Rules Notice
Request for Comments
UMIR

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14-0124
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Proposed Provisions Respecting the Order Protection Rule

Executive Summary

On May 7, 2014, the Board of Directors ("Board") of IIROC approved the publication for comment of proposed amendments to UMIR ("Proposed Amendments") that align to proposed amendments by the Canadian Securities Administrators ("CSA") to National Instrument 23-101 *Trading Rules* ("CSA Trading Rules") regarding order protection and best execution ("Proposed CSA OPR Amendments").[1]

The Proposed CSA OPR Amendments would:

- redefine a "protected order" for the purposes of Part 6 of the CSA Trading Rules ("OPR");
- require that only displayed orders on a marketplace that met a threshold related to market share would have to be considered for compliance with OPR;[2]
- clarify that displayed orders entered on any marketplace cannot lock or cross the best protected order;

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[1] (2014) 37 OSCB 4873.

[2] In addition, orders on an Exchange which does not meet the threshold level of market share would have to be considered in respect of securities listed on that Exchange.

- require disclosure by dealers of their best execution policies particularly as related to their order handling and routing practices, including the identification of the marketplaces or trading facilities and the types of intermediaries to which client orders may be routed for handling or execution; and
- introduce a cap on trading fees.

The Proposed Amendments would:

- revise the definition of "protected marketplace" to provide that the marketplace meet the threshold level of market share established for the purposes of the OPR;[3]

- provide that the "best ask price" and "best bid price" would be determined by reference to orders displayed on a "protected marketplace";

- confirm that a "bypass order" could be entered on any marketplace that displays orders and not just on protected marketplaces;

- confirm that the entry of a client order on a marketplace that is not protected while entering a principal or non-client order on that same terms on a protected marketplace would be considered a breach of the prohibition under client priority rules on intentional trading ahead;

- confirm that a Participant should consider, if known or available, displayed orders on a marketplace that is not protected when determining if a client-principal trade will occur at the "best available price"; and

- make several editorial changes or consequential amendments to certain provisions.

The most significant impact of the Proposed Amendments would be to allow a Participant or Access Person to take account only of displayed orders on protected marketplaces when determining compliance with a UMIR requirement that makes reference to "best ask price", "best bid price" or "better price" except in three specific circumstances related to:

- best execution (see Section 2.3 of this Notice);

- client priority (see Section 3.2 of this Notice); and

- client-principal trading (see Section 3.3 of this Notice).

IIROC would expect that, if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would be implemented on the date the changes to the CSA Trading Rules related to the OPR become effective.

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[3]   In addition, an Exchange which does not meet the threshold level of market share would be a protected marketplace with respect to the trading of securities listed on that Exchange.

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1.   Policy Development Process

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (the "Recognizing Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and the CSA Trading Rules.

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.[4]   IIROC has adopted, and the Recognizing

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[4]   Presently, IIROC has been retained to be the regulation services provider for: Alpha Exchange Inc. ("Alpha"), CNSX Markets Inc. (the operator of the Canadian Securities Exchange or CSE), Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSXV"), each as an

Regulators have approved, UMIR as the market integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

The Market Rules Advisory Committee ("MRAC") of IIROC was consulted with respect to the Proposed Amendments. MRAC is an advisory committee comprised of representatives of each of: the marketplaces for which IIROC acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.[5]

Comments are requested on all aspects of the Proposed Amendments, including any matter not addressed in this Request for Comments. Comments should be in writing and delivered by **September 19, 2014** to:

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Comment letters will be made publicly available on the IIROC website (www.iiroc.ca under the heading "Notices" and sub-headings "Rules Notices – UMIR Request for Comments") upon receipt. A summary of the comments contained in each submission will also be included in a future IIROC Notice.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, IIROC may recommend that revisions be made to the Proposed Amendments. If the revisions are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions are material, the Proposed Amendments as revised will be submitted to the Board for ratification and, if ratified, will be republished for further public comment.

"exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Bloomberg Tradebook Canada Company ("Bloomberg"), Chi-X Canada ATS Limited (which operates "Chi-X" and "CX2"), Instinet Canada Cross Ltd. ("Instinet"), Liquidnet Canada Inc. ("Liquidnet"), Omega Securities Inc. (which operates ("Omega ATS" and "Lynx ATS"), TMX Select ("TMX Select") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS").

[5]   The review by MRAC of the Proposed Amendments should not be construed as approval or endorsement of the Proposed Amendments. Members of MRAC may express their personal views on topics and that advice may not represent the views of their respective organizations as expressed during the public comment process.

