



Appendix C – Comments Received in Response to Rules Notice 12-0315 - Rules Notice – Request for Comments – UMIR - Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces (October 25, 2012)

On October 25, 2012, IIROC issued Notice 12-0315 requesting comments on Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces (“Proposed Amendments”). IIROC received comments on the Proposed Amendments from:

Investment Industry Association of Canada (“IIAC”)
 Mark DesLauriers, Blair Wiley, Osler LLP (“Wiley”)
 National Bank Financial (“NBF”)
 RBC Dominion Securities Inc. and RBC Direct Investing Inc. (“RBC”)
 Scotia Capital Inc. (“Scotia”)
 TD Securities Inc. (“TDSI”)
 TMX Group (“TMX”)
 TD Waterhouse Institutional Services (“TDW IS”)

A copy of the comment letters received in response to the Proposed Amendments is publicly available on the website of IIROC (www.iiroc.ca) under the heading “Notices”, sub-heading “Marketplace Rules” and further sub-heading “Request for Comments”. The following table presents a summary of the comments received on the Proposed Amendments together with the responses of IIROC to those comments. Column 1 of the table highlights the revisions to the Proposed Amendments made on the approval of the Amendments.

Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>1.1 Definitions</p> <p>“direct electronic access” means an arrangement between a Participant that is a member, user or subscriber and a client that permits the client to electronically transmit an order relating to a security containing the identifier of the Participant:</p>		<p>Amendment for consistency with NI 23-103 direct electronic access (“DEA”) definition and definition of “routing arrangement” below.</p>



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<p>(a) through the systems of the Participant for automatic onward transmission to a marketplace; or</p> <p>(b) directly to a marketplace without being electronically transmitted through the systems of the Participant.</p>		
<p>1.1 Definitions</p> <p>“foreign dealer equivalent” means a person registered in a category in the business of trading securities in a foreign jurisdiction in a manner analogous to that of an investment dealer in a foreign jurisdiction that and that is a subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding in that foreign jurisdiction.</p>		<p>Definition has been amended for consistency with NI 23-103 concerning foreign “advisers” that may trade for clients and no longer employs the term “registered” with reference to foreign dealers.</p>
<p>1.1 Definitions</p> <p>“order execution service” means a service that meets the requirements, from time to time, under Dealer Member Rule 3200 – <i>Minimum Requirements for Dealer Members Seeking Approval under Rule 1300.1(t)</i> for Suitability Relief for Trades Not Recommended by the Member to Offer an Order-Execution Only Service.</p>		
<p>1.1 Definitions</p> <p>“Participant” means:</p> <p>(a) a dealer registered in accordance with securities legislation of any jurisdiction and who is:</p> <ul style="list-style-type: none"> (i) a member of an Exchange, (ii) a user of a QTRS, or (iii) a subscriber of an ATS, or (iv) an investment dealer that is a party to a routing arrangement and who, in accordance with the applicable written agreement: <p>(A) is able to enter orders directly to the marketplace without being electronically transmitted through the systems of the Participant and is authorized to set or adjust the various controls, policies or procedures respecting such orders, or</p>		<p>IIROC acknowledges the comment (see question 1 below) expressing support for a clear prohibition on investment dealers offered “naked access” by Participants, and that an investment dealer should become a full Participant rather than be deemed one under certain conditions. IIROC has determined that extending the definition of Participant for anti-avoidance purposes is not necessary because naked access is clearly prohibited under UMIR and in the Amendments, and an extension of the definition might have the effect of confusing stakeholders. The definition of Participant has accordingly been restored to its original scope.</p>



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<p>(B) has been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; or</p> <p>(b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.</p>		
<p>1.1 Definitions</p> <p>“routing arrangement” means an arrangement under which a Participant that is a member, user or subscriber permits an investment dealer or a foreign dealer equivalent to electronically transmit an order relating to a security containing the identifier of the Participant:</p> <p>(a) through the systems of the Participant for automatic onward transmission to:</p> <p>(i) a marketplace to which the Participant has access using the identifier of the Participant, or</p> <p>(ii) a foreign organized regulated market to which the Participant has access directly or through a dealer in the other jurisdiction; or</p> <p>(b) directly to a marketplace using the identifier of the Participant without being electronically transmitted through the systems of the Participant.</p>	<p>IIAC - Questions the impact of routing arrangements on Introducing-Carrying (IC) arrangements. Suggests IC arrangements will require new documentation, re-examination and possibly changes to the established supervisory relationships under existing regulation. Seeks clarification concerning application of the proposed amendments to those relationships in which the Participant provides third-party electronic access “without intermediation” by an employee of the Participant.</p>	<p>In reference to question 2 below, although similar to direct electronic access, IIROC has retained the definition of “routing arrangement” in order to maintain a distinction for dealer to dealer direct access relationships with agency order flow, and in view of the CSA’s exclusion of dealers from direct electronic access which is instead provided for in UMIR under the rubric of a “routing arrangement”.</p> <p>There is no change to IC arrangements under Dealer Member Rule 35 as a result of the definition of “routing arrangement” (or “RA”) in UMIR for the purposes of regulating direct access to marketplaces. Rather, an introducing dealer in an IC arrangement today may also be able to electronically transmit non-intermediated order flow containing the identifier of the carrying/executing Participant to a marketplace. Going forward, this form of direct access would have to be implemented in accordance with UMIR 7.13 and related UMIR rules that govern a “routing</p>



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		<p>arrangement”.</p> <p>Intermediation refers to clients or registrants using an advisor or trader to enter transactions on their behalf for execution on a marketplace.</p>
<p>6.1 Entry of Orders to a Marketplace</p> <p>...</p> <p>(7) A Participant shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Participant unless the order has been:</p> <p>(a) received, processed and entered on the marketplace by an employee of the Participant who is registered in accordance with applicable securities legislation to perform such functions; or</p> <p>(b) has been entered on a marketplace or transmitted to a marketplace through:</p> <p>(i) direct electronic access,</p> <p>(ii) a routing arrangement, or</p> <p>(iii) an order execution service.</p> <p>(8) An Access Person shall not enter an order on a marketplace or permit an order to be transmitted to a marketplace containing the identifier of the Access Person unless the order is:</p> <p>(a) for the account of the Access Person and not for any other person; or</p> <p>(b) entered by an Access Person who is registered or exempted from registration as an adviser a portfolio manager or a restricted portfolio manager in accordance with applicable securities legislation and the order is for or on behalf of the a client of the Access Person acting in the capacity of adviser for that client and not for any other person.</p> <p>(9) A marketplace shall not allow an order to be entered on the marketplace unless:</p> <p>(a) the order:</p> <p>(i) has been entered by or transmitted through a Participant or Access Person who has access to trading on that marketplace,</p>	<p>Wiley – of view that use of the term “registrant” is unclear and/or inappropriate.</p>	<p>Amendment to conform with change to NI 23-103 respecting advisers.</p>



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<p>and</p> <p>(ii) contains the identifier of the Participant or Access Person as assigned in accordance with Rule 10.15; or</p> <p>(b) the order has been generated automatically by the marketplace on behalf of a person who has Marketplace Trading Obligations in order for that person to meet their Marketplace Trading Obligations.</p>		
<p>6.2 Designations and Identifiers</p> <p>(1) Each order entered on a marketplace shall contain:</p> <p>(a) the identifier of:</p> <p>(i) the Participant or Access Person entering the order as assigned to the Participant or Access Person in accordance with Rule 10.15,</p> <p>(ii) the marketplace on which the order is entered as assigned to the marketplace in accordance with Rule 10.15,</p> <p>(iii) the Participant for or on behalf of whom the order is entered, if the order is a jitney order,</p> <p>(iv) the client for or on behalf of whom the order is entered under direct electronic access, and</p> <p>(v) the investment dealer or foreign dealer equivalent for or on behalf of whom the order is entered under a routing arrangement; and</p>		
<p>7.12 Routing Arrangements</p> <p>(1) A Participant that is a member, user or subscriber may enter into a routing arrangement with an investment dealer or a foreign dealer equivalent provided the Participant has:</p> <p>(a) established standards for the investment dealer or foreign dealer equivalent that are reasonably designed to manage, in accordance with prudent business practices, the Participant's risks associated with implementing a routing arrangement;</p> <p>(b) assessed and documented that the investment dealer or foreign dealer equivalent meets the standards established by the Participant</p>		<p>The Rules have been restructured to simplify and avoid duplication to the extent possible, such that Rule 7.12 has been deleted and merged into Rule 7.13 to address both DEA and routing arrangements. See also response to question 2 below.</p>



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<p>for a routing arrangement; and</p> <p>(c) executed a written agreement with the investment dealer or foreign dealer equivalent:</p> <p>(2) The standards established by the Participant under subsection (1) must include a requirement that the investment dealer or foreign dealer equivalent:</p> <p>(a) has sufficient resources to meet any financial obligations that may result from the routing arrangement;</p> <p>(b) has reasonable arrangements in place to ensure that all personnel transmitting orders under a routing arrangement have reasonable knowledge of and proficiency in the use of the order entry system;</p> <p>(c) has reasonable knowledge of and the ability to comply with all Requirements, including the marking of each order with the designation and identifiers required by Rule 6.2;</p> <p>(d) has reasonable arrangements in place to monitor the entry of orders transmitted under the routing arrangement;</p> <p>(e) take all reasonable steps to ensure that the use of automated order systems, by itself or any investment dealer or foreign dealer equivalent, does not interfere with fair and orderly markets; and</p> <p>(f) ensure that each automated order system, used by the investment dealer, foreign dealer equivalent or any client, is tested in accordance with prudent business practices, including initially before use or introduction of a significant modification and at least annually thereafter.</p>		
<p>(3) The written agreement entered into by a Participant under subsection (1) with the investment dealer or foreign dealer equivalent must provide that:</p> <p>(a) the trading activity of the investment dealer or foreign dealer equivalent will comply with all Requirements;</p> <p>(b) the trading activity of the investment dealer or foreign dealer equivalent will comply with the product limits or credit or other financial limits specified by the Participant;</p> <p>(c) the investment dealer or foreign dealer equivalent will maintain all</p>		



