



**Appendix “B”**

**Comments Received in Response to**

**IIROC Notice 09-0328 – Rules Notice - Request for Comments – UMIR -**

**Provisions Respecting Implementation of the Order Protection Rule**

On November 13, 2009, IIROC issued IIROC Notice 09-0328 requesting comments on proposed revised amendments to UMIR (“Revised Proposed Amendments”) consequential to the implementation by the Canadian Securities Administrators of changes to National Instrument 23-101 – *Trading Rules* regarding the implementation of trade-through protection.<sup>6</sup> IIROC received comments on the Revised Proposed Amendments from:

Questrade Inc. (“Questrade”)

RBC Dominion Securities Inc. (“RBCDS”)

A copy of each comment letter submitted in response to the Request for Comments is publicly available on the IIROC website ([www.iiroc.ca](http://www.iiroc.ca) under the heading “Policy” and sub-heading “Market Proposals/Comments”). The following table presents a summary of the comments received on the Revised Proposed Amendments together with the response of IIROC to those comments.

Text of Provisions Following Adoption of the Amendments	Commentator and Summary of Comment	IIROC Response to Comment and Additional IIROC Commentary
<p><b>1.2 Interpretation</b></p> <p>(3) In determining the value of an order for the purposes of Rule 6.3, Rule 6.4 and Rule 8.1, the value shall be calculated as of the time of the receipt or origination of the order and shall be calculated by multiplying the number of units of the security to be bought or sold under the order by:</p> <p>(a) in the case of a limit order for the purchase of a security, the lesser of:</p> <ul style="list-style-type: none"> <li>(i) the specified maximum price in the order, and</li> <li>(ii) the best ask price;</li> </ul>		

<sup>6</sup> IIROC originally published proposed amendments and a concept proposal related to the implementation of trade-through protection as IIROC Notice 08-0163 – Rules Notice – Request for Comments – UMIR – *Provisions Respecting Implementation of Trade-through Protection* (October 27, 2008).



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<p>(b) in the case of a limit order for the sale of a security, the greater of:</p> <ul style="list-style-type: none"> <li>(i) the specified minimum price in the order, and</li> <li>(ii) the best bid price;</li> </ul> <p>(c) in the case of a market order for the purchase of a security, the best ask price; and</p> <p>(d) in the case of a market order for the sale of a security, the best bid price.</p>		
<p><b>5.2 Best Price Obligation – repealed</b></p>		
<p><b>6.2 Designations and Identifiers</b></p> <p>(1) Each order entered on a marketplace shall contain:</p> <p>...</p> <ul style="list-style-type: none"> <li>(b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:</li> </ul> <p>...</p> <ul style="list-style-type: none"> <li>(v.4) a directed action order as defined in the Trading Rules,</li> </ul>		
<p><b>6.4 Trades to be on a Marketplace</b></p> <p>(1) A Participant acting as principal or agent may not trade nor participate in a trade in a security by means other than the entry of an order on a marketplace.</p> <p>(2) Subsection (1) does not apply to a trade:</p> <ul style="list-style-type: none"> <li>(a) <b>Unlisted or Non-Quoted Security</b> - in a security which is not a listed security or a quoted security;</li> <li>(b) <b>Regulatory Exemption</b> – required or permitted by a Market Regulator to be executed other than on a marketplace in order to maintain a fair or orderly market and provided, in the case of a listed security or quoted security, the Market Regulator requiring or permitting the order to be executed other than on a marketplace shall be the Market Regulator of the Exchange on which the security is listed or of the QTRS on which the security is quoted;</li> <li>(c) <b>Error Adjustment</b> - to adjust by a journal entry an error in connection with a client order;</li> </ul>	<p><b>Questrade</b> – Believes that there should not be a requirement to take into account prices on foreign markets. Also believes that the application of the restriction to Canadian accounts denominated in Canadian currency may be problematic for “registered” accounts and for those that allow access to multiple currencies. Clients should be able to continue to have the right to determine when they want to execute a trade in the U.S. marketplace and when they don’t.</p>	<p>The amendment does not add a “foreign smart routing requirement”. The provision is applicable only if the Participant chooses to take into account a foreign market and seeks to execute on that organized foreign regulated market when there are better priced orders displayed on a marketplace in Canada.</p> <p>Registered accounts will, by definition, be considered to be Canadian denominated as would other accounts that are not explicitly and exclusively denominated in a foreign currency.</p> <p>Rule 5.2 of UMIR did not permit clients to direct execution on a market away from the displayed marketplace with the “best price”. In any event, the amendment applies only to a limited subset of trades that have the greatest likelihood of trading-through a displayed price - namely an intentional cross, a pre-arranged trade, a trade for more than 50 standard trading units or with a value of more than \$250,000. These qualifications would in the</p>