2.   Background to the Proposed Amendments

2.1.   CSA Review of the Order Protection Rule

In light of the changes in the equity trading landscape in Canada since the approval of OPR in 2009, the CSA undertook a review of OPR the primary focus of which was to weigh the benefits of OPR, such as:

- efficiency gains from the virtual consolidation of access to fragmented marketplaces;

- an increased investor perception of a level playing field resulting from their visible better-priced quotes trading ahead of other inferior-priced orders; and

- the effect it has had in fostering the emergence of competition (and the results of that competition);

against the costs of OPR, including the inefficiencies that might arise if:

- market participants have become captive consumers of marketplace services in order to comply with OPR;

- captive consumers are generating excess revenues for marketplaces, supporting an otherwise unsustainable level of competition; and

- the existence of any such unsustainable competition results in excessive complexities, costs and inefficiencies for equities trading.

Staff of IIROC participated in the discussions among CSA members regarding the review and the policy alternatives to address various concerns. As a result of that review, the CSA concluded that the costs and inefficiencies associated with protecting 100% of displayed orders from trade-through may not be sufficiently justified by the benefits of full-scope protection.

2.2.   Proposed CSA OPR Amendments and Other Initiatives

2.2.1. Summary of the Proposed CSA OPR Amendments

The Proposed CSA OPR Amendments would provide:

- visible orders entered on a marketplace that meets or exceeds a market share threshold set by the CSA ("OPR Threshold") will be protected;

- visible orders on Exchanges that do not meet the OPR Threshold will be protected for only securities listed on the Exchange;

- the application of the locked and crossed provisions would be limited to the locking or crossing of protected orders (such that an order could be entered on a protected marketplace which locked or crossed a displayed order that was not a protected order);

- a disclosure requirement to clients regarding the dealer's best execution obligations and order handling and routing practices with respect to listed securities (and addressing "unprotected" marketplaces); and

- a *c*ap active on trading fees for all listed equity securities of $0.0030 per security for securities traded at or above $1.00, and $0.0004 per security for securities traded below $1.00.[6]

2.2.2. Proposed Process for Establishing OPR Threshold

*The OPR Threshold will be calculated based on continuous auction trades that involve **passive displayed orders**,* excluding certain trades as described in the CSA notice regarding the Proposed CSA OPR Amendments.

The calculation will be based on trading activity in a one-year period and will be applied at the market or facility level when the marketplaces is comprised of more than one visible market or facility.[7] The initial OPR Threshold will be set at 5% market share of the adjusted share volume and value of trades.

Throughout the one-year period, the CSA and IIROC would expect to calculate and publish monthly on their websites information concerning the market share of each marketplace for the purposes of the OPR Threshold.[8] Shortly after the end of the one-year period, the CSA and IIROC would publish a list of protected marketplaces that would become effective approximately three months after the publication of the list.

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[6]   The fee caps will apply to all continuous auction trading. As such, the fee caps will not apply to trades not otherwise covered by OPR such as trades involving an Opening Order or Market-on-Close Order. The caps will also not apply to the trading of rights, warrants, debentures and notes but will apply to exchange-traded funds. The cap on trading fees for securities trading below $1.00 is the highest active trading fee presently charged by a marketplace with respect to trading in securities listed on either of the TSX or TSXV.

[7]   For example, there are currently marketplaces comprised of distinct visible continuous auction order books to which the OPR Threshold should be applied separately.

[8]   IIROC would expect that the initial publication of data for the OPR Threshold would be made concurrent with the publication of any notice respecting the approval of the Proposed Amendments.

2.3   Future Proposed Amendments Related to Best Execution

In 2013, IIROC completed a survey of Participants and other investment dealers that execute or handle marketplace trades in listed securities on behalf of clients to gauge their practices employed to achieve best execution of client orders.

IIROC recently issued a notice[9] summarizing the survey responses on various topics including:

- access to lit and dark marketplaces;

- use of smart order routers;

- best execution governance;

- order handling practices;

- treatment of marketplace fees and rebates; and

- compliance and supervision practices.

The survey information may be used by IIROC to develop rule amendments to either or both UMIR and the Dealer Member Rules and/or guidance to assist Dealer Members in complying with their best execution requirements. At this time, IIROC intends to focus its policy review on the areas of:

- policies and procedures for best execution;

- best execution governance;

- supervision of best execution practices; and

- disclosure of order handling practices.

