. RS recognizes that arbitrage activities will generally keep prices of inter-listed securities within reasonable "bounds" thereby minimizing the need to monitor foreign markets on an on-going basis.
	CSTA, RBC, RJ and **Scotia –** Concerned that "best price" has become the factor that most often characterizes best execution, to the exclusion of other determinants such as speed, market impact and certainty of fill. For large orders, these factors become more important than simply attaining best price for a client.	UMIR has always recognized that "best execution" and "best price" are two separate rules and obligations. UMIR continues to take into account factors beyond best price in considering best execution.
	ITG – Absent specific client instructions regarding execution (i.e. specific marketplace) dealer should be allowed to determine whether to execute an order immediately on a marketplace that is then open or to wait to execute the order on the principal market when it opens.	See response to Canaccord comment on page 42 above.
	NBF and **RBC -** The time required to undertake a review across marketplaces will result in delayed executions as traders "chase" quotes across marketplaces resulting in inferior fills for clients.	Rule 5.1 requires that a Participant "diligently" pursue best execution for its clients on the most advantageous terms for the client. The size of an order is a factor to be considered when determining best execution. Based on comments received in response to the CSA Concept Paper on trade-throughs, it is anticipated that the process of evaluating trading opportunities on various visible markets that are electronically and immediately accessible will be automated (in a manner comparable to that used by many US-affiliates of Participants).
	Perimeter – As drafted, the policy suggests that dealers should consider liquidity on non-transparent marketplaces only if transparent marketplaces cannot provide advantageous	The Marketplace Operation Instrument permits a marketplace to be "non-transparent" with respect to orders in order to accommodate the business model of that marketplace. A Participant may access any marketplace that fits the needs of the Participant, provided the

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	liquidity. Policy should provide that dealers have a duty to regularly search out opportunities for clients on all available marketplaces.	Participant meets the criteria established by the marketplace for access. As the number of marketplaces increases, it is impractical to require a Participant to check all marketplaces before undertaking an execution. The policy provides that reference must be made to non-transparent marketplaces if there is not sufficient liquidity on visible marketplaces at a satisfactory price and the non-transparent marketplace has demonstrated a reasonable likelihood of liquidity for the particular security.
	RJ – How does RS intend to police best-execution both on domestic and foreign marketplaces? How will currency exchange rates, speed to market and certainty of fill be factored in assessing whether the dealer has met its best execution obligations?	Rule 5.1 requires that a Participant "diligently" pursue best execution for its clients on the most advantageous terms for the client. As set out in Policy 5.1, currency exchange rates, speed and certainty of fills are factors to be considered when determining best execution. Achieving best execution is a "process".
	Scotia and **TSX –** What factors demonstrate that there is a "reasonable likelihood" that the marketplace will have liquidity? Further guidance is required or there should be no best execution obligation with respect to non-transparent markets.	For transparent marketplaces, the likelihood of liquidity is demonstrated by the depth of visible orders displayed in the consolidated display. For non-transparent marketplaces, liquidity can only be demonstrated by historic patterns of trades. RS has left to Participants the determination of which marketplaces demonstrate a "reasonable likelihood" of liquidity for a particular security that is relative to the size of the client order.

Policy 5.2 – Best Price Obligation
 	
Part 1 – Qualification of Obligation
 	
The "best price obligation" imposed by Rule 5.2 is subject to the qualification that a Participant make "reasonable efforts" to ensure that a client order receives the best price. In determining whether a Participant has made "reasonable efforts", the Market Regulator will consider:
• the transaction costs and other costs –that would be associated with executing the trade on a marketplace; and
• whether a "better-priced" order is on another marketplace that:
   o disseminates order data in real-time and electronically through one or more information vendors,
   o permits dealers to have access to trading in the capacity as agent,
   o provides fully-automated electronic order entry, and
	CSTA, RJ and **Torys –** Requiring a Participant to route to a marketplace with the best price may result in the loss of a quick certain fill on a marketplace with a slightly inferior price which may have been the client's preference.	See response to IIAC below.
		
		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 foreign market. A client may not consent to trade at an inferior price. The obligation to make "reasonable efforts" to execute a client order at the best price extends equally to all marketplaces which provide fully automated electronic order entry and trade matching or execution. By limiting "best price" obligations to fully-automated electronic marketplaces, the ability of a Participant to obtain a "quick fill" should not be affected.