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<p>(d) <b>On a Foreign Organized Regulated Market</b> – executed on a foreign organized regulated market;</p> <p>(e) <b>Outside of Canada</b> – executed as principal with a non-Canadian account or as agent if both the purchasers and seller are non-Canadian accounts provided the trade is reported to a marketplace or a foreign organized regulated market in accordance with the reporting requirements of the marketplace of foreign organized regulated market;</p> <p>(f) <b>Term of Securities</b> – as a result of a redemption, retraction, exchange or conversion of a security in accordance with the terms attaching to the security;</p> <p>(g) <b>Options</b> – as a result of the exercise of an option, right, warrant or similar pre-existing contractual arrangement;</p> <p>(h) <b>Prospectus and Exempt Distributions</b> – pursuant to a prospectus, take-over bid, issuer bid, amalgamation, arrangement or similar transaction including any distribution of previously unissued securities by an issuer; or</p> <p>(i) <b>Non-Regulatory Halt, Delay or Suspension</b> – in a listed security or quoted security in respect of which trading has been halted, delayed or suspended in circumstances described in clause (3)(a) or subclause (3)(b)(8) of Rule 9.1 that is not listed, quoted or traded on a marketplace other than the Exchange or QTRS on which the security is halted, delayed or suspended provided such trade is reported to a marketplace.</p> <p>(3) The exemption provided for in clause (d) of subsection (2) is unavailable to an order of a Canadian account denominated in Canadian funds that:</p> <p>(a) is part of an intentional cross;</p> <p>(b): is part of a pre-arranged trade;</p> <p>(c) is for more than 50 standard trading units; or</p> <p>(d) has a value of \$250,000 or more</p> <p>if the entry of the order on a foreign organized regulated market would avoid execution against a better-priced order on a marketplace pursuant to Part 6 of the Trading Rules.</p>		<p>ordinary course not have an effect on the order routing decisions of individual retail clients. In effect, the Amendments permit greater latitude in the execution of small orders than previously existed under Rule 5.2.</p>



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<p><b>7.1 Trading Supervision Obligations</b></p> <p>(5) Notwithstanding any other provision of this Rule, a Participant or Access Person shall not mark an order on entry to a marketplace as a directed action order unless the Participant or Access Person has established, maintained and ensured compliance with written policies and procedures that are reasonably designed to prevent trade-throughs other than those trade-throughs permitted in Part 6 of the Trading Rules.</p>	<p><b>RBCDS</b> – Urges that IIROC and the CSA to continue to work together to ensure that all marketplaces meet minimum technology standards (e.g. clock synchronization, latency tests and standards).</p>	<p>The standards will evolve with the development of technology employed by Participants, marketplaces and service providers. Policies and procedures that are acceptable for marketplaces and Participants on the date the Order Protection Rule comes into effect may cease to be so if industry standards improve with the deployment of new technology. See also the response to RBCDS comment under Policy 7.1.</p> <p>UMIR imposes existing requirements with respect to Participants and marketplaces synchronizing to the standards used by IIROC.</p>
<p><b>10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons</b></p> <p>(1) An officer, director, partner or employee of a Participant shall forthwith report to their supervisor or the compliance department of the Participant upon becoming aware of activity in a principal, non-client or client account of the Participant or a related entity that the officer, director, partner or employee believes may be a violation of:</p> <ul style="list-style-type: none"> <li>(a) Subsection (1) of Rule 2.1 respecting just and equitable principles of trade;</li> <li>(b) Rule 2.2 respecting manipulative and deceptive activities;</li> <li>(c) Rule 2.3 respecting improper orders and trades;</li> <li>(d) Rule 4.1 respecting frontrunning;</li> <li>(e) Rule 5.1 respecting best execution of client orders;</li> <li>(f) Rule 5.3 respecting client priority;</li> <li>(g) Rule 6.4 respecting trades to be on a marketplace; and</li> <li>(h) any Requirement that has been designated by the Market Regulator for the purposes of this subsection.</li> </ul>	<p><b>RBCDS</b> – Does not believe that there should be a requirement to file a “gatekeeper report” applied to matter “relating to internal policies and procedures”.</p>	<p>Rule 10.16 of UMIR presently requires a Participant to inform IIROC if a review conducted by supervisory or compliance personnel of the Participant conclude that there may have been a violation of various rules under UMIR including Rule 6.4 respecting trades to be on a marketplace. The Participant is not reporting whether they have concluded that their policies and procedures are inadequate but rather whether there has been a possible violation of the requirement to execute trades on a marketplace.</p>
<p><b>Policy 5.1 – Best Execution of Client Orders</b></p> <p><b>Part 4 – Subject to Order Protection Rule</b></p> <p>Notwithstanding any instruction or consent of the client, the provision of “best execution” for a client order is subject to compliance with the “order protection rule” under Part 6 of the Trading Rules by the marketplace on which the order is entered or by the Participant if the Participant has marked</p>	<p><b>Questrade</b> – Requests additional guidance with respect to the effects on best execution.</p>	<p>The point of Part 4 of Policy 5.1 is simply to confirm that “best execution” is subject to compliance with the “best price” obligation under Rule 5.1 of UMIR until February 1, 2011 and thereafter to compliance with the Order Protection Rule. In other words, attempts to obtain “best execution” for a client can not justify a violation of the obligation which the Participant owes to the market</p>