For this reason, the Proposed Amendments do **not** contain a provision related to the disclosure of best execution policies. Such a provision would be included in a future IIROC initiative on best execution practices and may be informed by feedback received by the CSA on this aspect of the Proposed CSA OPR Amendments.

IIROC wishes to remind Participants of the existing requirements under UMIR related to the best execution obligation. Part 4 of Policy 5.1 specifically makes the provision of "best execution" for a client order subject to compliance with the OPR. If the Proposed CSA OPR Amendments are implemented, a Participant would not have to take into account orders on a marketplace that was not "protected" when determining whether there was compliance with the OPR. However, under Part 2 of Policy 5.1, a Participant would be required in its policies and procedures for best execution to consider, among the other factors set out in Parts 1, 2 and 3 of Policy 5.1, whether a transparent marketplace that is not a "protected marketplace"

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has nonetheless demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order.

Whether a marketplace is "protected" for the purposes of the OPR is separate and distinct from the determination by a Participant whether a marketplace needs to be considered for the purposes of achieving best execution of client orders in accordance with Rule 5.1 of UMIR. Best execution will be achieved by a Participant adhering to the policies and procedures which the Participant has adopted to pursue "the execution of each client order on the most advantageous execution terms reasonably available under the circumstances". The policies and procedures must be reviewed at least annually and more frequently if circumstances warrant, such as when there have been changes in marketplaces or market structure. This review may rely on historic order and trade data from marketplaces, including those marketplaces for which the Participant does not receive real-time data nor otherwise have access as a member, user or subscriber. Neither the CSA Trading Rules nor UMIR requires a Participant, directly or indirectly, to access trading on all marketplaces – it is a decision to be made by the Participant in the context of obtaining best execution of client orders while complying with other applicable regulatory requirements including the OPR. Each Participant may have different business models and different types of clients and, as such, the policies and procedures may vary across business lines or trading desks of a Participant. Order routers used by a Participant or Access Person will not be required to take into account displayed orders on an unprotected marketplace when determining compliance with the OPR. If a Participant determines that compliance with best execution requires the Participant to consider displayed orders on an unprotected marketplace, the order router would need to make its decisions including data on displayed orders on that unprotected marketplace.

3. Discussion of the Proposed Amendments

The following is a summary of the principal components of the Proposed Amendments:

3.1 Definitions

3.1.1 Definitions of "best ask price" and "best bid price"

UMIR presently defines both "best ask price" and "best bid price" in reference to prices on any marketplaces as displayed in a consolidated market display. In light of the proposed changes to the OPR, IIROC believes that it would be appropriate to limit the determination to orders displayed on a "protected marketplace" as those are the orders which a Participant or Access Person must take into account for preventing a trade-through.

The terms "best ask price" and "best bid price" are used throughout UMIR including:

- ☐ definition of "best independent bid price" (which is used for determining permitted market stabilization activities under Rule 7.7);

- ☐ definition of "better price";[10]

- ☐ definition of "connected security";

- ☐ definition of "designated trade";

- ☐ determining the value of an order for the purposes of Rule 6.3 (Order Exposure), 6.4 (Trades to be on a Marketplace) or Rule 8.1 (Client-Principal Trading);

- ☐ interpretation of "best ask price" and "best bid price" under Rule 1.2(8);

- ☐ provisions for executing a pre-arranged trade or intentional cross under Part 2 of Policy 2.1;

- ☐ provisions for the "best execution obligation" under Rule 5.2;

- ☐ provisions for client priority under Policy 5.3;

- ☐ provisions for price improvement by Dark Orders under Rule 6.6;

- ☐ provisions for the official record of an order under Rule 7.4; and

- ☐ provisions for client-principal trading under Rule 8.1 and Policy 8.1.

3.1.2   Definition of "bypass order"

The current definition of a "bypass order" contemplates the execution of the order on a protected marketplace. A bypass order is designed not to execute against non-transparent liquidity on a marketplace or liquidity on the marketplace provided by various "specialty orders". A bypass order will be part of a designated trade or to satisfy requirements under UMIR (which includes by incorporation the requirement not to trade-through contrary to the OPR). The Proposed Amendments would specifically recognize that a bypass order could be executed on a transparent marketplace other than a "protected marketplace". While no obligation under the OPR would be owed to orders displayed on a non-protected marketplace, a designated trade could be executed on such a marketplace. When executing

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[10]   For the purposes of UMIR, "better price" means, in respect of each trade resulting from an order for a particular security:

(a)   in the case of a purchase, a price that is at least one trading increment lower than the best ask price at the time of the entry of the order to a marketplace provided that, if the best bid price is one trading increment lower than the best ask price, the price shall be at least one-half of one trading increment lower; and

(b)   in the case of a sale, a price that is at least one trading increment higher than the best bid price at the time of the entry of the order to a marketplace provided that, if the best ask price is one trading increment higher than the best bid price, the price shall be at least one-half of one trading increment higher.

on such a non-protected marketplace, the order would trade against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.

