

# IIROC NOTICE

## **Rules Notice Request for Comments**

UMIR

*Please distribute internally to:*  
Legal and Compliance  
Trading

*Contact:*

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**12-0011**  
**January 9, 2012**

## **Marketplace Disclosure for Trade Confirmations**

### **Summary**

The Investment Industry Regulatory Organization of Canada (“IIROC”) previously has issued guidance (“Current Guidance”)<sup>1</sup> related to acceptable language for the marketplace disclosure on trade confirmations for securities which are subject to the provisions of the Universal Market Integrity Rules (“UMIR”). IIROC is proposing to revise the Current Guidance to provide for more “generic disclosure” on trade confirmations as a result of changes to applicable securities legislation, proposed changes to the Dealer Member Rules of IIROC and the evolution of trading patterns for securities in multiple marketplaces and cross-border. This IIROC Notice requests comments on the draft revised guidance (“Proposed Guidance”).

### **Policy Development Process**

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (“Recognizing Regulators”) and, as such, is

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<sup>1</sup> Market Integrity Notice 2005-031 – Guidance – *Disclosure of Marketplaces on Trade Tickets and Confirmations* (September 16, 2005) and Question 3 of Market Integrity Notice 2006-020 – Guidance – *Compliance Requirements for Trading on Multiple Marketplaces* (October 3, 2006).



authorized to be a regulation services provider for the purposes of National Instrument 21-101 (“Marketplace Operation Instrument”) and National Instrument 23-101.

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.<sup>2</sup> IIROC has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

The Market Rules Advisory Committee of IIROC (“MRAC”) has reviewed the Proposed Guidance. 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.

The text of the Proposed Guidance is set out in Appendix “A”. Comments are requested on all aspects of the Proposed Guidance, including any policy alternatives that commentators consider preferable and/or more effective to achieve the intended objectives. Comments should be in writing and delivered by **March 9, 2012** to:

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***Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website ([www.iroc.ca](http://www.iroc.ca) under the heading “Policy” and sub-heading “Market Proposals/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 Guidance received in response to this Request for Comments, IIROC may make revisions to the Proposed Guidance prior to the issuance of the final Guidance Note.

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<sup>2</sup> Presently, IIROC has been retained to be the regulation services provider for: the Toronto Stock Exchange (“TSX”), TSX Venture Exchange (“TSXV”) and Canadian National Stock Exchange, each as an “exchange” for the purposes of the Marketplace Operation Instrument (“Exchange”); and for Alpha Trading Systems, Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited, Instinet Canada Cross Ltd., Liquidnet Canada Inc., Omega ATS Limited, TriAct Canada Marketplace LP (the operator of “MATCH Now”), Sigma X Canada and TMX Select, each as an alternative trading system (“ATS”). CNSX presently operates an “alternative market” known as “Pure Trading” that is entitled to trade securities that are listed on other Exchanges and that presently trades securities listed on the TSX and TSXV.



## **Background**

In recognition of developments in trading in a multiple marketplace environment, IROC issued a Rules Notice proposing an amendment to Dealer Member Rule 200.1(h) concerning the provision of marketplace disclosure on trade confirmations (“Proposed Amendment”).<sup>3</sup> Dealer Member Rule 200.1(h) currently requires that trade confirmations disclose “the stock exchange or commodity futures exchange” upon which a trade took place. The Proposed Amendment would require that trade confirmations make disclosure of the “marketplace or marketplaces on which a trade is executed, or that the trade confirmation include marketplace disclosure language acceptable to the Corporation”.

The Current Guidance provides that the marketplace should be identified on the trade confirmation if an order executes on a single marketplace or, if an order executes on multiple marketplaces, disclosure may indicate that the transaction was executed on multiple marketplaces with details of each trade to be made available on request by the Participant at no cost.

## **Considerations Related to Marketplace Disclosure**

### ***Marketplace Disclosure Errors on Confirmations***

In its most recently issued Consolidated Compliance Report<sup>4</sup> (the “Report”), IROC acknowledged the operational difficulties some firms have had in making the correct identification of the marketplace on trade confirmations, and particularly poor compliance with marketplace disclosures to clients in cases when trades are confirmed at an average price. It was noted that internal manual or automated processes would need to be adapted so that clients receive accurate disclosure on all of their trade confirmations. Since the Report was issued, the operational challenges identified have continued.