	IIAC – Compliance with the CSA's expectations and the proposed amendments to Policy 5.2 which require a dealer to take into account all prices and not just those to which the Participant subscribes provides potential	Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006) provides RS's view that "best ask price" and "best bid price" can only be determined by reference to orders on marketplaces that provide pre-trade transparency. In order for a Participant to demonstrate that it had

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o provides fully-automated order matching and trade execution.	for delays in execution and other related latency issues.	made "reasonable efforts" to execute a client order at the best price, RS expects the Participant to deal with "better-priced" orders on another marketplace if that marketplace: • disseminates order data in real-time and electronically through one or more information vendors; • permits dealers to have access to trading in the capacity as agent; • provides fully-automated electronic order entry; and • provides fully-automated order matching and trade execution. Of the current marketplaces, only CNQ, TSX and TSXV meet all four conditions (and it is anticipated that Pure Trading will meet all four conditions also). In the view of RS, compliance with the "best-price obligation" does not prevent immediate execution.
	IIAC and **NBF** – Costs associated with accessing marketplaces should be factored into the "reasonable efforts" standard.	Transaction costs and other costs (including access fees and settlement charges) associated with executing a trade on a marketplace is a factor to be considered in determining whether a Participant has made "reasonable efforts".
	NBF – Advocate a "partial" trade-through solution whereby a Participant may trade through better priced orders on "illiquid" marketplaces. Illiquid markets would be those who account for less than a pre-determined volume of trading for a particular security (Reg. NMS approach).	The CSA has indicated that further amendments to the ATS Rules may be proposed on the completion of the study following Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations* published by the CSA on July 22, 2005. The provisions of UMIR and their interpretation and application would be modified to conform to the positions adopted by the CSA.
	NBF – Is it reasonable for a Participant to factor in connectivity costs and trading fees in determining best price?	As set out in Policy 5.2, transaction costs and other costs (including access fees and settlement charges) associated with executing a trade on a marketplace is a factor to be considered in determining whether a Participant has made "reasonable efforts". This provision is subject to review as part of the CSA study of trade-through obligation.
	RBC – How does a trader evidence "reasonable efforts"? How would a dealer determine if "reasonable efforts" were made when better priced orders were identified on a post-trade basis?	The determination of what constitutes "reasonable efforts" is tied to the nature of the Participant's business. A Participant's policies and procedures should be reasonably designed to ensure that, in the ordinary course, client orders receive the best price. Post-trade monitoring for best price violations should consider systematic or

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		recurring failures of client orders to receive the best price that would indicate that either the policies or procedures were not adequate or that there was a failure to adhere to them.
Policy 5.3 – Client Priority **Part 1 – Background** Rule 5.3 restricts a Participant and its employees from trading in the same securities as a client of the Participant. The restriction is designed to minimize the conflict of interest that occurs when a Participant or its employee compete with the firm's clients for execution of orders. The Rule governs: • *trading ahead* of a client order, which is taking out a bid or offering that the client could have obtained had the client order been entered first. By trading ahead, the pro order obtains a better price at the expense of the client order. • *trading along* with a client, or competing for fills at the same price. The application of the rule can be quite complex given the diversity of professional trading operations in many firms, which can include such activities as block facilitation, market making, derivative and arbitrage trading. In addition, firms may withhold particular client orders in order to obtain for the client a better execution than the client would have received if the order had been entered directly on a marketplace. Each firm must analyze its own operations, identify risk areas and adopt compliance procedures tailored to its particular situation. **A Participant has overriding agency responsibilities to its clients and cannot use technical compliance with the rule to establish fulfillment of its obligations if the Participant has not otherwise acted reasonably and diligently to obtain best execution of its client orders.**		
Policy 5.3 – Client Priority **Part 2 – Prohibition on Intentional Trading Ahead** ~~Rule 5.3 provides that a Participant must give priority of the execution to client orders over all principal orders and non-client orders of the Participant that are entered on a marketplace or an organized regulated market after the receipt of the client order for the same security at the same price on the same side of the market on the same conditions and settlement terms. The requirement is subject to certain exceptions necessary to ensure overall efficiency of order handling.~~		

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In particular, exceptions to the client priority rule are provided if the principal order or non-client order that is entered after the receipt of the client order is:		

In particular, exceptions to the client priority rule are provided if the principal order or non-client order that is entered after the receipt of the client order is:

- automatically generated by the trading system of an Exchange or QTRS in accordance with the Market Maker Obligations of that marketplace;

- automatically generated by a system operated by the Participant or on behalf of the Participant based on pre-determined order and trading parameters established, programmed and enabled for trading prior to the receipt of the client order,

- a Basis Order; or

- required or permitted to be executed by a Market Integrity Official in priority to the client order.