3.1.3   Definition of "protected marketplace"

UMIR currently defines a "protected marketplace" as a marketplace that:

- disseminates order data in real-time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;

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

- provides fully-automated electronic order entry; and

- provides fully-automated order matching and trade execution.

Under the Proposed Amendments, the definition of "protected marketplace" would be expanded to add a fifth element. The additional requirement would be that the marketplace, in accordance with the CSA Trading Rules, meet the threshold set for the purposes of the definitions of "protected bid" and "protected offer" or is an Exchange that does not meet the threshold but only with respect to orders for securities listed on the Exchange. (See section 2.2.2 for a summary discussion of the proposed process for establishing the OPR Threshold.)

All of the current marketplaces other than MATCH Now, Liquidnet and Instinet qualify as a "protected marketplace" for the purposes of the existing definition in UMIR. If the Proposed Amendments to the definition of "protected marketplace" are adopted, certain marketplaces that provide pre-trade transparency of orders may nonetheless cease to meet the definition of a "protected marketplace". It is proposed that the application of the threshold and the identification of those marketplaces whose displayed order would be "protected" be done on an annual basis by the CSA, with input and assistance from IIROC. The method for calculating the threshold and the list of protected markets would be made public on the websites for both the applicable securities regulatory authorities and IIROC.

3.2   Client Priority

Rule 5.3 of UMIR sets out a general requirement that a Participant not enter a principal order or non-client order that the Participant knows or should have known will execute or have a reasonable likelihood of executing in priority to a client order received by the Participant prior to the entry of the principal or non-client order. Under Part 2 of Policy 5.3, there is a general prohibition on intentional trading ahead of a client order. The Proposed Amendments would

expand the examples of "intentional trades" that would be prohibited to include a Participant entering (other than on the instructions of the client) a client order for display on a marketplace that is not a protected marketplace but which displays orders in accordance with Part 7 of the Marketplace Operation Instrument and the Participant also entering a principal or non-client order on a protected marketplace. The presumption underpinning the Proposed Amendment is that there is a probability that an order at a specific price may execute on a protected marketplace before an order on an unprotected marketplace since not all Participants may have information on orders on the unprotected marketplace or access to trade on that marketplace.

3.3   Client-Principal Trading

Under Rule 8.1 of UMIR, subject to certain exceptions, a client order for 50 standard trading units or less with a value of $100,000 or less may execute with a principal order or non-client order of the Participant at a better price "provided the Participant has taken reasonable steps to ensure that the price is the best available price for the client under prevailing market conditions".

Under the Proposed Amendments, a Participant, in determining the "best available price", should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. However, a Participant will be considered not to have complied with Rule 8.1 if:

- a displayed order on a marketplace that is not protected is known to the Participant;

- the Participant executes a client order against a principal or non-client order at a "better price" (as determined from orders displayed on protected markets); and

- the Participant executes, in whole or in part, as principal or non-client, with the order on the unprotected marketplace (at a price which is better than the Participant provides the client).

3.4   Editorial and Consequential Amendments

The Proposed Amendments would make several editorial or consequential amendments including:

3.5.1   Price for Determination of "standard trading units"

In accordance with guidance provided in Companion Policy 21-101, an "odd lot" order would not meet the requirements to be a protected order.[11] An odd lot order is essentially an

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[11]   See section 5.1(3) of 21-101CP.

order that is not at least one standard trading unit.[12] Presently, UMIR provides that the determination of the price at which a security is trading is by reference to the last sale price of the security on the trading day prior to the determination. The last sale price may be established by a trade on any marketplace and includes trades that may be executed outside of "regular" trading hours of 9:30 a.m. to 4:00 p.m.

IIROC is aware that marketplaces generally rely on the last sale price on the listing market for a security. The Proposed Amendment would specifically allow for this practice provided all marketplaces that are eligible to trade the particular security agree to use the last sale price of the Exchange on which the security is listed. The provision as amended would still ensure that all marketplaces follow a uniform practice.