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<p>technology facilitating the routing arrangement in a secure manner and will not permit personnel, other than those authorized by the Participant or the investment dealer or foreign dealer equivalent, to transmit orders under the routing arrangement to the Participant; (d) the Participant is authorized, without prior notice, to:</p> <ul style="list-style-type: none"> (i) reject any order, (ii) vary, correct or cancel any order entered on a marketplace, or (iii) discontinue accepting orders, <p>from the investment dealer or the foreign dealer equivalent;</p> <p>(e) the investment dealer or foreign dealer equivalent will immediately inform the Participant if the investment dealer or foreign dealer equivalent fails or expects not to meet the standards set by the Participant; and</p> <p>(f) the investment dealer or foreign dealer equivalent will not allow any order entered electronically by a client of the investment dealer or foreign dealer equivalent to be entered directly to a marketplace without being electronically transmitted through the systems of the Participant or the system of the investment dealer or foreign dealer equivalent.</p>		
<p>(4) A Participant must not allow any order to be transmitted under a routing arrangement unless:</p> <ul style="list-style-type: none"> (a) the Participant is: <ul style="list-style-type: none"> (i) maintaining and applying the standards established by the Participant under subsection (1); (ii) satisfied the investment dealer or foreign dealer equivalent meets the standards established by the Participant under subsection (1), and (iii) satisfied the investment dealer is in compliance with the written agreement entered into with the Participant; and (b) the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a 		



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<p>marketplace.</p>		
<p>5) The Participant shall review and confirm: (b) at least annually that: (i) the standards established by the Participant under subsection (1) are adequate, and (ii) the Participant has maintained and consistently applied the standards in the period since the establishment of the standards or the date of the last annual review; and (b) at least annually by the anniversary date of the written agreement with an investment dealer or foreign dealer equivalent that the investment dealer or foreign dealer equivalent: (i) is in compliance with the written agreement with the Participant, and (ii) has met the standards established by the Participant under subsection (1) since the date of the written agreement or the date of the last annual review.</p>		
<p>(6) A Participant shall forthwith notify the Market Regulator: (a) upon entering into a written agreement with an investment dealer or foreign dealer equivalent respecting a routing arrangement, of: (i) the name of the investment dealer or foreign dealer equivalent, and (ii) the contact information for the investment dealer or foreign dealer equivalent which will permit the Market Regulator to deal with the investment dealer or foreign dealer equivalent immediately following the entry of an order by the investment dealer or foreign dealer equivalent in respect of which the Market Regulator wants additional information; and (b) of any change in the information described in clause (a).</p>		
<p>7.13 Direct Electronic Access and Routing Arrangements (1) A Participant that is a member, user or subscriber may: grant direct electronic access to a client provided: (a) grant direct electronic access or enter into a routing arrangement</p>		



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<p>provided that the Participant has:</p> <ul style="list-style-type: none"> (i) established standards for the client that are reasonably designed to manage, in accordance with prudent business practices, the Participant’s risks associated with providing direct market electronic access to a client or implementing a routing arrangement with an investment dealer or foreign dealer equivalent, (ii) assessed and documented that the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant for direct electronic access, and (iii) executed a written agreement with the client, investment dealer or foreign dealer equivalent; and <p>(b) not grant direct electronic access if the client is not acting and registered as a dealer registrant—in accordance with applicable securities legislation other than:</p> <ul style="list-style-type: none"> (i) a portfolio manager, or (ii) a restricted portfolio manager. 		
<p>(2) The standards established by the Participant under subsection (1) must include a requirement that the client, investment dealer or foreign dealer equivalent:</p> <ul style="list-style-type: none"> (a) has sufficient resources to meet any financial obligations that may result from use of direct electronic access or the routing arrangement; (b) has reasonable arrangements in place to ensure that all personnel transmitting orders using direct electronic access or the routing arrangement have reasonable knowledge of and proficiency in the use of the order entry system; (c) has reasonable knowledge of and the ability to comply with all applicable Requirements, including the marking of each order with the designations and identifiers required by Rule 6.2; (d) has reasonable arrangements in place to monitor the entry of orders transmitted using direct electronic access or the routing arrangement; 	<p>Scotia, IIAC – Re. UMIR 7.12(2)(c) and 7.13(2)(c); concerned that a higher standard of order marking is expected of RA and DEA orders than those given to a traditional trading desk. Participants only have to apply Insider (IA) or Significant Shareholder (SS) markers if they are aware that a particular client is IA or SS. Foreign dealers do not typically know specific insider information for their clients and would not generally be expected to apply these markers.</p>	<p>Rule 6.2 applies under the same standard whether an order is transmitted through DEA, RA or is intermediated. The Participant is similarly under an obligation to maintain policies and procedures to ensure the proper marking of any order transmitted through RA or DEA and there is no exception for orders that are not intermediated. The requirement may be met by reliance on “know your client” information which has been collected from an account holder, that is current, except if there is actual knowledge that a client exceeds the levels of ownership or control of an issuer and is an insider or significant shareholder, then appropriate order marking must be implemented accordingly.</p> <p>There is no exception to compliance with Rule 6.2 for RA with a foreign dealer equivalent. IIROC expects that a Participant permitting a foreign dealer equivalent to enter</p>



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<p>(e) takes all reasonable steps to ensure that the use of automated order systems, by itself or any client, does not interfere with fair and orderly markets; and</p> <p>(f) ensures that each automated order system, used by itself the client or any of its clients, is tested in accordance with prudent business practices, including initially before use or introduction of a significant modification and at least annually thereafter.</p>	<p>Scotia, RBC and IIAC - Re. UMIR 7.12(2), 7.13(2) Standards Established by Participants</p> <ul style="list-style-type: none"> • Onerous expectation that the standards to be established by a Participant for its clients under DEA, or investment dealers or foreign dealer equivalents under RA must be “tailored” to each client or dealer and assessed for compliance annually, in addition to an annual review for compliance with the written agreement. If this rule remains, the Participant should maintain full discretion on how to achieve this. • Tailored standards should be required only in limited cases (i.e. grants of DEA to a sophisticated retail customer). 	<p>orders by RA on a Canadian marketplace will comply with Rule 6.2, just as a Canadian dealer must comply with foreign regulations when its client trades in a foreign market.</p> <p>A principal requirement underpinning the provision of third-party electronic access is that the Participant must undertake due diligence with respect to any DEA client, or investment dealer or foreign dealer equivalent in a routing arrangement in lieu of a mandated “eligible client list”. This is a key method of managing risks associated with providing third-party electronic access and necessitates a thorough vetting of each potential DEA client, investment dealer or foreign dealer equivalent.</p> <p>There is flexibility however, in determining what standards to apply beyond the minimum, based on the risks presented to the Participant’s business. Accordingly, it is not necessary that different standards beyond the minimum apply to each client, investment dealer or foreign dealer equivalent, but it does require that the Participant undertake the assessment and determination of what additional standards are reasonable given the particular circumstances of the Participant and each prospective DEA client, investment dealer or foreign dealer equivalent in a routing arrangement. While additional standards would be applied for a retail customer granted DEA, IIROC expects that the need for additional standards would not be limited to this circumstance.</p> <p>Under Rule 7.13(5), the assessment for compliance with the agreements must be done by the anniversary date of the agreement which may be done together with the annual review of the standards or the review of standards may be undertaken annually since the last review. The requirement to periodically determine compliance with the agreement and standards is integral to the Rules concerning third-party electronic access and cannot be conducted on a “discretionary” basis by a Participant to adequately mitigate</p>



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		its risks.
	<p>Scotia - Language in UMIR 7.12 (2)(e) should mirror sub-section (f), seeks clarification.</p>	<p>UMIR 7.12(2)(e) has been deleted and the requirements in Rule 7.13(e) and (f) have also been aligned.</p>
	<p>Scotia, RBC, IIAC – Re. automated order systems (“AOS”) testing – UMIR 7.12(2)(f), 7.13(2)(f).</p> <ul style="list-style-type: none"> • The requirement for DEA and RA clients to “ensure” that their AOSs, and those of their clients, are tested in accordance with prudent business practices is too high a standard. Policies and procedures should be “reasonably designed” to ensure appropriate testing. Foreign dealer equivalents may not enter contracts that require they ‘ensure’ their clients have adequately tested since they do not directly control those systems. • Seeks confirmation that a statement, attestation or representation from the DEA client or dealer, or the third party service provider as applicable, that the automated order system is appropriately tested would suffice. 	<p>The same language has been used in Part 8 of Policy 7.1 respecting trading supervision obligations for use of AOSs by a Participant or its client (see IIROC Notice 12-0363 – <i>Provisions Respecting Electronic Trading</i>). This provision contemplates a similar obligation to also ensure testing of an AOS used by clients of a DEA client, investment dealer or foreign dealer equivalent. This testing requirement captures all AOSs used for DEA or RA in order to mitigate the risk that an improperly operating AOS may interfere with fair and orderly markets. Similar to the expectation outlined in IIROC Notice 12-0364 - <i>Guidance Respecting Electronic Trading</i>, IIROC expects a Participant to maintain written records documenting the testing undertaken by the DEA client or dealer, or by any third party service provider that the AOS is appropriately tested. The Participant continues however to be responsible for any offending order entered on or trade executed on a marketplace resulting from the improper operation of the AOS.</p>
<p>(3) The written agreement entered into by a Participant under subsection (1) with the client, investment dealer or foreign dealer equivalent must</p>	<p>Scotia - Written Agreements – UMIR 7.12(3)(a),</p>	<p>See 7.13(1)(a)(i) which uses “reasonably designed” language in reference to the standards that a Participant establishes.</p>