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<p>the order as a directed action order in accordance with Rule 6.2. Similarly, if a Participant considers a foreign organized regulated market in order to provide a client with “best execution”, the Participant must ensure that the condition in subsection (3) of Rule 6.4, if applicable, is satisfied prior to the execution on the foreign organized regulated market.</p>		<p>under the “best price” obligation or the Order Protection Rule.</p>
<p><b>Policy 5.2 – Best Price Obligation</b> <b>Part 1 – Qualification of Obligation – repealed</b></p>		
<p><b>Policy 5.2 – Best Price Obligation</b> <b>Part 2 – Orders on Other Marketplaces – repealed</b></p>		
<p><b>Policy 5.2 – Best Price Obligation</b> <b>Part 3 – Foreign Currency Translation – repealed</b></p>		
<p><b>Policy 6.4 – Trades to be on a Marketplace</b> <b>Part 6 – Foreign Currency Translation</b></p> <p>If a trade is to be executed on a foreign organized regulated market in a foreign currency, the foreign trade price shall be converted to Canadian dollars using the exchange rate the Participant would have applied in respect of a trade of similar size on a foreign organized regulated market in that foreign jurisdiction in order to determine whether the condition in subsection (3) of Rule 6.4 restricting avoidance of Part 6 of the Trading Rules has been met. The Market Regulator regards a difference of one trading increment or less as "marginal" because the difference would be attributable to currency conversion. A Participant shall maintain with the record of the order the exchange rate used for the purpose of determining whether a better priced order existed on a marketplace and such information shall be provided to the Market Regulator upon request in such form and manner as may be reasonably required by the Market Regulator in accordance with subsection (3) of Rule 10.11.</p>		
<p><b>Policy 7.1 – Trading Supervision Obligation</b> <b>Part 6 – Specific Provisions Respecting Trade-throughs</b></p> <p>Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure that an order:</p> <ul style="list-style-type: none"> <li>marked as “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules; or</li> </ul>	<p><b>RBCDS</b> – Requests further guidance on what would be considered “adequate” for the purposes of testing policies and procedures in respect of preventing trade-throughs with the use of Directed Action Orders. In particular, seeks guidance on an acceptable number of trade-throughs and acceptable level of latency.</p>	<p>There is no pre-determined amount of testing that IIROC would consider adequate. The level of testing will vary with the degree of use the Participant makes of Directed Action Orders and whether prior tests have indicated that the level of trade-throughs is within acceptable limits.</p> <p>IIROC will be monitoring the levels of trade-through in conjunction with the use of Directed Action Orders. IIROC expects to be able to bring to the attention of a Participant the fact that their proportion of trade-throughs</p>



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<ul style="list-style-type: none"> <li>entered on a foreign organized regulated market complies with the conditions in subsection (3) of Rule 6.4.</li> </ul> <p>Each Access Person must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Access Person, to ensure that an order marked as a “directed action order” in accordance with Rule 6.2 does not result in a trade-through other than a trade-through permitted under Part 6 of the Trading Rules.</p> <p>The policies and procedures must set out the steps or process to be followed by the Participant or Access Person to ensure that the execution of an order does not result in a trade-through. The policies and procedures must specifically address the circumstances when the bypass order marker will be used in conjunction with a “directed action order”. These policies and procedures must address the steps which the Participant or Access Person will undertake on a regular basis, which shall not be less than monthly, to test that the policies and procedures are adequate.</p>		<p>associated with the use of Directed Action Orders is out of line with the Participant’s proportion of trading undertaken through Direct Action Orders. Such a finding may be an indicator that the policies and procedures of the Participant are not “adequate”. However, IIROC acknowledges that information and processing latencies between IIROC and the Participants will produce different results. The test for the Participants is whether they have used reasonable efforts to obtain timely order and trade data for all relevant marketplaces.</p>
<p><b>General Comments</b></p>	<p><b>RBCDS</b> - Urges minimum capital requirements for marketplaces in order to promote liquidity and foster confidence.</p>	<p>The financial viability of an exchange or QTRS is dealt with by the CSA under National Instrument 21-101 (in particular in Part 7 of Form 21-101F1). Each ATS must be registered as a dealer and be subject to minimum capital requirements of IIROC.</p>
	<p><b>Questrade</b> – Believes that “price” should take into account transaction costs.</p>	<p>UMIR and National Instrument 23-101 recognize that transaction costs are properly a factor in determining “best execution”. Currently, the “best price” obligation under UMIR and the Order Protection Rule that becomes effective on February 1, 2011 exclude transaction costs from the determination of price.</p> <p>In amendments to section 8.2 of Companion Policy 21-101, the CSA addressed the issue of transaction fees in stating: “With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IIROC’s Universal Market Integrity rules, as amended, would unreasonably condition or limit access to an ATS’s services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to an ATS’s</p>



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		<p>services when taking into account factors including those listed above. [5 factors to be taken into account in determining fees are in compliance with section 6.13 of National Instrument 21-101]”.</p> <p>To the extent that the transaction costs must be less than a trading increment, the net proceeds/cost to the client will always be better as a result of an execution on the marketplace with the “best” displayed price.</p>