3.5.2   Interpretation of "best ask price" and "best bid price"

Rule 1.2(8) of UMIR provides that for the purposes of determining the "best ask price" or the "best bid price" at any particular time reference is made to orders contained in a consolidated market display for a marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been:

☐ halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or

☐ halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.

For consistency purposes, the Proposed Amendments would clarify that reference would only be made to orders on a "protected marketplace".

3.5.3   Clarification of Power of Market Integrity Official

Under the OPR, each marketplace has the obligation to prevent trade-throughs on that marketplace. If a Participant marks an order as a "directed-action order" the marketplace obligation to prevent a trade-through shifts to the Participant that has entered the order. The Proposed Amendment to Rule 10.9 clarifies that the power of a Market Integrity Official is to require a Participant to satisfy any outstanding orders included in the disclosed volume that were traded-through when the Participant entered a "directed-action order" on a marketplace and the Participant did not comply with the requirements under section 6.4 of the OPR to prevent a trade-through.

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[12]   For the purposes of UMIR, a standard trading unit is:

- 1,000 units of a security trading at less than $0.10 per unit,
- 500 units of a security trading at $0.10 or more per unit and less than $1.00 per unit, and
- 100 units of a security trading at $1.00 or more per unit.

3.5.4 Clarification on Executing a Pre-arranged Trade or Intentional Cross

Currently, Part 2 of Policy 2.1 sets out the process for executing a pre-arranged trade or intentional cross as a "designated trade".[13] The example of how a designated trade would be handled is premised on all transparent marketplaces being a "protected marketplace". With the change to the definition of a "protected marketplace", it would be possible for a designated trade to execute on a transparent marketplace that does not have "protected orders" for the purposes of the OPR. As such, the example in Part 2 of Policy 2.1 will be changed to be applicable whether the designated trade is executed on a "protected marketplace" or any other marketplace that displays order information in a consolidated market display.

4. Summary of the Impact of the Proposed Amendments

The most significant impacts of the adoption of the Proposed Amendments would be:

- to allow a Participant or Access Person, except in three specific circumstances related to best execution, client priority and client-principal trading,[14] to take account only of displayed orders on protected marketplaces when determining compliance with a UMIR requirement that makes reference to "best ask price", "best bid" or "better price";[15]

- to require a Participant in its policies and procedures for best execution of a client order to consider whether a lit marketplace that is not a "protected marketplace" needs to be taken into account if that marketplace has demonstrated a reasonable likelihood of liquidity for a specific security relative to the size of the client order; and

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[13] As part of the proposed consolidation of IIROC Rules, Rule 2.1 and Policy 2.1 of UMIR would be repealed and replaced with a new Consolidated Rule 1400 that would incorporate the existing Dealer Member Rule 29.1. As a result of this proposed change, a new Rule 2.1 of UMIR entitled "Specific Unacceptable Activities" would be added that essentially move the specific examples of unacceptable activities outlined in the policies into a rule. See IIROC Notice 13-0275 – Rules Notice – Request for Comments – Dealer Member Rules and UMIR – *Republication of Proposed Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules* (November 14, 2013). As the portions of the current Part 2 of Policy 2.1 that would be changed under the Proposed Amendments are more in the nature of guidance, those provisions have not been included in the proposed Rule 2.1 set out in IIROC Notice 13-0275 and, as such, no further revisions would be required to that rule proposal to accommodate changes to the OPR.

[14] In particular, reference should be made to:
- Section 2.3 of this Notice regarding Rule 5.1 of UMIR dealing with the best execution obligation;
- Section 3.2 of this Notice regarding Rule 5.3 of UMIR dealing with client priority; and
- Section 3.3 of this Notice regarding Rule 8.1 of UMIR dealing with client-principal trading.

[15] For example, price improvement requirements under rules related to exposure of client orders and trading of dark orders will no longer be based on the best bid/best ask derived from every lit marketplace but by reference solely to orders on protected marketplaces.

- to clarify the power of a Market Integrity Official to require a Participant or Access Person to satisfy any order included in the disclosed volume on a protected marketplace if the Participant or Access Person traded-through contrary to section 6.4 of the CSA Trading Rules.

The Proposed Amendments would not alter the best execution obligation of a Participant under Rule 5.1 of UMIR. Whether a marketplace is "protected" for the purposes of the OPR is separate and distinct from the determination by a Participant whether a marketplace needs to be considered for the purposes of achieving best execution of client orders in accordance with Rule 5.1 of UMIR. (See Section 2.3 *Future Proposed Amendments Related to Best Execution*.)