A principal order which is automatically generated by the trading system of an Exchange or QTRS in accordance with that marketplace's rules on market-making activities is not an intentional attempt by a Participant to trade ahead of or along with a client order. An exemption from the client priority rule is therefore provided in order to ensure overall market liquidity in accordance with established Market Making Obligations.

A Basis Order is undertaken at a price that is determined by prices achieved in related trades made in the derivatives markets. As such, the execution of a Basis Order is not an intentional attempt by a Participant to trade ahead of or along with a client order.

An exception to the client priority rule is also provided where the trading system of a marketplace allocates the fill to a principal order or non-client order. In order to be able to rely on this exception the following three conditions must be met:

- either:
  - the security does not trade on any marketplace other than the one on which the client order and the principal order or non-client order is entered,
  - the principal order or non-client order is a Call Market Order, a Closing Price Order, an Opening Order, a Market-on-Close Order or a Volume-Weighted Average Price Order,
  - each of the client order and the principal order or non-client order was entered on the same marketplace, or

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⊖ the client has instructed the Participant to enter the client order on a particular marketplace, or ⊖ the client has instructed the Participant to enter the client order in a manner that does not disclose the identifier of the Participant in a consolidated market display and the person entering the principal order or non-client order has no knowledge of the client order, • the client order was entered immediately upon receipt by the Participant; and • after entry, the client order is not varied or changed except on the specific instructions of the client. The exception that is provided for a principal or non-client order which is a Call Market Order, Opening Order, Market-on-Close Order or a Volume-Weighted Average Price Order recognizes that the price at which such an order may execute will not generally be known at the time the principal or non-client order is entered on a marketplace. Provided the client order has been entered on receipt and not varied without the consent of the client, any allocation by the trading system of the marketplace for these particular types of orders is not an attempt to bypass client orders. In the case of a Closing Price Order, the order is subject to the condition that it trade only at the closing price of the security on that particular marketplace notwithstanding that the order might otherwise have been capable of executing at a better price on another marketplace. A Closing Price Order will likely be entered by a person with an interest in a security that is tied to the closing price (e.g. part of a portfolio that tracks an index). Given the condition attached to a Closing Price Order, the use of such an order for a principal account or non-client account will not be considered an attempt to bypass client orders. A Participant can never intentionally trade ahead of a client order that is either a market order or tradeable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining without the specific consent of the client. Examples of "intentional trades" include, but are not limited to: • withholding a client order from entry on a marketplace (or removing an order already entered on a marketplace) to permit the entry of a competing principal or non-client order ahead of the client order; • entering a client order oin a relatively illiquid market (other than on the instructions of the client) and entering a principal or non-client order oin a		

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more liquid marketplace where the principal or non-client order is likely to obtain faster execution; • adding terms or conditions to a client order (other than on the instructions of the client) so that the client order ranks behind principal or non-client orders at that price; • putting terms or conditions on a principal or non-client order for the purpose of differentiating the principal or non-client order from a client order that would otherwise have priority at that price; and • entering a principal order or non-client order as an "anonymous order" (without the identifier of the Participant) which results in an execution in priority to a previously entered client order that discloses where the identifier of the Participant has been disclosed on the entry of the client order.		
Policy 5.3 – Client Priority **Part 3 – No Knowledge of Client Order** Rule 5.3 also contains four exceptions to client priority that require the director, officer, partner, employee or agent of the Participant who enters the principal order or the non-client order to be unaware that the client order has not been entered. The exceptions are: • the client specifically instructs the Participant to withhold entry of the order; • the client specifically grants discretion to the Participant with respect to the entry of the order; • the Participant withholds the client order from entry in accordance with Rule 6.3 in a *bona fide* attempt to get better execution for the client; and • the client enters the order directly on a marketplace that does not require the disclosure of the identifier of the Participant in a consolidated market display. In these circumstances, tThe Participant must have reasonable procedures in place to ensure that information concerning client orders is not used improperly within the firm. These procedures will vary from firm to firm and no one procedure will work for all firms. If a firm does not have reasonable procedures in place, it cannot rely on the exceptions. Reference should be made to Policy 7.1 – Policy on Trading Supervision Obligations, and in particular Part 4 – Specific Procedures Respecting Client Priority and Best Execution.		