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<p>provide that:</p> <p>(a) in the case of an agreement for direct electronic access or a routing arrangement:</p> <p>(i) the trading activity of the client, investment dealer or foreign dealer equivalent will comply with:</p> <p>(A) all Requirements, and</p> <p>(b) (B) the trading activity of the client will comply the product limits or credit or other financial limits specified by the Participant;</p> <p>((cii) the client, investment dealer or foreign dealer equivalent will maintain all technology facilitating direct market-electronic access or a routing arrangement in a secure manner and will not permit any person to transmit an order using the direct market-electronic access or the routing arrangement other than the personnel of the client who have been authorized by the client and named under the provision of the agreement referred to in sub-clause (b)(i), or personnel authorized by the investment dealer or foreign dealer equivalent to transmit orders using direct market access;</p> <p>(iii) the client, investment dealer or foreign dealer equivalent will fully co-operate with the Participant in connection with any investigation or proceeding by any marketplace or the Market Regulator with respect to trading conducted pursuant to direct electronic access or a routing arrangement, including upon request by the Participant, providing access to information to the marketplace or Market Regulator that is necessary for the purposes of the investigation or proceeding;</p> <p>(div) the Participant is authorized, without prior notice, to:</p> <p>(iA) reject any order,</p> <p>(iiB) vary or; correct or cancel any order entered on a marketplace to comply with Requirements, or</p> <p>(C) cancel any order entered on a marketplace, or</p> <p>(iiiD) discontinue accepting orders,</p>	<p>7.13(3)(a) - Requirement that written agreements stipulate that DEA and RA client orders, and those of their clients, “will” comply with all Requirements is not a reasonable standard. Participant should be required to maintain policies and procedures reasonably designed to ensure orders comply with the Requirements.</p> <p>Scotia - “Vary” or “Correct” Orders – UMIR 7.12(3)(d), 7.13(3)(d)</p> <ul style="list-style-type: none"> A Participant does not require the ability to vary or correct client orders. This requirement, which is also part of the existing TMX direct access rules, is problematic when establishing contracts with clients. The ability to reject or cancel any order and to discontinue accepting orders is sufficient to manage client trading. To the extent that specific scenarios or order details are the subject of IIROC’s concern, it is suggested this ability be limited to those specific cases. Otherwise prefer that requirement be removed. <p>Wiley - Prohibition on trading for accounts of clients too restrictive – UMIR 7.13(3)(f)</p> <ul style="list-style-type: none"> No policy reason to treat trading for accounts of clients differently than DEA client trading for its own account. Prohibition too broad and will cause market disruption (e.g. CDN pension fund managing accounts, foreign dealer trading for a fully managed account of a client in a foreign jurisdiction, foreign hedge fund manager trading fund accounts, a firm relying on the international adviser exemption trading an incidental amount of CDN securities for a CDN permitted client). 	<p>This is distinct from the term of the agreement that must mandate trading activity by the client, investment dealer or foreign dealer equivalent will comply with the Requirements. This is also required in NI-23-103.</p> <p>IIROC acknowledges the comment and has addressed it in the amendment to the subject provision (which has been paralleled in NI-23-103). The qualification “to comply with Requirements” limits the circumstances when such action may be taken by the Participant, such as to comply with the Order Protection Rule or to comply with the direction of a Market Integrity Official.</p> <p>The CSA and IIROC remain of the view that it is important to limit the risk of DEA trading by preventing DEA clients from trading for another person except under specified circumstances. However, investment dealers and foreign dealer equivalents that trade for other persons are permitted to enter “routing arrangements” under UMIR.</p>



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<p>from the client, investment dealer or foreign dealer equivalent;</p> <p>(ev) the client, investment dealer or foreign dealer equivalent will immediately inform the Participant if the client, investment dealer or foreign dealer equivalent fails or expects not to meet the standards set by the Participant; and</p> <p>(fb) in the case of an agreement for direct electronic access:</p> <p>(i) the client will immediately notify the Participant in writing of:</p> <p>(A) the names of the personnel of the client authorized by the client to enter an order using direct electronic access, and</p> <p>(B) details of any change to the information in sub-clause (A);</p> <p>(ii) the client may not trade for the account of any other person unless the client is:</p> <p>(A) a portfolio manager registered or exempted from registration as an adviser under securities legislation, or</p> <p>(B) a restricted portfolio manager, or a person conducting business in a foreign jurisdiction in a manner analogous to an adviser and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding in that foreign jurisdiction</p> <p>and the order is for or on behalf of a person who is itself a client of the client acting in the capacity of adviser for that person;</p> <p>(iii) an entity that is registered in a category analogous to the entities referred to in subclause (i) or (ii) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding;</p> <p>(gii) if the client trades for the account of any other person in</p>	<p>Scotia, IIAC, RBC - DEA Client Risk Controls - UMIR 7.13(3)(g)(ii)</p> <ul style="list-style-type: none"> Obligation to ensure that a client has reasonable risk controls for its own clients should not be placed on the Participant, but should remain with the client via contractual agreement. The language should read "the client must ensure that they have established and maintain reasonable risk management...". 	<p>IIROC acknowledges the comment and has amended the provision accordingly.</p>
<p>(iii) an entity that is registered in a category analogous to the entities referred to in subclause (i) or (ii) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding;</p> <p>(gii) if the client trades for the account of any other person in</p>	<p>RBC - Provision of Requirements to DEA Client - UMIR 7.13(3)(h)</p> <ul style="list-style-type: none"> Imposes a significant burden on Participants to send DEA clients updates to all the collective Requirements. The DEA client is already required to agree in writing that it will comply with the Requirements (and reconfirm annually). The onus should be on the DEA client to fulfill its contractual obligations under the DEA agreement and requirement on Participant should be removed. 	<p>This requirement is consistent with NI-23-103 and applies only with respect to relevant amendments to "applicable" Requirements following a grant of DEA.</p>



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<p>accordance with sub-clause (fi), the client must:</p> <p>(iA) ensure that the orders for the other person are transmitted through the systems of the client before being entered on a marketplace directly or indirectly through a Participant, and</p> <p>(iiB) the Participant must ensure that ensure that the orders for the other person are subject to has established and maintains reasonable risk management and supervisory controls, policies and procedures established and maintained by the client; and</p> <p>(hiV) the Participant shall provide to the client, in a timely manner, any relevant amendments or changes to:</p> <p>(iA) applicable Requirements, and</p> <p>(iiB) the standards established by the Participant under subsection (1); and</p> <p>(c) in the case of a routing arrangement agreement, the investment dealer or foreign dealer equivalent will not allow any order entered electronically by a client of the investment dealer or foreign dealer equivalent to be entered directly to a marketplace without being electronically transmitted through the systems of the Participant or the system of the investment dealer or foreign dealer equivalent.</p>		
<p>(4) A Participant must not allow any order to be transmitted using direct electronic access or through a routing arrangement unless:</p> <p>(a) the Participant is:</p> <p>(i) maintaining and applying the standards established by the Participant under subsection (1),</p> <p>(ii) satisfied the client, investment dealer or foreign dealer equivalent meets the standards established by the Participant under subsection (1), and</p> <p>(iii) satisfied the client, investment dealer or foreign dealer equivalent is in compliance with the written agreement entered into with the Participant; and</p>		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>(b) the order is subject to the risk management and supervisory controls, policies and procedures established by the Participant including the automated controls to examine each order before entry on a marketplace.</p>		
<p>(5) The Participant shall review and confirm:</p> <p>(a) at least annually review and confirm that:</p> <p>(i) the standards established by the Participant under subsection (1) are adequate, and</p> <p>(ii) the Participant has maintained and consistently applied the standards in the period since the establishment of the standards or the date of the last annual review; and</p> <p>(b) at least annually by the anniversary date of the written agreement assess, confirm and document with a client that the client, investment dealer or foreign dealer equivalent:</p> <p>(i) is in compliance with the written agreement with the Participant, and</p> <p>(ii) has met the standards established by the Participant under subsection (1) since the date of the written agreement or the date of the last annual review.</p>	<p>Scotia - Annual Client Review of Standards and Agreement – UMIR 7.12(5)(b), 7.13(5)(b)</p> <ul style="list-style-type: none"> • Seeks clarification that an annual confirmation and sign-off by clients would meet the requirement to confirm continued client compliance with the agreement and standards. • Wants flexibility in defining an annual review date in their policies and confirm client compliance before that date rather than the effective date of each individual agreement. This would allow coordination such reviews as part of an annual process, without compromising effectiveness. • Expectations regarding potential consequences resulting from a breach of the written agreement (material or otherwise) should be set out in guidance and confirm that the Participant has full discretion in this regard. 	<p>In IIROC’s view the annual compliance review of standards and the agreement for third-party electronic access should be conducted in accordance with policies and procedures reasonably designed to meaningfully assess compliance beyond an annual client “sign-off”, which would be part of that process. The annual review should confirm whether, pursuant to trading supervision requirements under UMIR 7.1 and Policy 7.1, there has been effective detection of any compliance failure.</p> <p>The timing of annual reviews with respect to the agreement has been structured so that the anniversary date of the agreement will not be exceeded before a review occurs. The annual review of standards may coincide with that review or may be conducted annually from the date of the last standards review.</p> <p>A gatekeeper report under UMIR 10.18 is the mechanism Participants must employ to report material breaches of the standards or agreement. The Participant may consider terminating access as a consequence of any breach as part of its policies and procedures in order to mitigate risks to its business and market integrity.</p>
<p>(6) A Participant shall forthwith notify the Market Regulator:</p> <p>(a) upon entering into a written agreement with a client respecting direct electronic access or a routing arrangement, of</p> <p>(i) the name of the client, investment dealer or foreign dealer equivalent; and</p> <p>(ii) the contact information for the client which will permit the Market Regulator to deal with the investment dealer immediately following the entry of an order by the client in respect of which</p>	<p>Scotia, RBC - Client Contact Information – UMIR 7.12(6)(a)(ii) and 7.13(6)(a)</p> <ul style="list-style-type: none"> • Concerned about the requirement to provide DEA and RA client contact information to IIROC. Clients may refuse to respond to regulator that does not directly regulate them. Excludes the responsible Participant from discussions and may cause client confusion. Participant should be 	<p>IIROC acknowledges the comment and has amended the provision to remove the client contact information requirement. A requirement to notify the Participant (rather than the Market Regulator) of the personnel of a DEA client authorized to enter an order using DEA has been added, however, as a term of the agreement specific to DEA in s. 7.13(3)(b)(i), consistent with current practice and aligned with NI 23-103.</p>