The Proposed Amendments also will not alter the order exposure obligations of a Participant for certain client orders under Rule 6.3 of UMIR. Under that Rule, a Participant shall immediately enter for display on a marketplace that displays orders in accordance with Part 7 of the Marketplace Operation Instrument a client order to purchase or sell 50 standard trading units or less of a listed security. If the Proposed Amendments are approved, orders may continue to be entered on any marketplace that displays orders whether or not that marketplace meets the definition of a "protected marketplace".

5.   Technological Implications and Implementation Plan

5.1   *Technological Implications*

Generally speaking, if the Proposed Amendments are adopted a Participant or Access Person may modify their systems, including automated order systems, to take account only of displayed orders on protected marketplaces. However, depending upon the business of the Participant and the available liquidity in particular securities on a marketplace that does not qualify as a "protected marketplace" due to the fact that its market share does not meet the threshold established by the CSA, a Participant may determine that it needs to continue to consider such non-protected marketplace in order to meet its best execution obligations. In addition, if a Participant is executing a client order with a principal order or non-client order, the Participant should consider the price and size of orders displayed on marketplaces other than protected marketplaces, if available or known to the Participant, when determining whether the client is receiving the "best available price".

IIROC will also have to change its surveillance systems to limit the determination of "best ask price" and "best bid price" to orders displayed by a protected marketplace.

5.2 Implementation Plan

IIROC would expect that, if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would be implemented on the date the changes to the CSA Trading Rules related to order protection and best execution become effective. If approved by the Recognizing Regulators, IIROC will publish an IIROC Notice confirming the approval of the amendments to UMIR. The date of the publication of the notice may be more or less than the usual 180 days prior to the implementation date of the amendments.

Appendix A - Proposed Provisions Respecting the Order Protection Rule

The Universal Market Integrity Rules are hereby amended as follows:

1.   Rule 1.1 is amended by:

(a)   in the definition of "best ask price", inserting the word "protected" before the word "marketplace";

(b)   in the definition of "best bid price", inserting the word "protected" before the word "marketplace";

(c)   deleting the definition of "bypass order" and substituting the following:

> **"bypass order"** means an order that is:
>
> (a)   part of a designated trade; or
>
> (b)   to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy
>
> and that is entered on:
>
> (c)   a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or
>
> (d)   a marketplace that is not a protected marketplace but that immediately displays orders in a consolidated market display to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.

(d)   amending the definition of "protected marketplace" by adding the following as clause (e):

> (e)   for the purposes of the Trading Rules:
>
> (i)   meets the threshold set for the purposes of the definitions of "protected bid" and "protected offer", or
>
> (ii)   is an Exchange that does not meet the threshold but only with respect to orders for securities listed on the Exchange.

2.   Rule 1.2 is amended by:

(a)   inserting at the end of subsection (5) the phrase "unless all marketplaces that are eligible to trade the particular security agree to use the last sale price of the Exchange on which the security is listed or the QTRS on which the security is quoted"; and

(b)   deleting in subsection (8) the phrase "a marketplace" and inserting "a protected marketplace".

3.   Clause (g) of subsection (1) of Rule 10.9 is deleted and the following substituted:

(g)   require the Participant or Access Person to satisfy any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules.

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

1.   Part 2 of Policy 2.1 is amended by deleting the last two bullets and substituting the following:

- better-priced orders displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and

- the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following, the execution of the designated trade.

(b)   Policy 5.3 is amended by:

(a)   adding in Part 2 the following bullet after the second bullet:

- entering a client order for display on a marketplace that is not a protected marketplace but which displays orders in accordance with Part 7 of the Marketplace Operation Instrument (other than on the instructions of the client) and entering a principal or non-client order on a protected marketplace;

(b)   adding in the second paragraph of Part 4, the word "protected" before the word "marketplace".

3.   Part 3 of Policy 8.1 is amended by adding the following as the third paragraph:

In determining the "best available price", Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. However, a Participant will be considered not to have complied with Rule 8.1 if the Participant executes a principal or non-client order with a client at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the Participant executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace.