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If a client has instructed a Participant to withhold an order or has granted a Participant discretion with respect to the entry of an order, details of the instruction or grant of discretion must be retained for a period of seven years from the date of the instruction or grant of discretion and, for the first two years, the consent must be kept in a readily accessible location.		
Policy 5.3 – Client Priority **Part 4 – Client Consent** A Participant does not have to provide priority to a client order if the client specifically consents to the Participant trading alongside or ahead of the client. The consent of the client must be specific to a particular order and details of the agreement with the client must be noted on the order ticket. A client cannot give a blanket form of consent to permit the Participant to trade alongside or ahead of any future orders the client may give the Participant. 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 marketplace are filled prior to the execution of the client order. Prior to executing the client order, the Participant must ensure that the client is aware of the better-priced orders and has consented to the Participant executing as against them in priority to the client order. The consent of the client must be noted on the order ticket. If the client has given the Participant an order that is to be executed at various times during a trading day (e.g. an "over-the-day" order) or at various prices (e.g. at various prices in order to approximate a volume-weighted average price), the client is deemed to have consented to the entry of principal and non-client orders that may trade ahead of the balance of the client order. Unless the client has provided standing written instructions that all orders are to be executed at various times during the trading day or a various prices during the trading day, the client instructions should be treated as specific to a particular order and the details of the instructions by the client must be noted on the order ticket. However, if the un-entered portion of the client order would reasonably be expected to affect the market price of the security, the Participant may be precluded from entering principal or non-client orders as a result of the application of the frontrunning rule. In certain circumstances, a client may provide a conditional consent for the Participant to trade alongside or ahead of the client order. For example, a client may consent to a principal order of the Participant sharing fills with the		

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client order provided the client order is fully executed by the end of the trading day. If the client's order is not fully executed, the client may expect that the Participant "give up" its fills to the extent necessary to complete the client order. In this situation, the Participant should mark its orders as "principal" throughout the day. Any part of the execution which is given up to the client should not be re-crossed on a marketplace but should simply be journalled to the client (since the condition of the consent has not been met, the fills in question could be viewed as properly belonging to the client rather than the principal order). To the extent that a Participant "gives up" part of a fill of a principal order to a client based on the conditional consent, the Participant shall report the particulars of the "give up" to the Market Regulator not later than the opening of trading on marketplaces on the next trading day. The conditional consent of the client must be specific to a particular order. The details of the agreement with the client must be noted on the order ticket.		
Policy 6.1 – Entry of Orders to a Marketplace Notwithstanding that all orders for a security at a price of $0.50 or more must be entered on a marketplace at a price that does not include a fraction or a part of a cent, an order which is entered on a marketplace as a Basis Order, Call Market Order or a Volume-Weighted Average Price Order may execute at such price increment as established by the marketplace for the execution of such orders provided, unless otherwise permitted by the information processor or information vendor, that the marketplace shall report the price at which the trade was executed to the information processor or an information vendor as the nearest trading increment and if the price results in one-half of a trading increment the price shall be rounded up to the next trading increment.	**TriAct –** Requirement that prices be "rounded" up to the next trading increment will directly affect Participants that currently report Basis-, VWAP- and Call Market trades to 4 decimals, and display them to 3 decimals without rounding. Insofar as these trades will not establish the "last sale price" the price at which they are reported is not material from a regulatory perspective, and need not be prescribed within UMIR.	The Amendments to Rule 6.1 are intended to ensure standardized trade reporting. However, insofar as Basis-, VWAP and Call Market trades do not set the "last sale price", The Amendments to Rule 6.1 provide that, to the extent permitted by an information processor or information vendor, such trades may be reported without being "rounded" up to the next trading increment.

Specific Matters on Which Comment is Requested:
 	
1. Should the execution of a Single Price Session Order be exempt from the "best price" obligations under Rule 5.2?
 	
2. Should any exemption from the "best price" obligations for a Single Price Session Order be limited:
   (a) to the persons who were parties to the original "last sale" trade that gives rise to the procedures to discover additional volume at the price of that trade?
   (b) to trades completed within a prescribed time period after the original match and, if so, what should that time period be?
 	
3. If a Single Price Session Order is not exempt from the "best price" obligations, should the obligation to better-priced orders on other
	BMO, Canaccord, GMP, NBF, Scotia and **TD –** Single Price Session Order should not be exempt from the "best price" obligations under Rule 5.2.
	