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>the Market Regulator wants additional information, and (iii) the names of the personnel of the client authorized by the client to enter an order using direct electronic access, and</p> <p>(iii) the names of the personnel of the client authorized by the client to enter an order using direct electronic access; and</p> <p>(b) of any change in the information described in clause (a).</p>	<p>contacted first and allowed opportunity to contact the client, or alternatively, be notified if and when the Market Regulator has contacted the client directly.</p>	
<p>10.15 Assignment of Identifiers and Symbols</p> <p>(1) The Market Regulator shall assign a unique identifier to:</p> <p>(a) a marketplace for trading purposes upon the Market Regulator being retained as the regulation services provider for the marketplace; and</p> <p>(b) an investment dealer, other than a Participant, or a foreign dealer equivalent upon the Market Regulator being notified that a Participant has entered into a written agreement with the investment dealer or foreign dealer equivalent respecting a routing arrangement; and</p> <p>(c) a client upon the Market Regulator being notified that a Participant has entered into a written agreement with the client respecting direct electronic access.</p> <p>(2) A marketplace, upon granting access to the trading system of the marketplace to a Participant or Access Person, shall assign a unique identifier to the Participant or Access Person for trading purposes.</p> <p>....</p>	<p>Scotia, RBC, IIAC and TMX - Unique client ID - UMIR 6.2(1)(a)(iv),(v) and 10.15</p> <ul style="list-style-type: none"> • Process appears to be inconsistent with that under NI 23-103. Seeks confirmation that process currently in place will remain with continuing use of the User ID Field for every order, dealers creating client IDs and reporting them to IIROC. • Creation and assignment of IDs by IIROC would not be workable as all existing IDs would have to be changed to meet a new convention. • Confusion as to whether client User ID for a DEA client would be communicated through the trader ID in the case that DEA client accesses market through jitneying Participant. Currently a DEA client is not identified for jitney orders. A significant change to systems and operations would be required. Suggests creation of new standardized marketplace order entry protocol tag to mandate ID of DEA client to ensure DEA client flows via RAs are all identified. 	<p>NI 23-103 has been amended for consistency with UMIR, to clarify that a Participant must ensure the client is assigned a DEA client identifier in the form and manner required by IIROC as regulation services provider. IIROC has indicated in the Notice of Approval that the current process related to use of the User ID field and reporting of the client ID to IIROC will remain in place at this time.</p>
<p>10.18 Gatekeeper Obligations with Respect to Access to Marketplaces</p> <p>(1) A marketplace that has provided access to a Participant or Access Person shall forthwith report to the Market Regulator the fact that the marketplace:</p> <p>(a) has terminated the access of the Participant or Access Person to the marketplace; or</p>		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>(b) knows or has reason to believe that the Participant or Access Person has or may have breached a material provision of any Marketplace Rule or agreement pursuant to which the Participant or Access Person was granted access to the marketplace.</p> <p>(2) A Participant that has provided access to a marketplace to an investment dealer or foreign dealer equivalent pursuant to a routing arrangement shall forthwith report to the Market Regulator the fact that:</p> <ul style="list-style-type: none"> (a) the routing arrangement has been terminated; or (b) the Participant knows or has reason to believe that the investment dealer or foreign dealer equivalent has or may have breached a material provision of: <ul style="list-style-type: none"> (i) any standard established by the Participant for the routing arrangement with the investment dealer or foreign dealer equivalent; or (ii) the written agreement between the Participant and the investment dealer or foreign dealer equivalent regarding the routing arrangement. <p>(32) A Participant that has provided access to a marketplace pursuant to direct electronic access or through a routing arrangement shall forthwith report to the Market Regulator the fact that the Participant:</p> <ul style="list-style-type: none"> (a) has terminated the access of the client under the arrangement for direct electronic access or of the investment dealer or foreign dealer equivalent through a routing arrangement; or (b) knows or has reason to believe that the client, investment dealer or foreign dealer equivalent has or may have breached a material provision of: <ul style="list-style-type: none"> (i) any standard established by the Participant for the granting of direct electronic access or a routing arrangement, or (ii) the written agreement between the Participant and the client regarding the direct electronic access, or the investment dealer or foreign dealer equivalent regarding a routing arrangement. 		
<p>Policy 7.1 – Trading Supervision Obligations</p>		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>Part 1 – Responsibility for Supervision and Compliance</p> <p>...</p> <p>In performing the trading supervision obligations, the Participant will act as a “gatekeeper” to help prevent and detect violations of applicable Requirements.</p> <p>When an order is entered on a marketplace by direct electronic access, under a routing arrangement or through an order execution service, the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service than the percentage of orders sampled in other circumstances.</p> <p>In addition, the “post-order entry” compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service may restrict the ability of the Participant to detect orders that are not in compliance with specific rules. For example, “post-order entry” compliance testing may be focused on whether an order entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or a client through an order execution service:</p> <ul style="list-style-type: none"> • has created an artificial price contrary to Rule 2.2; • is part of a “wash trade” (in circumstances where the client has more than one account with the Participant); • is an unmarked short sale (if the trading system of the Participant does not automatically code as “short” any sale of a security not then held in the account of the client other than a client required to use the “short-marking exempt” designation); and 		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<ul style="list-style-type: none"> has complied with order marking requirements and in particular the requirement to mark an order as from an insider or significant shareholder (unless the trading system of the Participant restricts trading activities in affected securities). 		
<p>Policy 7.1 – Trading Supervision Obligations Part 2 – Minimum Elements of a Supervision System ... The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, in accordance with subsection (2) of Rule 10.1, orders entered (including orders entered by a client under direct electronic access, an investment dealer or foreign dealer equivalent under a routing arrangement or by a client through an order execution service) must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed.</p>		
<p>Policy 7.1 – Trading Supervision Obligations Part 9 - Specific Provisions Applicable to Direct Electronic Access and Routing Arrangements <i>Standards for Clients, Investment Dealers and Foreign Dealer Equivalents</i> In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that provides direct electronic access or implements a routing arrangement must establish, maintain and apply reasonable standards for granting direct electronic access or a routing arrangement and assess and</p>	<p>TDSI - Onerous requirement for Participant to identify an originating investment dealer or foreign dealer equivalent and ensure that each order ultimately transmitted through the RA is properly marked and identified. This is not current practice and has significant technology and operational implications as order flow is commingled with many investment dealers on same routing connection. Client confidentiality may be breached by disclosing originating investment dealer.</p>	<p>As indicated in the response to the comment above related to the “standard” for order marking, Participants permitting foreign dealer equivalents to access a Canadian marketplace must have policies and procedures to ensure that UMIR 6.2 is complied with as it would for any other client trading on a Canadian marketplace. The identification of an originating investment dealer would not breach “client confidentiality” as the investment dealer is an IIROC regulated member.</p>



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<p>document whether each client, investment dealer or foreign dealer equivalent meets the standards established by the Participant for direct electronic access or a routing arrangement. The Market Regulator expects that as part of its initial “screening” process, non-institutional investors will be precluded from qualifying for direct electronic access except in exceptional circumstances generally limited to sophisticated former traders and floor brokers or a person or company having assets under administration with a value approaching that of an institutional investor that has access to and knowledge regarding the necessary technology to use direct electronic access. The Participant offering direct electronic access or a routing arrangement must establish sufficiently stringent standards for each client granted direct electronic access or each investment dealer or foreign dealer equivalent under a routing arrangement to ensure that the Participant is not exposed to undue risk and in particular, in the case of a non-institutional client the standards must be set higher than for institutional investors.</p> <p>The Participant is further required to confirm with the client granted direct electronic access or the investment dealer or foreign dealer equivalent in a routing arrangement, at least annually, that the client, investment dealer or foreign dealer equivalent continues to meet the standards established by the Participant including to ensure that any modification to a previously “approved” automated order system in use by a client, investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards.</p> <p><i>Breaches by Clients with Direct Electronic Access or by Investment Dealers or Foreign Dealer Equivalents in a Routing Arrangement</i></p> <p>A Participant that has granted direct electronic access to a client or entered into a routing arrangement with an investment dealer or foreign dealer equivalent must further monitor orders entered by the client, investment dealer or foreign dealer equivalent to identify whether the client, investment dealer or foreign dealer equivalent may have:</p> <ul style="list-style-type: none"> breached any standard established by the Participant for the granting of direct electronic access or a routing arrangement; breached the terms of the written agreement between the Participant and the client regarding the direct electronic access or the routing arrangement; 		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IROC Response to Commentator and Additional IROC Commentary
<ul style="list-style-type: none"> improperly granted access to or passed on provided its direct electronic access under direct electronic access or a routing arrangement to another person or company; engaged in unauthorized trading on behalf of the account of another person or company; or failed to ensure that its client's orders flowed are transmitted through the systems of the client, or Participant, investment dealer or foreign dealer equivalent (which include proprietary systems or systems that are provided by a third party) before being entered on a marketplace. <p><i>Identifying Originating Investment Dealer or Foreign Dealer Equivalent</i></p> <p>In relation to the assignment of a unique identifier to an investment dealer or foreign dealer equivalent in a routing arrangement, if orders are routed through multiple investment dealers or foreign dealer equivalents, the executing Participant is responsible for properly identifying the originating investment dealer or foreign dealer equivalent and must establish and maintain adequate policies and procedures to assure that orders routed by an investment dealer or foreign dealer equivalent to the executing Participant containing the Participant's identifier are also marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.</p> <p><i>Identifying Clients with Direct Electronic Access</i></p> <p>In relation to the assignment of a unique identifier to a client that is granted direct electronic access, the Participant must establish and maintain adequate policies and procedures to assure that orders routed by the client to the executing Participant containing the Participant's identifier are marked with all identifiers and designations relevant to the order as required under Rule 6.2 of UMIR on the entry of the order to a marketplace.</p>		
<p>Policy 7.1—Trading Supervision Obligations</p> <p>Part 10—Specific Provisions Applicable to Routing Arrangements</p> <p>Standards for Investment Dealers or Foreign Dealer Equivalents</p>		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IROC Response to Commentator and Additional IROC Commentary
<p>In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that enters into a routing arrangement with an investment dealer or foreign dealer equivalent must establish, maintain and apply reasonable standards for entering into the routing arrangement and assess and document whether each investment dealer or foreign dealer equivalent meets the standards established by the Participant for the routing arrangement. The Participant offering the routing arrangement must establish sufficiently stringent standards for each investment dealer or foreign dealer equivalent to ensure that the Participant is not exposed to undue risk.</p> <p>The Participant is further required to confirm with the investment dealer or foreign dealer equivalent at least annually, that the investment dealer or foreign dealer equivalent continues to meet the standards established by the Participant including to ensure that any modification to a previously “approved” automated order system in use by the investment dealer or foreign dealer equivalent continues to maintain appropriate safeguards.</p> <p>Identifying Originating Investment Dealer or Foreign Dealer Equivalent</p> <p>In addition to assigning a unique identifier to an investment dealer or foreign dealer equivalent in a routing arrangement with the Participant, the Participant is responsible for properly identifying the originating investment dealer or foreign dealer equivalent and must establish and maintain policies and procedures to appropriately mark and identify the originating investment dealer or foreign dealer equivalent for each order that is ultimately transmitted through the routing arrangement.</p> <p>Breaches by Investment Dealer or Foreign Dealer Equivalent</p> <p>A Participant that has provided access to a marketplace to an investment dealer or foreign dealer equivalent pursuant to a routing arrangement must monitor all orders entered by the investment dealer or foreign dealer equivalent to identify whether the investment dealer or foreign dealer equivalent may have:</p> <ul style="list-style-type: none"> ▲ breached any standard established by the Participant for the routing arrangement; or ▲ breached the written agreement between the Participant and the investment dealer or foreign dealer equivalent regarding the routing 		