Appendix B - Text of UMIR to Reflect Proposed Amendments Respecting the Order Protection Rule

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
1.1 Definitions **"best ask price"** means the lowest price of an order on any protected marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.	**1.1 Definitions** **"best ask price"** means the lowest price of an order on any protected marketplace as displayed in a consolidated market display to sell a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.
1.1 Definitions **"best bid price"** means the highest price of an order on any protected marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.	**1.1 Definitions** **"best bid price"** means the highest price of an order on any protected marketplace as displayed in a consolidated market display to buy a particular security, but does not include the price of any order that is a Basis Order, Call Market Order, Closing Price Order, Market-on-Close Order, Opening Order, Special Terms Order or Volume-Weighted Average Price Order.
1.1 Definitions **"bypass order"** means an order that is: (a) part of a designated trade; or (b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy and that is entered on: (c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or (d) a marketplace that is not a protected marketplace but that immediately displays orders in a consolidated market display to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.	**1.1 Definitions** **"bypass order"** means an order that is: (a) part of a designated trade; or (b) to satisfy an obligation to fill an order imposed on a Participant or Access Person by any provision of UMIR or a Policy and that is entered on: (c) a protected marketplace to execute as against the disclosed volume on that marketplace prior to the execution or cancellation of the balance of the order; or (d) a marketplace that is not a protected marketplace but that immediately displays orders in a consolidated market display to execute as against the displayed orders on that marketplace that would have been included in the disclosed volume if that marketplace had been a protected marketplace.

1.1 Definitions
 	
"protected marketplace" means a marketplace that:
 	
(a)   disseminates order data in real-time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;
 	
(b)   permits dealers to have access to trading in the capacity as agent;
 	
(c)   provides fully-automated electronic order entry;
 	
(d)   provides fully-automated order matching and trade execution; and
 	
(e)   for the purposes of the Trading Rules:
 	
     (i)   meets the threshold set for the purposes of the definitions of "protected bid" and "protected offer",
	1.1 Definitions
	
	"protected marketplace" means a marketplace that:
	
	(a) disseminates order data in real-time and electronically to the information processor or one or more information vendors in accordance with the Marketplace Operation Instrument;
	
	(b) permits dealers to have access to trading in the capacity as agent;
	
	(c) provides fully-automated electronic order entry; and
	
	(d) provides fully-automated order matching and trade execution; and
	
	(e) for the purposes of the Trading Rules:
	
	     (i) meets the threshold set for the purposes of the definitions of "protected bid" and "protected offer",

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
or (ii) is an Exchange that does not meet the threshold but only with respect to orders for securities listed on the Exchange.	<u>or</u> (ii) <u>is an Exchange that does not meet the threshold but only with respect to orders for securities listed on the Exchange</u>.
1.2 Interpretation (5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a "standard trading unit", the price shall be the last sale price of the particular security on the immediately preceding trading day unless all marketplaces that are eligible to trade the particular security agree to use the last sale price of the Exchange on which the security is listed or the QTRS on which the security is quoted.	**1.2 Interpretation** (5) For the purposes of determining the price at which a security is trading for the purposes of the definition of a "standard trading unit", the price shall be the last sale price of the particular security on the immediately preceding trading day <u>unless all marketplaces that are eligible to trade the particular security agree to use the last sale price of the Exchange on which the security is listed or the QTRS on which the security is quoted</u>.
1.2 Interpretation (8) For the purposes of determining the "best ask price" or the "best bid price" at any particular time reference is made to orders contained in a consolidated market display for a protected marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been: (a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or (b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace.	**1.2 Interpretation** (8) For the purposes of determining the "best ask price" or the "best bid price" at any particular time reference is made to orders contained in a consolidated market display for a <u>protected</u> marketplace that is then open for trading and in respect of which trading in the particular security on that marketplace has not been: (a) halted, suspended or delayed for regulatory purposes in accordance with Rule 9.1; or (b) halted, suspended or delayed in accordance with a Marketplace Rule or a requirement of the marketplace
10.9 Power of Market Integrity Officials (1) A Market Integrity Official may, in governing trading in securities on the marketplace: ... (g) require the Participant or Access Person to satisfy any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules; ...	**10.9 Power of Market Integrity Officials** (1) A Market Integrity Official may, in governing trading in securities on the marketplace: ... (g) require the Participant <u>or Access Person</u> to satisfy <u>any order included in the disclosed volume if the trade by the Participant or Access Person failed to comply with requirements of section 6.4 of the Trading Rules</u> <s>the better bid or offer up to the disclosed volume if the trade failed to comply with the requirements of Part 5</s>; ...
Policy 2.1 – Just and Equitable Principles ***Part 2 – Executing a Pre-arranged Trade or Intentional Cross*** .... If the price at which the pre-arranged trade or the intentional cross is to be made: • will **not** be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and • will **not** be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,	**Policy 2.1 – Just and Equitable Principles** ***Part 2 – Executing a Pre-arranged Trade or Intentional Cross*** .... If the price at which the pre-arranged trade or the intentional cross is to be made: • will **not** be less than the lesser of 95% of the best bid price and the best bid price less 10 trading increments; and • will **not** be more than the greater of 105% of the best ask price and the best ask price plus 10 trading increments,

