

**13.1.3 RS Market Integrity Notice – Request for Comments – Provisions Respecting the “Best Price” Obligation**

May 16, 2008

No. 2008-009

**RS MARKET INTEGRITY NOTICE**

**REQUEST FOR COMMENTS**

**PROVISIONS RESPECTING THE “BEST PRICE” OBLIGATION**

**Summary**

This Market Integrity Notice provides notice that, on April 22, 2008, the Board of Directors of Market Regulation Services Inc. approved amendments to the Universal Market Integrity Rules respecting the “best price” obligation for immediate implementation upon the publication of this Market Integrity Notice. The “best price” obligation requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. In particular, the amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the “best price” obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

If a Participant uses another means to enter an order on a marketplace, the amendments expand on the factors that may be taken into account by Market Regulation Services Inc. in determining whether a Participant has made “reasonable efforts” to obtain the best available prices on a protected marketplace. The factors have been expanded to include whether:

- the protected marketplace recently launched operations;
- order information from the protected marketplace is available through a data vendor used by the Participant;
- the protected marketplace has recently had a material malfunction or interruption of services; and
- the protected marketplace has demonstrated an inordinate proportion of “inferior fills” with respect to tradeable orders routed to it.

The amendments also remove transaction costs as a factor in determining the “best price” obligation and clarify that “reasonable efforts” does not require a Participant to maintain a connection to each protected marketplace.

Each Participant must adopt policies and procedures to ensure compliance with its “best price” obligation, which will include the relevant factors upon which it is relying in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

**Questions / Further Information**

For further information or questions concerning this notice contact:

James E. Twiss  
Chief Policy Counsel

Telephone: 416.646.7277  
Fax: 416.646.7265

e-mail: james.twiss@rs.ca

## PROVISIONS RESPECTING THE “BEST PRICE” OBLIGATION

### Summary

This Market Integrity Notice provides notice that, on April 22, 2008, the Board of Directors (“Board”) of Market Regulation Services Inc. (“RS”) approved amendments to the Universal Market Integrity Rules (“UMIR”) respecting the “best price” obligation for immediate implementation upon the publication of this Market Integrity Notice (“Interim Amendments”). The “best price” obligation requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. In particular, the Interim Amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the “best price” obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

If a Participant uses another means to enter an order on a marketplace, the Interim Amendments expand the factors that may be taken into account by RS in determining whether a Participant has made “reasonable efforts” to obtain the best available prices on a “protected marketplace”<sup>1</sup>. The factors have been expanded to include whether:

- the protected marketplace recently launched operations;
- order information from the protected marketplace is available through a data vendor used by the Participant;
- the protected marketplace has recently had a material malfunction or interruption of services; and
- the protected marketplace has demonstrated an inordinate proportion of “inferior fills” with respect to tradeable orders routed to it.

The Interim Amendments also remove transaction costs as a factor in determining the “best price” obligation and clarify that “reasonable efforts” do not require a Participant to maintain a connection to each protected marketplace.

Each Participant must adopt policies and procedures to ensure compliance with its “best price” obligation, which will include the relevant factors upon which it is relying in making trading decisions. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

RS considers these to be “interim” amendments because the Canadian Securities Administrators (“CSA”) are developing a trade-through proposal.<sup>2</sup> Depending upon the final form of this trade-through regime, conforming changes may be required to UMIR, in particular the “best price” obligation under Rule 5.2 as modified by the Interim Amendments. RS expects that the Interim Amendments will be in effect from the date of this Market Integrity Notice until changes implementing the final form of the CSA’s trade-through regime become effective.

### Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, by the Autorité des marchés financiers (the “Recognizing Regulators”) and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 (“Marketplace Operation Instrument”) and National Instrument 23-101 (“Trading Rules”).

As a regulation services provider, RS administers and enforces trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any

---

<sup>1</sup> Concurrent with the publication of this Market Integrity Notice, RS issued Market Integrity Notice 2008-008 - *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008) that provided notice of the approval by the Recognizing Regulators of various amendments to UMIR including the adoption of a definition of “protected marketplace”. See “Impact of Amendments Respecting “Off-Marketplace” Trades” on pages 7 and 8.

<sup>2</sup> See Market Integrity Notice 2007-007 – *Request for Comments – Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* (April 20, 2007) (“Joint Notice”).

marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange ("TSX"), TSX Venture Exchange ("TSXV"), Canadian Trading and Quotation System ("CNQ") and egX Canada Inc. ("egX"), each as an as an "exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Bloomberg Tradebook Canada Company, Chi-X Canada ATS Limited ("Chi-X"), Liquidnet Canada Inc. ("Liquidnet"), Perimeter Markets Inc. (the operator of "BlockBook" and "Omega ATS") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS"). CNQ 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. egX is recognized in British Columbia as an Exchange and RS has agreed to act as the regulation services provider for egX upon egX commencing trading operations.