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>arrangement:</p> <p>Policy 7.1 – Trading Supervision Obligations Part 11 – Specific Provisions Applicable to Order Execution Services In addition to the trading supervision requirements in Parts 1, 2, 3, 5, 7 and 8, a Participant that provides order execution services must monitor orders entered by an order execution services client to determine if the client may be using an automated order system other than one provided as part of the order execution service. The Participant shall confirm with the order execution services client, at least annually, whether the client has used since the date of the last confirmation an automated order system other than one provided as part of the order execution service.</p>	<p>Scotia, TDSI, TDW, IIAC, NBF –</p> <ul style="list-style-type: none"> • Not feasible to confirm annually with order execution service (OES) client re. use of AOS, a firm suggested an exemption from the requirement if AOS cannot be connected other than if firm “hacked” into. • No clear policy rationale for excluding Institutional Customers from OES which will disadvantage these customers. • Clarification requested as to implementation, communication and methodology of “manual order threshold” required so that firms can implement threshold. 	<p>The proposed amendments to Dealer Member Rule 3200 and UMIR Policy 7.1 relating to restriction on access to OES by Institutional Customers and monitoring for AOS use by OES clients have not been brought forward with this set of Amendments. Please refer to Appendix “B” of the Notice of Approval for final Dealer Member Rule amendments.</p> <p>However, these proposals are being re-examined and may form a new request for comments to be issued separately.</p> <p>A value for the order threshold is not being applied by IIROC at this time. However, at such time as IIROC is of the view that it may be necessary to impose a threshold for the purpose of supporting market integrity, a request for comments will be issued concerning methodology and implementation so that firms will have the ability to provide input and have time to implement.</p>
<p>Questions:</p> <p>1. Are there any consequences from the proposed extension of the definition of “Participant” that have not been addressed in the Proposed UMIR Amendments? In the alternative, should routing arrangements simply prohibit:</p> <p>a) a Participant from authorizing an investment dealer engaged in proprietary trading to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure; and</p> <p>b) the ability of an investment dealer to transmit orders to a marketplace without first passing through the systems of a Participant?</p> <p>In the alternative, should routing arrangements simply prohibit:</p> <ul style="list-style-type: none"> • a Participant from authorizing an investment dealer engaged in proprietary trading to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, 	<p>TDSI – Support for clear prohibition on investment dealers offered “naked access” by Participants. Investment dealer should become a full Participant rather than be deemed one.</p> <p>Scotia – If an investment dealer engaged in proprietary trading is authorized to set risk management or supervisory controls, the investment dealer should be both a DEA client for such trading and RA client for its agency trading.</p>	<p>Please see response above in reference to amended definition of “Participant”.</p> <p>As the definition of Participant is no longer expanded, an investment dealer may only be authorized to set or adjust the risk management or supervisory controls for agency order flow where there is an “ultimate client”. This precludes the authorization of control setting to an investment dealer in respect of any account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest.</p>



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>policy or procedure; and</p> <ul style="list-style-type: none"> the ability of an investment dealer to transmit orders to a marketplace without first passing through the systems of a Participant? 		
<p>2. Are the risks of providing direct electronic access to a client sufficiently different from the risks associated with operating a routing arrangement with an investment dealer to justify a separate “rule” governing each means of electronically accessing a marketplace?</p>	<p>Scotia - favours keeping rules distinct but not opposed one way or another.</p> <p>TD - favours simplifying the rule structure given difficulties explaining subtle differences in rule sets to clients.</p>	<p>In recognition that investment dealers and foreign dealer equivalents are granted market access without intermediation equivalent to direct electronic access and that the requirements respecting routing arrangements and direct electronic access are substantially similar, IIROC has restructured the rule framework for simplicity from two separate rules to one, Rule 7.13, to address both DEA and routing arrangements, and similarly for related Part 9, Policy 7.1, with qualifications for direct electronic access and routing arrangements specifically in the Rules where necessary.</p>
<p>3. Are there any implementation issues respecting the regulatory framework for electronic access to marketplaces that have not been considered?</p>	<p>Scotia – Seeks clarification of the treatment of clients with “direct access” to dealer algorithms with respect to application of DEA and RA regulations.</p>	<p>The comment has been addressed in the revised guidance with the addition of a new question for clarity. To the extent that an algorithm offered by the Participant is managed by and includes inputs of the Participant, this is equivalent to “intermediation” of the orders of the client, investment dealer or foreign dealer equivalent and is excluded from application of the third-party-electronic access regulatory framework.</p>
<p>4. Is the contemplated timeframe for implementation sufficient?</p>	<p>Scotia, TDSI, RBC, IIAC - Support for a one year implementation period (i.e. add 180 days to the 180 days provided for). Concern over time required to amend or replace existing contracts with DEA and RA clients as well as time involved for migration of Institutional Customers from OES platform.</p>	<p>Participants with existing agreements have been provided an additional 180 days to replace/amend their agreements such that the effective implementation period is one year.</p>



Text of Provision Following Adoption of the Amendments (Revisions to the Proposed Amendments Highlighted)	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<p>General Comments</p>	<p>RBC, IIAC - A DEA client or a dealer under routing arrangement that is affiliated with a Participant generally relies on the same standard of risk and supervisory controls employed by the Participant and would not be subject to the type of financial and operational risks contemplated in the Proposal. IIROC should exempt affiliates of a Participant from the proposed requirements and allow Participants flexibility in determining and applying the controls that best address its business risks when providing electronic access to marketplaces to its affiliates.</p>	<p>Pursuant to IIROC Notice 12-0363 – Provisions Respecting Electronic Trading, there is no exemption provided with respect to the requirement for a Participant to maintain a system of risk management controls, policies and procedures in respect of orders received from affiliates of a Participant, whether through a routing arrangement or DEA. The Provisions Respecting Electronic Trading do permit the authorization of the setting or adjustment of the risk management controls, policies and procedures in certain circumstances to an investment dealer, which may also be an affiliate of the Participant, and thus provides some flexibility in setting and applying controls where the investment dealer is in a better position to know the “ultimate client”.</p>
	<p>Wiley - Inconsistency in drafting between NI 23-103 and UMIR:</p> <ul style="list-style-type: none"> • Concern that different wording as between CSA and IIROC provisions could lead to different interpretations. • Duplication of proposals in NI 23-103 and UMIR. Could lead to unintended consequences (e.g. differences in processes for seeking exemptive relief). 	<p>Although the rule structure and some language in UMIR is not identical to that in NI 23-103, in certain cases given specific UMIR terminology, the CSA and IIROC are of the view that with the amendments, the language has been made as consistent as possible and the requirements and their meaning are essentially the same.</p> <p>In addition, under section 4.1 of NI 23-103, a Participant that complies with similar UMIR requirements to those established under Part 2.1 of the Instrument would not need to meet the requirements of Part 2.1 and would therefore only need to gain an exemption under UMIR. A separate exemption from NI 23-103 would not be necessary.</p>



Text of Guidance - Blacklined Revisions to IROC Notice 12-0316 – Rules Notice - Request For Comments – UMIR
Proposed Guidance Respecting Third-Party Electronic Access to Marketplaces

On October 25, 2012, IROC issued Notice 12-0316 requesting comments on Proposed Guidance Respecting Third-Party Electronic Access to Marketplaces (“Proposed Guidance”). IROC did not receive comments on the Proposed Guidance. However, editorial modifications have been made to the Proposed Guidance to conform with changes to the Proposed Amendments (see above Summary of Comments), as well as to include clarifications in response to questions received from industry representatives, confirming that:

- “naked access” is not permitted (new Question 3);
- DEA and routing arrangement requirements do not apply to client order flow that is intermediated by a Participant’s algorithm (new Question 12); and
- a foreign dealer equivalent that is also registered as an exempt market dealer is permitted to use electronic access but not when it is acting in its capacity as an exempt market dealer (new paragraph in Question 2).

The following table highlights the revisions to the Proposed Guidance together with IROC’s commentary in regard to the revisions.

Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IROC Commentary
<p>Executive Summary</p> <p>This Rules Notice provides guidance relating to the requirements under UMIR with respect to a Participant granting a third-party electronic access to a marketplace. The Guidance updates previous guidance issued with respect to aspects of electronic access to marketplaces and specifically addresses provisions established under both National Instrument 23-103 (the “CSA Access Rule”)³³ and amendments to UMIR (“Amendments”).³⁴ The Guidance expands upon the obligations of Participants under the framework for third-party electronic access to marketplaces by means of:</p>	<p>Revision to conform with change to proposed expanded definition of Participant, which has returned to its original scope.</p>

³³ Published at (2013) 36 OSCB 6893.