	ITG, RJ and **Shorcan –** Single Price Session Order should be exempt from the "best price" obligations under Rule 5.2
	
	BMO, ITG, NBF, Scotia, TD and **TSX –** If a Single Price Session Order is not exempt from "best price" obligations, the obligation to fill better-priced orders should be limited to the volume of the Single Price Session Order that executes.
		RS would not propose to amend the UMIR provisions with respect to a Single Price Session Order at this time. RS expects that the matter of "Single Price Session Orders" will be dealt with as part of a broader initiative by the CSA dealing with their response to Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations.* RS would then pursue consequential amendments to UMIR based on the CSA proposals.

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marketplaces be limited to the volume of the Single Price Session Order that executes?	**ITG** and **TSX** – The exemption from the "best price" obligations for a Single Price Session Order should be available only to the parties that gave rise to the session.	
	TSX – During the period that a marketplace's continuous auction is in progress, there should be no exemption from "best price" obligations. However, when the continuous auction ends and the opportunity to trade in the follow-on session exists, Single Price Session Orders should be exempt from "best price" obligations	
	RJ and **Shorcan** – The exemption from the "best price" obligations should ideally include counterparties not involved in the initial price discovery. 90 seconds is sufficient for full quantity discovery under the Trade Expansion Protocol.	
	ITG – Not opposed to allowing up to 2 minutes to "execute" the follow-on trade.	
	GMP – The obligation to better priced orders on other marketplaces should be limited to the lesser of the volume of the Single Price Session that executed or the volume of the disclosed orders in other marketplaces which has been traded-through.	
General Comments	**BMO** – Given that further amendments to the Market Operation Instrument and CSA Trading Rules may be proposed on completion of the study following Concept Paper 23-403 it is premature for RS to amend UMIR at this time.	Upon the publication by the CSA of any proposed amendments to the Marketplace Operation Instrument and CSA Trading Rules, RS will issue additional Market Integrity Notices to request comments on proposed consequential amendments to UMIR and to provide further guidance on the trading practices that may be required as a direct consequence of the final position adopted by the CSA with respect to trade-through obligations.

Until the Marketplace Operation Instrument and the CSA Trading Rules are amended, there is nonetheless a need for a comprehensive framework to govern trading on multiple marketplaces. In order to conform to the requirements of the CSA, the amendments to Policies under Rule 5.2 ("best price") delete as |

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		consideration the information available to the Participant and whether the Participant is a member, user or subscriber of the marketplace with the best price. The "best price" obligations under UMIR otherwise remain unchanged.
	BMO, Canaccord, CSTA, GMP, NBF, RBC, RJ, Scotia and **Torys –** Trade-through obligations should be imposed at the marketplace level. New marketplaces should be required to connect with each other rather than impose connectivity upon dealers (Regulation NMS approach).	Trade-through will be addressed by the CSA as part of their response to Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations.* The requirement for marketplaces to maintain connectivity was deleted from the Marketplace Operation Instrument in 2003 on the recommendations of the Industry Committee.
	BMO, CIBC, GMP, PCI, RJ, Scotia and **Torys –** New marketplace approval process should mandate that industry wide testing occur pre-approval. Without established standards, Participants are forced to route orders to marketplaces that may be susceptible to reliability issues, trade settlement problems and technology failures. Insufficient time for dealers to ensure that all system related requirements can be adequately addressed and tested.	The 2006 ATS Rule Amendments provide that a marketplace must publish technology requirements for two months prior to the commencement of operation and provide testing facilities for one month prior to the commencement of operation.
	BMO and **GMP –** New marketplaces are not required to meet the same standards of Business Continuity Plan and disaster recovery as Participants. Participants may be in breach of IDA By-law 17.16 (Business Continuity Plan Development Guidelines) by being required to direct orders to a marketplace that does not demonstrate effective and proven business continuity capabilities.	The requirements to be met by new marketplaces are established by the CSA pursuant to the Marketplace Operation Instrument. IDA By-law 17.16 relates to service providers retained by the dealer and is not applicable to marketplaces. Clearly, RS would not expect that a Participant would owe obligations to orders on a marketplace that was "unavailable" for failure of the technology of the marketplace.
	Canaccord, CSTA, IIAC and **RJ –** Absent a consolidated data feed or order routing system to all marketplaces trades and orders will be subject to increased manual intervention which will have a negative impact on execution speed and audit trail (TREATS)	The view of the Industry Committee was that an "industry solution" would emerge to satisfy these requirements. On that recommendation, the CSA removed the requirement for a data consolidator and connections between marketplaces in amendments to the Marketplace Operation Instrument in 2003.