### ***Audit Trail and Disclosure Requirements***

Marketplace disclosure on trade confirmations has been a longstanding requirement under Canadian securities regulation. Pursuant to section 36 of the *Securities Act* (Ontario) and comparable provisions of the securities legislation of other jurisdictions, a trade confirmation must be sent to the client containing the prescribed information. While this had originally required, among other things, disclosure of “the name of the stock exchange” on which the transaction took place, currently National Instrument 31-103 takes account of multiple

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<sup>3</sup> IROC Notice 10-0097 – Rules Notice - Request for Comments- Dealer Member Rules – *Trade Confirmation and Matching Requirements* (April 9, 2010).

<sup>4</sup> IROC Notice 10-0278 – Rules Notice – Guidance Note – *Consolidated Compliance Report: Examination Findings in the 2009/2010 Examination Cycle* (October 22, 2010).



marketplaces and requires the disclosure of the name of the marketplace on which a transaction took place or, if applicable, a statement that the transaction took place on more than one marketplace or over more than one day.<sup>5</sup> Participants who are a member of IIROC are exempt from the requirements of section 14.12 of National Instrument 31-103 but they must comply with the requirements of IIROC, including the Current Guidance.

Rule 10.11 of UMIR further mandates that a Participant comply with the audit trail requirements set out under Part 11 of National Instrument 23-101- *Trading Rules*, which includes recording the marketplace identifier following transmission of an order to a marketplace, and recording the marketplace identifier for the marketplace on which an order is executed.<sup>6</sup> The Current Guidance addresses maintenance of a proper audit trail for orders and trades in compliance with Rule 10.11 of UMIR, noting that the Participant must maintain a separate trade blotter for each marketplace to which the Participant has trading access as a member, user or subscriber or directs orders through a carrying broker that is a member, user or subscriber of that marketplace.<sup>7</sup>

### ***Disclosure of Trades Executed on a Market Outside of Canada***

As a result of transactions which may be executed on more than one marketplace in Canada or on foreign markets, including markets in the United States, certain Participants firms have adopted a form of marketplace disclosure indicating the purchase or sale was “traded on a North American marketplace” or alternatively, without jurisdictional reference to read “traded on multiple markets”. Notably, there is no similar requirement under US regulation to include marketplace disclosure on a trade confirmation, as in Canada.<sup>8</sup>

### **Acceptable Marketplace Disclosure**

Certain industry participants have advocated that trade reconciliation be facilitated by permitting trades from the marketplaces to be reflected on a single blotter. IIROC has

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<sup>5</sup> See trade confirmation disclosure requirements in section 14.12 of National Instrument 31-103 – *Registration Requirements and Exemptions*. SROs are exempted from this requirement.

<sup>6</sup> See reference in subsections 11.2(2) and 11.2(4) of the CSA Trading Rules.

<sup>7</sup> Part 3 of Policy 7.1 of UMIR requires a Participant to have appropriate policies and procedures to ensure compliance with the requirements under UMIR (including Rule 10.11).

<sup>8</sup> US transaction disclosure requirements are prescribed in FINRA Rule 2232 “Customer Confirmations”, which requires member firms, at or before the completion of any transaction in any securities effected for or with an account of a customer, to provide written notification (“confirmation”) to the customer pursuant to the requirements of Rule 10b-10 under the *Securities and Exchange Act of 1934* (the “Act”) and generally, further disclose the settlement date of the transaction in respect to any transaction in a NMS stock. Rule 10b-10 of the Act requires that a customer be provided with written notification about certain basic terms of a securities transaction, such as the identity, price, and number of shares of the security bought or sold at or before the completion of a transaction, and the date and time of the transaction. Rule 10b-10 does not, however, include a requirement for marketplace disclosure on customer confirmations.



received requests for relief from the current form of marketplace disclosure in order to mitigate against marketplace disclosure errors.

While the requirement for marketplace disclosure has not fundamentally changed, implementation of the current form of disclosure on trade confirmations has presented ongoing challenges. IIROC has considered the practical implications of compliance with the Current Guidance on marketplace disclosure and the significance of the failures to make accurate disclosure to clients. Accordingly, IIROC would propose the following disclosure language on trade confirmations would be acceptable to IIROC for securities the trading of which is subject to UMIR:

“Traded on one or more marketplaces or markets, details available upon request.”

The term “marketplace” is defined in UMIR as an exchange, quotation and trade reporting system or alternative trading system in Canada. The term “market” is not defined in UMIR but includes a “foreign organized regulated market” on which a trade in a security subject to UMIR may be executed.

This acceptable language may be used on trade confirmations in circumstances when an order is executed on:

- a single marketplace in Canada;
- multiple marketplaces in Canada;
- a foreign organized regulated market (which includes markets in the United States); or
- any combination of one or more marketplace and foreign organized regulated markets.