³⁴ IROC Notice 13-0184 - Rules Notice – Notice of Approval – UMIR and Dealer Member Rules – *Provisions Respecting Third-Party Electronic Access to Marketplaces* (July 4, 2013).



Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
<ul style="list-style-type: none"> • direct electronic access; • a routing arrangement; or • an order execution service. <p>In particular, the Guidance:</p> <ul style="list-style-type: none"> • provides examples relating to the requirements for order identification and designation, including the use of the “jitney” marker; and • highlights specific changes respecting order execution services, and direct electronic access and routing arrangements; and <p>□ outlines the effect of the expanded definition of Participant to include investment dealers who, while not a member, user or subscriber to a marketplace, have under a routing arrangement:</p> <ul style="list-style-type: none"> ○ the ability to enter orders on a marketplace without the order being transmitted through the system of a Participant and who have been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting orders from client accounts, or ○ been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management and supervisory controls, policies and procedures for accounts in which the investment dealer has a direct or indirect interest in addition to those of its clients. 	
<p>1. Background</p> <p>1.1 CSA Access Rule and UMIR Amendments</p> <p>On July 4, 2013, IIROC published notice of the approval of the Amendments which Amendments align UMIR with the requirements set out in the CSA Access Rule and introduce a regulatory framework for third-party electronic access to marketplaces.³⁵ The Amendments confirm that a third-party may only obtain electronic access to marketplaces through a Participant using the mechanisms of:</p> <ul style="list-style-type: none"> • direct electronic access (“DEA”) provided by Participants to certain Canadian registrants advisers and other clients (“DEA clients”); • order routing arrangements between investment dealers or foreign dealer equivalents³⁶ and Participants; or 	<p>Revision to conform with new reference to “advisers” in NI 21-103 as well as in UMIR provisions, and to reflect conforming change to proposed UMIR definition of “foreign dealer equivalent”.</p>

³⁵ See IIROC Notice 13-0184 *op.cit.*

³⁶ The Amendments define a “foreign dealer equivalent” as ~~“a person registered in a category analogous to that of investment dealer in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding~~ a person in the business of trading securities in a foreign jurisdiction in a manner analogous to an



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<ul style="list-style-type: none"> • order execution services presently offered to a range of client account types. <p>The framework is designed to address areas of concern and risks brought about by electronic access to marketplaces. Such risks include those relating to: liability; credit; market integrity; sub-delegation; technology or systems; and regulatory arbitrage.</p>	
<p>1.2 UMIR Requirements for Identifiers and Designations</p> <p>Prior to the Amendments, Rule 1.1 of UMIR defined a “Participant” generally as a registered dealer that is a:</p> <ul style="list-style-type: none"> <input type="checkbox"/> member of an exchange; <input type="checkbox"/> user of a quotation and trade reporting system; or <input type="checkbox"/> subscriber to an alternative trading system. <p>Under the Amendments, the definition of “Participant” was expanded to include an investment dealer that is a party to a routing arrangement with a Participant and, in the applicable written agreement, the investment dealer:</p> <ul style="list-style-type: none"> <input type="checkbox"/> may enter orders directly to the marketplace without being electronically transmitted through the Participant’s systems and is authorized to set or adjust on behalf of the Participant the various controls, policies or procedures respecting such orders; or <input type="checkbox"/> has been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than in the commission charged on a transaction or reasonable fee for the administration of the account (that is an account in which proprietary trading is taking place). <p>Rule 1.1 of UMIR defines a “jitney order” as an order entered on a marketplace by a Participant acting for or on behalf of another Participant. In light of the expansion of the definition of “Participant” under the Amendments, the definition of “jitney order” will include orders from an investment dealer that, while not a member, user or subscriber, has become a “Participant” under the expanded definition.</p> <p>Prior to the Amendments, Rule 6.2 of UMIR required that each order entered on a marketplace contain various identifiers and designations that may be applicable to the order including:</p> <ul style="list-style-type: none"> • the identifier of the Participant entering the order on a marketplace (the “Executing Participant”); • in the case of a jitney order, the identifier of the Participant for or on behalf of whom the order is entered; • the designation that the order is: 	<p>Revision to conform with change to proposed expanded UMIR definition of Participant which has returned to its original scope.</p>

investment dealer and that is subject to the regulatory jurisdiction of a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding in that foreign jurisdiction”.



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<ul style="list-style-type: none"> ○ a jitney order, ○ a principal or non-client order, ○ an order that will be a short sale or a short-marking exempt sale, and ○ an order from an insider or significant shareholder. <p>The Amendments expanded the identifiers which must be included on an order to add:</p> <ul style="list-style-type: none"> • the identifier of the client for or on behalf of whom an order is entered under direct electronic access; and • the identifier of the investment dealer or foreign dealer equivalent for or on behalf of whom the order is entered under a routing arrangement. <p>At this time, IIROC will require is continuing the practice that these new is currently used for the identification of orders from clients with direct market access such that unique identifiers; will be included in the “User ID” field (as designated by the marketplace on which the order is entered), be included in the “User ID” field for DEA clients, and for investment dealers and foreign dealer equivalents under routing arrangements.</p> <p>Reference should be made to the text of Rule 6.2 for a listing of all of the required identifiers and designations to be attached to an order entered on a marketplace.</p>	
<p>1.3 Origination and Routing of Orders for Execution and Use of Identifiers</p> <p>Only a Participant that is a member, user or subscriber may provide direct third-party access to a marketplace through:</p> <ul style="list-style-type: none"> • DEA to DEA clients; or • a routing arrangement with other Participants, investment dealers or foreign dealer equivalents. <p>A client order, principal order or non-client order may originate with a dealer that is either a Participant³⁷ (an “Originating Participant”) or with an investment dealer or foreign dealer equivalent that is not a Participant for the</p>	<p>Editorial change to more clearly address in s.1.3 the use of identifiers, and moving certain text related to order marking in s. 1.4 following.</p>

³⁷ ~~This would include an investment dealer which, while not being a member, user or subscriber of a marketplace, has either:~~

- ~~• direct access to a marketplace under a routing arrangement with a Participant that permits the investment dealer to enter orders directly to the marketplace without being electronically transmitted through the Participant’s systems and who have been authorized to perform on behalf of the Participant the setting or adjustment of a specific risk management or supervisory control, policy or procedure respecting orders from client accounts; or~~
- ~~• been authorized to perform on behalf of a Participant the setting or adjustment of a risk management or supervisory control, policy or procedure related to the handling of the dealer’s proprietary orders.~~



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<p>purposes of UMIR (an “Originating Dealer”). The order may be routed to another dealer to act as intermediary (a “Participant Intermediary” if the other dealer is a Participant for the purposes of UMIR or otherwise a “Dealer Intermediary”) in on-routing the order to an Executing Participant.</p> <p>1-4 Responsibility for Ensuring Proper Order Marking</p> <p>With the Amendments, an order will be able to carry up to three separate identifiers. Each of the Executing Participant and any Originating Participant or Participant Intermediary has an obligation to ensure that all applicable designations and identifiers are included on the entry of an order on a marketplace. With respect to identifiers:</p> <ul style="list-style-type: none"> • the Broker ID Field must always contain the identifier of the Executing Participant; • the Jitney ID Field must contain the identifier of the first Participant involved in the routing of the order if an Originating Participant or a Participant Intermediary is involved in the routing of the order and the order must be marked “jitney”; and • the User ID Field must contain: <ul style="list-style-type: none"> ○ the identifier of the DEA client if a client enters an order using DEA provided by a Participant, or ○ if no DEA client is involved, the identifier of the first Participant, investment dealer or foreign dealer equivalent that receives access under a routing arrangement with a Participant (regardless if there are other intermediaries in the chain) and is using the routing arrangement in the transmission of the order. <p>With respect to designations, an order must contain all designations required under Rule 6.2 that are relevant to the order (e.g. non-client, insider, short sale, short marking exempt, etc.):</p> <p>The Originating Participant has the same obligations regarding client knowledge that it would have if it entered the order directly onto the marketplace and must therefore provide any intermediary or the Executing Participant with all required designations and identifiers.</p> <p>If an Executing Participant receives an order directly from an Originating Dealer or from a Dealer Intermediary that is acting on behalf of an Originating Dealer that order will not be considered a “jitney order” for the purposes of UMIR. In these circumstances, the Executing Participant is responsible for ensuring that its identifier and all designations relevant to the order as required under Rule 6.2 of UMIR are included on the entry of the order to a marketplace.</p> <p>An Originating Participant that uses a Dealer Intermediary for routing orders to an Executing Participant must ensure that the Dealer Intermediary is able to receive and to pass on to the Executing Participant all required identifiers and designations on an order. Similarly, a Participant Intermediary or Executing Participant must ensure that a Dealer Intermediary or Originating Dealer has adequate policies and procedures in place to assure that orders routed to the Executing Participant contain all of the designations and identifiers that are required by Rule 6.2 of UMIR.</p>	



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<p>If a Participant has provided DEA to a client, the Participant must have established standards that require the client to have reasonable knowledge of and the ability to comply with all applicable requirements, including the marking of each order with the designations and identifiers as by required by Rule 6.2. On an on-going basis, the Participant would be expected to supervise the entry of orders on a marketplace and to undertake compliance testing (including testing of compliance with order marking requirements). The Participant is expected to review and confirm at least annually that the client is in compliance with standards established by the Participant. Under the Amendments, each client with direct electronic access will be assigned a unique identifier which must be included in the User ID field on each order that the client enters using direct electronic access.</p> <p>While a client that enters orders through an order execution service will not be assigned a separate unique identifier, any Participant handling the orders at any stage in the transmission to a marketplace must take reasonable steps to ensure that the orders comply with all applicable requirements, including the marking of each order with designation and identifiers as required by Rule 6.2.</p> <p>Any Participant handling the orders at any stage in the transmission to a marketplace must take reasonable steps to ensure that the orders comply with all applicable Requirements, including the marking of each order with designations and identifiers as required by Rule 6.2.</p> <p>The following table sets out the identifiers which should be attached to an order based on a number of order routing and transmission scenarios. The table includes situations where there would be no change in the current order marking practices but these are provided in order to better illustrate the changes that are introduced by the Amendments. For the purposes of this table, “intermediated” means the provision of an order by a means other than third-party electronic access through:</p> <ul style="list-style-type: none"> • direct electronic access; • a routing arrangement; or • an order execution services account. <p>...</p>	
<p>1.4 Responsibility for Ensuring Proper Order Marking</p> <p>With respect to designations, an order must contain all designations required under Rule 6.2 that are relevant to the order (e.g. non-client, insider, short sale, short-marking exempt, etc.). Rule 6.2 is applicable in the same manner whether orders are transmitted via third-party electronic access or are intermediated by a Participant. The Originating Participant has the same obligations regarding client knowledge that it would have if it entered the order directly onto the marketplace and must therefore provide any intermediary or the Executing Participant with all required designations and identifiers.</p> <p>If an Executing Participant receives an order directly from an Originating Dealer or from a Dealer Intermediary that is acting on behalf of an Originating Dealer that order will not be considered a “jitney order” for the purposes of</p>	<p>Revision to clarify that there is no difference in application of UMIR 6.2 whether trading is by third-party electronic access or intermediated.</p>