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
the orders will be considered to be part of a "designated trade" and on entry may be marked as a "bypass order". As a designated trade, the trade may execute on a marketplace if: • better-priced orders displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and • the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade. ….	the orders will be considered to be part of a "designated trade" and on entry may be marked as a "bypass order". As a designated trade, the trade may execute on a marketplace if: • better-priced orders ~~included in the disclosed volume~~ displayed on the marketplace on which the designated trade is entered are filled prior to the execution of the designated trade; and • ~~subject to any qualification of the "best price" obligation in accordance with Part 1 of Policy 5.2,~~ the Participant or Access Person enters orders on each protected marketplace with a sufficient volume and at a price to fill the orders included in the disclosed volume of that protected marketplace concurrent with, or immediately following the execution of the designated trade. ….
Policy 5.3 – Client Priority ***Part 2 – Prohibition on Intentional Trading Ahead*** A Participant can never intentionally trade ahead of a client order that is either a market order or tradable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client. Examples of "intentional trades" include, but are not limited to: … • entering a client order for display on a marketplace that is not a protected marketplace but which displays orders in accordance with Part 7 of the Marketplace Operation Instrument (other than on the instructions of the client) and entering a principal or non-client order on a protected marketplace; …	**Policy 5.3 – Client Priority** ***Part 2 – Prohibition on Intentional Trading Ahead*** A Participant can never intentionally trade ahead of a client order that is either a market order or tradable limit order received prior to the entry of the principal order or non-client order except in accordance with an exemption from the requirements of Rule 5.3(1), which exemptions include obtaining the specific consent of the client. Examples of "intentional trades" include, but are not limited to: … • entering a client order for display on a marketplace that is not a protected marketplace but which displays orders in accordance with Part 7 of the Marketplace Operation Instrument (other than on the instructions of the client) and entering a principal or non-client order on a protected marketplace; …
Policy 8.1 – Client-Principal Trading ***Part 3 - Factors in Determining "Best Available Price"*** The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as: • prices and volumes of the last sale and previous trades; • direction of the market for the security; • posted size on the bid and offer; • the size of the spread; and • liquidity of the security. For example, if the market is $10 bid and $10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at $10.05 if the security has been trading heavily at $10.50 and there is strong bidding for the security at $10 compared to the number of securities being offered at $10.50. The condition of the market suggests that the client	**Policy 8.1 – Client-Principal Trading** ***Part 3 - Factors in Determining "Best Available Price"*** The price of the principal transaction must also be justified by prevailing market conditions. Participants should consider such factors as: • prices and volumes of the last sale and previous trades; • direction of the market for the security; • posted size on the bid and offer; • the size of the spread; and • liquidity of the security. For example, if the market is $10 bid and $10.50 asked and a client wants to sell 1,000 shares, it would be inappropriate for a Participant to do a principal trade at $10.05 if the security has been trading heavily at $10.50 and there is strong bidding for the security at $10 compared to the number of securities being offered at $10.50. The condition of the market suggests that the client

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
should be able to sell at a better price than $10.05. Accordingly, the Participant as agent for the client should post an offer at $10.45 or even $10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration. In determining the "best available price", Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. However, a Participant will be considered not to have complied with Rule 8.1 if the Participant executes a principal or non-client order with a client at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the Participant executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace. Of course, if a client expressly consents to a principal trade on a fully-informed basis, following the client's instructions will be reasonable.	should be able to sell at a better price than $10.05. Accordingly, the Participant as agent for the client should post an offer at $10.45 or even $10.50, depending on the circumstances. The desire of the client to obtain a fill quickly is always a consideration. In determining the "best available price", Participants should consider the price and size of orders displayed on marketplaces other than protected marketplaces if such information is available or known to the Participant. However, a Participant will be considered not to have complied with Rule 8.1 if the Participant executes a principal or non-client order with a client at a better price which is inferior to the price that would have been available to the client on a displayed marketplace that is not a protected marketplace and the Participant executes, in whole or in part, with the order displayed on the marketplace that is not a protected marketplace. Of course, if a client expressly consents to a principal trade on a fully-informed basis, following the client's instructions will be reasonable.