If an order has been executed in whole or in part on a foreign organized regulated market, IIROC expects that the disclosure will include the quantity of securities traded on the foreign organized regulated market together with the applicable foreign exchange rate for any currency conversion.<sup>9</sup> In all cases, Participants using this disclosure language are to continue identifying the marketplaces or markets of execution at no cost to clients making request for such particulars.

While the proposed form of disclosure places the onus on the client to obtain details regarding the venues on which the trade was executed, a Participant would be able to respond with the correct marketplace information rather than potentially providing erroneous information at first instance on the trade confirmation.

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<sup>9</sup> The disclosure of exchange rate aligns with Dealer Member Rule 200.1(h)(2) requiring that the consideration paid for a trade in securities be disclosed on the trade confirmation. Of note, Dealer Member Rule 2600, Internal Control Policy Statement 7 – *Pricing of Securities* indicates that foreign exchange security denomination that is not considered in security pricing is an indication of inadequate internal controls. In addition, Dealer Member Rule 29.8 does not permit imposing on any customer or deducting from the account of any customer any service fee or service charge relating to services provided by the Dealer Member for the administration of the customer's account unless written notice shall have been given to the customer on the opening of the account or not less than 60 days prior to the imposition or revision of the fee or charge.



## **Appendix**

Appendix “A” sets out the text of the Proposed Guidance respecting Marketplace Disclosure for Trade Confirmations.



# IIROC NOTICE

**Rules Notice**  
**Guidance Note –**  
UMIR

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**12-00\*\***  
**\*\* , 2012**

## **Guidance on Marketplace Disclosure for Trade Confirmations**

### **Summary**

This Rules Notice provides guidance of the Investment Industry Regulatory Organization of Canada ("IIROC") in relation to acceptable marketplace disclosure language for confirmations for securities the trading of which is subject to the Universal Market Integrity Rules ("UMIR").

***This Guidance repeals and replaces, effective as of [the date the amendment to Dealer Member Rule 200.1(h) becomes effective], the guidance set out in:***

- ***Market Integrity Notice 2005-031 – Guidance – Disclosure of Marketplaces on Trade Tickets and Confirmations (September 16, 2005); and***
- ***Market Integrity Notice 2006-020 – Guidance – Compliance Requirements for Trading on Multiple Marketplaces – Question 3 (October 3, 2006).***



## Acceptable Marketplace Disclosure

Dealer Member Rule 200.1(h) requires that the trade confirmation disclose “the marketplace or marketplaces upon which the trade took place, or marketplace disclosure language acceptable to” IIROC.<sup>1</sup> For the purposes of this requirement, the following disclosure language is acceptable to IIROC for securities the trading of which is subject to UMIR:

“Traded on one or more marketplaces or markets, details available upon request.”

The term “marketplace” is defined in UMIR as an exchange, quotation and trade reporting system or alternative trading system in Canada. The term “market” is not defined in UMIR but includes a “foreign organized regulated market” on which a trade in a security subject to UMIR may be executed.

This acceptable language may be used on trade confirmations in circumstances when an order is executed on:

- a single marketplace in Canada;
- multiple marketplaces in Canada;
- a foreign organized regulated market (which includes markets in the United States); or
- any combination of one or more marketplace and foreign organized regulated markets.

If an order has been executed in whole or in part on a foreign organized regulated market, IIROC expects that the disclosure will include the quantity of securities traded on the foreign organized regulated market together with the applicable foreign exchange rate for any currency conversion. In all cases, Participants using this disclosure language are to continue identifying the marketplaces or markets of execution at no cost to clients making request for such particulars.

## Audit Trail Requirements

Notwithstanding any general marketplace disclosure on the trade confirmation, Rule 10.11 of UMIR requires a Participant to comply with the audit trail requirements set out under Part 11 of National Instrument 23-101- *Trading Rules*, which includes recording the marketplace identifier following transmission of an order to a marketplace, and recording the marketplace identifier for the marketplace on which an order is executed.<sup>2</sup> In particular, a Participant must

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<sup>1</sup> IIROC Notice \*\*-\*\*\*\* - Rules Notice – Notice of Approval – Dealer Member Rules – *Trade Confirmation and Matching Requirements* (\* \*, 201\*).

<sup>2</sup> See reference in subsections 11.2(2) and 11.2(4) of National Instrument 23-101.



maintain appropriate records which would allow the Participant to provide details of the execution of any order to the client upon request.<sup>3</sup>

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<sup>3</sup> Part 3 of Policy 7.1 of UMIR requires a Participant to have appropriate policies and procedures to ensure compliance with the requirements under UMIR (including Rule 10.11).