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<p>UMIR. In these circumstances, the Executing Participant is responsible for ensuring that its identifier and all designations relevant to the order as required under Rule 6.2 of UMIR are included on the entry of the order to a marketplace.</p> <p>An Originating Participant that uses a Dealer Intermediary for routing orders to an Executing Participant must ensure that the Dealer Intermediary is able to receive and to pass on to the Executing Participant all required identifiers and designations on an order. Similarly, a Participant Intermediary or Executing Participant must ensure that a Dealer Intermediary or Originating Dealer has adequate policies and procedures in place to assure that orders routed to the Executing Participant contain all of the designations and identifiers that are required by Rule 6.2 of UMIR.</p> <p>If a Participant has provided DEA to a client or enters into a routing arrangement with an investment dealer or foreign dealer equivalent, the Participant must have established standards that require the client, investment dealer or foreign dealer equivalent to have reasonable knowledge of and the ability to comply with all applicable Requirements, including the marking of each order with the designations and identifiers as by required by Rule 6.2. On an on-going basis, the Participant would be expected to supervise the entry of orders on a marketplace and to undertake compliance testing (including testing of compliance with order marking requirements). The Participant is expected to review and confirm at least annually that the client is in compliance with standards established by the Participant.</p>	
<p>2. Questions and Answers</p> <p>The following is a list of questions regarding the supervision and compliance obligations of a Participant or Access Person under the Amendments and IIROC’s response to each question:</p> <p>1. May a Participant in a routing arrangement authorize <u>ANY</u> investment dealer with an ultimate client that originates the orders to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure?</p> <p>...</p> <p>No. A Participant may only authorize an investment dealer that is a party to a routing arrangement with the Participant to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure. The routing arrangement is subject to minimum standards, a written agreement and regulatory oversight under UMIR.</p> <p>If the investment dealer is authorized, pursuant to the applicable routing agreement, to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> enter orders directly to the marketplace without being transmitted through the Participant’s systems and the investment dealer is authorized to set or adjust the various controls, policies or procedures respecting client orders; or • engage in “proprietary” trading on its own behalf or that of a related entity in which the investment dealer holds a direct or indirect interest; <p>the investment dealer will be considered a Participant subject to UMIR under the expanded definition of</p>	<p>Revision to conform with change to proposed expanded definition of Participant which is returned to its original scope, and to conform language to NI 23-103 respecting authorization of setting or adjusting of controls.</p>



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<p>“Participant”. This is to ensure that all proprietary trading or trading outside the Participant’s systems is equally subject to UMIR and regulatory oversight to mitigate the higher risk associated with these trading activities.</p> <p>Market Regulation Policy staff may consider requests for exemptions related to the allocation authorization of an investment dealer to perform on behalf of the Participant the setting or adjusting of a risk management or supervisory of controls, policy or procedure in certain circumstances if it is demonstrated that each dealer in the chain of order transmission has reasonable controls so as to manage their individual risks and comply with the requirements under UMIR and 7-National Instrument 23-103 and the CSA Access Rule.</p>	
<p>2. Are Exempt Market Dealers permitted electronic access to marketplaces?</p> <p>No. Registered dealers such as Exempt Market Dealers (“EMDs”) may not gain direct electronic access to a marketplace through a Participant under a routing arrangement or direct electronic access and would not be eligible to trade through an order execution account for Retail Customers. These restrictions are intended to prevent regulatory arbitrage with respect to trading and encourage registered dealers wishing to have direct access to a marketplace to become a member of IIROC (and be subject to the Dealer Member Rules and, in certain cases, UMIR).³⁸</p> <p>In the event a foreign dealer equivalent is also registered as an EMD, the foreign dealer equivalent would be eligible to be granted DEA for its proprietary trading and may enter into a routing arrangement with respect to its agency order flow, but would not be eligible for direct access to a marketplace when acting in its capacity as an EMD for Canadian clients.</p>	<p>Revisions to account for deferral of proposal respecting institutional order execution accounts and to clarify types of access that a foreign dealer equivalent may have when also registered as an EMD.</p>
<p>3. Is “naked access” permitted under DEA or a routing arrangement?</p> <p>No. While a Participant may, in limited circumstances, authorize an investment dealer that is a party to a routing arrangement with the Participant to perform on behalf of the Participant the setting or adjustment of a risk management or supervisory control, policy or procedure,³⁹ this is precluded in the case of an investment dealer or related entity engaged in proprietary trading.</p> <p>In addition, notwithstanding that a Participant may have authorized an investment dealer to set or adjust the specific risk management or supervisory controls, policies or procedures in respect of client orders from that investment dealer, under Rule 7.13(4)(b), orders transmitted through a routing arrangement as well as using direct electronic access cannot “bypass” a Participant’s risk management and supervisory controls, policies and procedures. However, this does not impact the ability of a client, investment dealer or foreign dealer equivalent, to transmit orders containing the identifier of the Participant directly to a marketplace without being electronically</p>	<p>New question to clarify and confirm that naked access is not permitted.</p>

³⁸—IIROC has issued a concept proposal regarding the establishment of a new class of IIROC Member to be called a “Restricted Dealer Member”. If the concept proposal is pursued and adopted, a firm with exempt market dealer or restricted dealer registration under applicable securities legislation would be able to apply for registration as an investment dealer and for membership in IIROC as a “Restricted Dealer Member”. See IIROC Notice 12-0217 – Rules Notice – Concept Paper – Request for Comments – Dealer Member Rules – IIROC Concept Proposal – Restricted Dealer Member Proposal (July 12, 2012).

³⁹ See Rule 7.1(8) in IIROC Notice 12-0363 – Rules Notice – Notice of Approval – UMIR – Provisions Respecting Electronic Trading (December 7, 2012).



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<p>transmitted through the “systems” of the Participant and instead be transmitted through the technology systems of a service provider retained by the Participant for facilitating access to a marketplace.</p>	
<p>34. Does the form of electronic access to marketplaces impact whether a Participant should apply the “short-marking exempt” designation to purchases and sales in an account?</p> <p>No. The characteristics of the account activity govern whether the short-marking exempt designation should apply, not the means of electronically accessing the marketplace.⁴⁰ In particular, UMIR defines a “short-marking exempt order” (“SME order”) as including an order for the purchase or sale of a security from an account that is an arbitrage account. Whether an arbitrage account is held by an order execution services client, a DEA client or an investment dealer in a routing arrangement, the arbitrage account would qualify for the SME order designation. Accounts which use automated order generation and entry and which are generally “directionally neutral” in their trading activity will also have SME orders.</p> <p>A Participant that provides electronic access to a marketplace must ensure that orders entered through any form of such arrangements are correctly designated. IIROC expects the Participant to review the designation of orders by clients with SME order designations as part of the Participant’s supervisory procedures required by Rule 7.1 and Policy 7.1 of UMIR.</p>	
<p>4.5. Are the standards to be established by a Participant for granting direct electronic access to a client or entering a routing arrangement with an investment dealer or foreign dealer equivalent the same for each DEA client and for each investment dealer or foreign dealer equivalent?</p> <p>No. While the general standards that must be established by the Participant in granting access to a marketplace are included in Rule 7.12 for via routing arrangements and Rule 7.13 for direct electronic access are provided for in Rule 7.13, their application must be appropriate and customized to for the type, level of risk and level of sophistication of trading that would be undertaken by the DEA client or by the investment dealer or foreign dealer equivalent that the Participant would grant access to. As the provider of electronic access to marketplaces, the Participant’s role in undertaking due diligence with respect to its clients is a key method of managing risks associated with electronic access to marketplaces and necessitates a thorough vetting of potential DEA clients and parties to routing arrangements. This process is accordingly integral to the preservation of market integrity, which can only be accomplished if the standards are meaningfully set by Participants.</p> <p>A Participant should assess and determine what additional standards are reasonable given the particular circumstances of the Participant and each client, or investment dealer or foreign dealer equivalent. This includes an evaluation of the suitability of the form of access that should be provided to any client. In the case of a Retail Customer considered for direct electronic access, IIROC expects such would only be provided in exceptional</p>	<p>Editorial changes to clarify the application of standards pursuant to Rule 7.13.</p>

⁴⁰ See IIROC Notice 12-0078 - Provisions Respecting Regulation of Short Sales and Failed Trades (March 2, 2012) and IIROC Notice 12-0030 -Guidance on “Short Sale” and “Short-Marking Exempt” Order Designations (October 11, 2012).