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	Canaccord and **RBC –** For orders filled on more than one marketplace dealers should be allowed to produce a single trade confirmation which provides that "marketplace details available upon request".	Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements for Trading on Multiple Marketplaces* (October 30, 2006) provides that if a client order for the purchase or sale of a particular security is executed on more than one marketplace, the trade confirm may disclose that the order has been executed on multiple marketplaces. However, the confirmation must also disclose that details of each trade are available upon request.
	GMP – For orders executed at an average price on a single marketplace, a Participant should be allowed to produce a trade confirmation which instead of including the marketplace on which the order was filled, provides that "marketplace available upon request".	Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements for Trading on Multiple Marketplaces* (October 30, 2006) confirms that the trade confirmation must identify the marketplace on which a client order was executed if executed on a single marketplace. This is consistent with the requirements under section 36 of the *Securities Act* (Ontario) and comparable provisions of the securities legislation of other jurisdictions.
	GMP and **Torys –** Dealers and Access Persons should be held to the same standards respecting "best price" and "best execution".	These issues will be addressed by the CSA as part of their response to Concept Paper 23-402 – *Best Execution and Soft Dollar Arrangements* and Concept Paper 23-403 – *Developments in Market Structure and Trade-Through Obligations.* RS would anticipate that it would make any consequential amendments to UMIR that may be required in order to conform to the provisions adopted by the CSA.
	GMP – All marketplaces should be required to support markers that are required by UMIR.	As a general principal, marketplaces should support markers that are relevant to trading conducted on that marketplace.
	GMP and **RBC –** Regulators should mandate that new marketplaces be required to have consistent trading hours, rules, system capabilities and marketplace linkages as conditions of approval.	Approval of new marketplaces is within the ambit of the CSA. The differences in trading hours, trading platforms and structures of the various new marketplaces is based on the business plans of the marketplaces, which are an outgrowth of the CSA's goal of fostering a competitive Canadian landscape. UMIR provides standardized market integrity rules that apply to all marketplaces regardless of the business model adopted by a particular marketplace.
	IIAC and **Torys –** The CSA and RS notices contain substantive provisions which result in significant changes to industry structure without providing for an opportunity for industry feedback or sufficient lead time for systems development at Participants.	Most of the proposed changes to UMIR were issued by RS for public comment in June of 2005 or earlier. The changes to "best execution" were to conform to the requirements of the CSA arising out of amendments to the Marketplace Operation Instrument and CSA Trading Rules in 2003 that, in part, were based on the recommendations of the Industry Committee. RS had indicated in

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		publications at that time that further changes to UMIR would be proposed in response to the specific introduction of new marketplaces.
	PCI, TD and **Torys –** Grace period is required to develop routing technology and establish appropriate regulatory oversight at Participants.	The proposed rules governing Pure Trading were published for comment in October of 2005. Early in 2006, the CSA convened a symposium on various technology issues related to different approaches to trade-through. Participants and service providers indicated that technology solutions would be available and relied heavily on the fact that such technology was then readily available in the United States. RS expects that Participants will use "best efforts" to be in a position to comply with the requirements of UMIR on the launch of any new marketplace.
	RBC – Will NCIBs be done on marketplaces other than the TSX, and if so, what rules apply?	Provisions governing Normal Course Issuer Bids are set out in securities legislation which, in addition to a specific exemption in the securities legislation, allows reliance on rules established by exchanges in connection with listed securities. While a Participant may make purchases on any marketplace based on the best ask price available (similar to purchases which are currently made today on NASDAQ or NYSE), all such purchases must be made in accordance with the requirements of the listing exchange or applicable securities legislation depending upon the exemption relied on for the normal course issuer bid.
	Scotia – Concerned that there is no consistent audit trail requirement across all marketplaces. Some marketplaces do not make time of order entry or receipt time available, making it difficult for dealers to monitor for frontrunning, client priority or best execution.	Frontrunning, client priority and best execution will be evaluated for the purposes of UMIR on the actions of the Participant at the time of order entry (and not on the time that the marketplace receives or acknowledges an order). The data requirements for a Participant are established by Part 11 of the CSA Trading Rules while the requirements for a marketplace are set out in Part 11 of the Marketplace Operation Instrument.