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<p>circumstances upon application of more stringent standards than to an institutional client. Additional factors a Participant may consider when setting such standards for prospective DEA clients, and investment dealers or and foreign dealer equivalents include prior sanctions for improper trading activity, evidence of a proven track record of responsible trading, knowledge and of and proficiency regarding use of an automated order system, knowledge of trading rules, supervisory oversight, the proposed trading strategy and associated volumes of trading.</p>	
<p>56. What level of “knowledge” must a DEA client have before being provided DEA by a Participant?</p> <p>A Participant’s standards must provide require its a DEA client to have reasonable knowledge of and the ability to comply with the applicable Requirements; and the Participant must provide its DEA client with relevant changes or amendments to the applicable Requirements and standards established by the Participant and further must regularly update this information with all relevant amendments as they are introduced.</p> <p>In addition, a Participant must assess each client’s knowledge and determine what, if any, training is reasonably required in the particular circumstances. The training must at a minimum enable the client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. It may be appropriate for the Participant dealer to require that the client have the same training and proficiency required of registrants.</p> <p>After DEA has been granted, an assessment of the DEA client’s knowledge of applicable marketplace and regulatory requirements would be considered necessary if significant changes to these Requirements are made or if the Participant detects unusual trading activity by the DEA client. If the Participant finds the DEA client’s knowledge to be deficient after such an assessment, the Participant may require additional training for the DEA client.</p>	<p>Editorial revision for greater clarity regarding Participant’s standards for DEA clients and obligation on Participant to provide DEA clients with changes to applicable Requirements and standards.</p>
<p>67.. Should a Participant employ the same compliance and supervision standards to monitor trading conducted by order execution clients as with other forms of electronic access to marketplaces?</p> <p>Yes. A Participant is expected to comply with the trading supervision obligations set out in Rule 7.1 and Policy 7.1 with respect to all forms of electronic access to marketplaces, which emphasize the higher risks attendant with trading which does not involve a Participant’s staff directly. It is important to note, however, that these risks may be heightened for trading by order execution clients as, in distinction to DEA and routing arrangements, a Retail Customer client seeking to open an order execution service account would not be subject to a similar “screening” process and would not be provided training. There may be a disparity in knowledge of trading rules and obligations causing a higher proportion of unintentional offending orders or a greater degree of unscrupulous trading by sophisticated clients given the relative “anonymity” afforded in the order execution service⁴¹.</p> <p>In order to mitigate some of these risks, the Dealer Member Rules provide that an order execution client must not employ an automated order system that is not provided by the order execution service and provide IIROC with the authority to set, from time to time, a threshold on the number of orders that may be manually sent by order</p>	<p>Revision to account for deferral of proposed UMIR Policy concerning monitoring of use of an AOS by an order execution service client.</p>

⁴¹ Please refer to Market Integrity Notice 2007-011 – Guidance - Compliance Requirements for Order Execution Services (April 20, 2007).



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<p>execution clients. Policy 7.1 of UMIR requires that a Participant providing an order execution service must, in addition to the other applicable compliance and supervision obligations, monitor to determine if the order execution client may be using such an automated order system and confirm at least annually with the client that an automated order system is not used.</p>	
<p>78. Are there any new “gatekeeper obligations” in regard to trading activities of: a DEA client; investment dealer or foreign dealer equivalent in a routing arrangement; and order execution service client?</p> <p>Yes. Policy 7.1 provides for trading supervision obligations with regard to all forms of electronic access to a marketplace and requires the monitoring of all orders entered by the party provided with electronic access to a marketplace for UMIR violations such as “manipulative and deceptive” trading activities and “improper orders and trades”. However, the scope of supervision is expanded to include potential breaches of any standard set by a Participant or term of a written agreement, unauthorized trading or improper use of an automated order system, associated with the grant of electronic access to a marketplace.</p> <p>Rule 10.16 already requires a Participant or Access Person to conduct further investigation or review where the Participant or Access Person has reason to believe that there may have been a violation of UMIR.⁴² A Participant or Access Person cannot ignore “red flags” which may be indicative of improper behaviour by a client, director, officer, partner or employee of the Participant, Access Person or related entity.</p> <p>A Participant that has provided third-party electronic access must, as part of its gatekeeper responsibilities, report to IIROC:</p> <ul style="list-style-type: none"> • any termination by the Participant of access to a marketplace; and • knowledge of, or a reason to believe that any person who has been granted access has materially breached: <ul style="list-style-type: none"> ○ a Marketplace Rule, ○ a term of the agreement governing third-party access, or ○ a standard established by the Participant governing third-party access. 	
<p>89. Can a Participant use the same compliance sampling and testing standards to monitor trading conducted by persons with third-party electronic access as it does for other trading activity?</p> <p>Under Policy 7.1 of UMIR, if an order is entered on a marketplace without the involvement of a trader, a Participant’s supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. To the extent that a Participant does not conduct separate testing of trading by persons with third-party electronic access to marketplaces, it may be appropriate for a Participant to sample for compliance testing a higher percentage of orders entered by these persons that have not been handled by staff of the Participant (i.e. orders that were not</p>	<p>Revision to conform with Guidance on Certain Manipulative and Deceptive Trading Practices, <i>op. cit.</i></p>

⁴² See also IIROC Notice 13-0053 - *Guidance on Certain Manipulative and Deceptive Trading Practices* (February 14, 2013), which provides guidance on manipulative and deceptive activities, particularly trading strategies using automated order systems or direct electronic access.



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<p>“flagged” through an automated compliance system or otherwise handled by staff of the Participant) than the percentage of orders sampled in other circumstances. Participants should consider using an automated compliance system for post-trade review and analysis of orders that have been generated by an automated order system.</p>	
<p>910. Are there any particular “risks” that need to be addressed in compliance procedures for trading by persons with third-party electronic access?</p> <p>Part 3 of Policy 7.1 under UMIR sets out the minimum compliance procedures for trading on a marketplace. However, Policy 7.1 also stipulates that the compliance procedures must be appropriate for the lines of business conducted by a Participant. Given that orders entered by a person with third-party electronic access will be subject to pre-entry filtering as set out in Part 7 of Policy 7.1 but, in most circumstances, will be subject to limited supervision prior to being sent to the order routing system of the Participant, the compliance procedures for persons with third-party electronic access should, at a minimum, address the procedures for testing:</p> <ul style="list-style-type: none"> • markers and identifiers as required by Rule 6.2 of UMIR, and in particular: <ul style="list-style-type: none"> ○ the “short sale” or “short-marking exempt” markers, and ○ the insider or significant shareholder order markers; • orders that have been entered for “spoofing” contrary to Rule 2.2 of UMIR (such as the entry of an order or orders which are not intended to be executed and are entered for the purpose of determining the depth of the market, checking for the presence of an “iceberg” order, affecting a calculated opening price or other similar improper purpose); • orders that have been entered on a marketplace and trades that have executed for the creation of an “artificial price” contrary to Rule 2.2 of UMIR; • orders that have been entered on one or more marketplaces with the intention of “quote stuffing” (intentionally submitting a high volume of orders or messages for the purpose of interfering with the timely execution of trades or dissemination of order and trade data) contrary to Rule 2.2 of UMIR; • orders that have been entered which seek to abuse the minimum guaranteed fill facility of a person with Marketplace Trading Obligations; • orders that have been entered at unreasonable prices; • “wash trading” (particularly if the person with third-party electronic access has more than one account with the Participant); and • trades for failure to deliver or settle. <p>As required by Rule 7.1, any special compliance procedures employed for trading by persons with third-party electronic access to a marketplace must be in writing and must contain detailed guidance on how testing of orders and trades is to be conducted.</p> <p>Part 5 of Policy 7.1 requires that the procedures adopted by a Participant address the steps to be taken to monitor the trading activity of any person who has multiple accounts with the Participant including other accounts in which the person has an interest or over which the person has direction or control.</p>	



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<p>1011. What are the obligations if a client sends orders directly to a smart order router offered by the Participant?</p> <p>If a client has direct access to a smart order router offered by the Participant (such that an order from the client does not pass through the systems of the Participant), the client will be considered to have received “direct electronic access” from the Participant and would be subject to the requirements of Rule 7.13 of UMIR. In this case, the identifier assigned to a direct electronic access client will be in the “User ID” field.</p> <p>However, it should also be noted that in accordance with the requirement of National Instrument 23-103 <i>Electronic Trading Rule</i> and Part 7 of Policy 7.1 of UMIR, each order must be subject to examination prior to entry on a marketplace by automated controls to prevent the entry of an order which would result in:</p> <ul style="list-style-type: none">• the Participant exceeding pre-determined credit or capital thresholds;• a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client; or• the Participant or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities. <p>As such, any order entered to a smart order router must be subject to the automated controls of the Participant before the smart order router transmits the order to a marketplace.</p>	



Text of Guidance (Revisions to the Proposed Guidance Highlighted)	IIROC Commentary
<p>12. What are the obligations if a client sends orders directly to an algorithm (such as a “VWAP algo”) offered by the Participant?</p> <p>If a client sends orders directly to an algorithm offered by the Participant, the Participant is intermediating the client’s order flow as the Participant provides input into the programming and management of the algorithm. The provisions respecting DEA and routing arrangements are accordingly not applicable to the entry of orders on a marketplace that are intermediated by the Participant through the algorithm it offers to the client. However, it should also be similarly noted that in accordance with the requirements of National Instrument 23-103 <i>Electronic Trading and Direct Electronic Trading Access to Marketplaces</i> and Part 7 of Policy 7.1 of UMIR, each order must be subject to examination prior to entry on a marketplace by automated controls to prevent the entry of an order which would result in:</p> <ul style="list-style-type: none"> • the Participant exceeding pre-determined credit or capital thresholds; • a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client; or • the Participant or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities. 	<p>New question to clarify that regulatory framework related to DEA and routing arrangements does not apply to client order flow that is intermediated by a Participant’s algorithm.</p>
<p>3. Impact on Existing Guidance</p> <p>This Rules Notice repeals and replaces, effective the date the CSA Access Rule and the Amendments become effective March 1, 2014 the guidance set out in:</p> <ul style="list-style-type: none"> • Market Integrity Notice 2005-003 - <i>Guidance – Marking Jitney Orders</i> (March 4, 2005); • Market Integrity Notice 2005-006 – <i>Guidance - Obligations of an “Access Person” and Supervision of Persons with “Direct Access”</i> (March 4, 2005); • Market Integrity Notice 2007-004 - <i>Guidance – Marking Orders Received from Other Dealers</i> (February 28, 2007); and • Market Integrity Notice 2007-010 – <i>Guidance - Compliance Requirements for Dealer Sponsored Access</i> (April 20, 2007); and • Market Integrity Notice 2007-011 – <i>Guidance – Compliance Requirements for Order Execution Services</i> (April 20, 2007). 	