**The Board approved the Interim Amendments for immediate implementation upon publication of this Market Integrity Notice. Based on comments received, the Recognizing Regulators may require changes to the Interim Amendments or may require that the Interim Amendments be repealed by RS.** The text of the Interim Amendments is set out in Appendix "A". Comments are requested on all aspects of the Interim Amendments, including comments on policy alternatives that may be available to the implementation of the Interim Amendments. Comments should be in writing and delivered by **June 9, 2008** to:

James E. Twiss,  
Chief Policy Counsel,  
Market Policy and General Counsel's Office,  
Market Regulation Services Inc.,  
Suite 900,  
145 King Street West,  
Toronto, Ontario. M5H 1J8

Fax: 416.646.7265  
e-mail: james.twiss@rs.ca

A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Susan Greenglass  
Manager, Market Regulation  
Ontario Securities Commission  
Suite 1903, Box 55,  
20 Queen Street West  
Toronto, Ontario. M5H 3S8

Fax: (416) 595-8940  
e-mail: sgreenglass@osc.gov.on.ca

**Commentators should be aware that a copy of their comment letter will be publicly available on the RS website ([www.rs.ca](http://www.rs.ca) under the heading "Market Policy" and sub-heading "Universal Market Integrity Rules") after the comment period has ended. A summary of the comments contained in each submission will also included in a future Market Integrity Notice dealing with the revision or the final approval of the Interim Amendments.**

#### **Rationale for the Interim Amendments**

The emergence of multiple transparent marketplaces trading the same securities has highlighted the operational challenges that Participants face in complying with the "best price" obligation in Rule 5.2. Within this environment, RS is concerned that its enforcement of the current "best price" obligation would require Participants to access orders on all marketplaces without regard to such operational challenges.

Without amendments to the Marketplace Operation Instrument and UMIR to implement a comprehensive trade-through protection regime, the application of Rule 5.2 prior to the Interim Amendments essentially resulted in a trade-through obligation at the Participant level, despite the fact that the "best price" obligation is only one element of a robust trade-through regime. Imposing a trade-through obligation at the Participant level using Rule 5.2 is inconsistent with the view of the Recognizing

Regulators, RS and many commentators that a different and more efficient alternative for trade-through protection is a marketplace-level obligation.<sup>3</sup>

In an effort to address these concerns, RS applied on December 20, 2007 to the Recognizing Regulators, in accordance with Rule 11.1 of UMIR, for their approval to grant an exemption for a class of transactions.<sup>4</sup> Under the proposed exemption, a Participant would have been permitted, when determining compliance with the “best price” obligation under Rule 5.2 of UMIR, to take into account the disclosed volume of orders on only the protected marketplaces to which the Participant has access as:

- a member, in the case of a recognized exchange;
- a user, in the case of a recognized quotation and trade reporting system; or
- a subscriber, in the case of an alternative trading system.

Since that time, based on discussions about this exemption with the Recognizing Regulators, RS has instead developed the Interim Amendments for immediate implementation and **has therefore withdrawn the original application for approval of the exemption**. The Interim Amendments have a different impact than the original proposed exemption and become effective on May 16, 2008.

### **Background to the Interim Amendments**

#### ***Impact of the Amendments Respecting “Off-Marketplace” Trades***

Concurrent with the publication of this Market Integrity Notice, RS has published Market Integrity Notice 2008-008 - *Amendment Approval – Provisions Respecting “Off-Marketplace” Trades* (May 16, 2008) which provides notice that various amendments to UMIR (“Off-Marketplace” Amendments) became effective May 16, 2008 that, among other changes:

- adopt the definition of a “protected marketplace” as a marketplace that:
  - disseminates order data in real-time and electronically through 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;
- incorporate into Rule 5.2, the guidance of RS that the “best price” obligation arises at the time of the execution of an order;<sup>5</sup>

---

<sup>3</sup> The trade-through protection proposal outlined by RS and the CSA would require each marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs (in a manner similar to the requirements in the United States under Regulation NMS) and to regularly review the effectiveness of the policies and procedures and take prompt action to remedy deficiencies. The proposal would not mean that marketplaces would be required to establish linkages with other marketplaces. RS and the CSA identified a number of alternative ways a marketplace could choose to implement its policies and procedures obligation without requiring mandatory linkages. Some examples included:

- preventing orders from being entered into the marketplace when they are not at the best available prices;
- preventing orders from being executed if not at the best price;
- providing price improvement so that the transaction is executed at the same or better price to that available on another marketplace;
- requiring participants to take certain specified actions or to more generally confirm their own policies and procedures;
- allowing the entry of “inter-market sweep orders”; and
- establishing voluntary linkages (direct or indirect through an entity that has access to other marketplaces) to the other marketplaces to route orders to the best available visible limit orders.

Although the obligation to establish, maintain and enforce written policies to prevent trade-throughs would rest with the individual marketplaces, the decision about how to implement the requirement would be a choice and an opportunity for marketplaces to differentiate themselves and their services.

<sup>4</sup> Market Policy Notice 2007-009 – *General – Application for Approval of an Exemption from Aspects of the Best Price Obligation* (December 20, 2007).

<sup>5</sup> Rule 5.2 previously provided that the Participant was to make reasonable efforts “prior to” the execution of an order but RS had issued guidance on the interpretation of this requirement. See Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006).

- eliminate the distinction between “active” and “passive” orders when determining which orders owe a “best price” obligation;
- confirm that the obligation of a Participant to fill better-priced orders is not limited by the size of the trade executed by the Participant; and
- specifically provide that a Participant will be considered to have taken “reasonable efforts” to obtain the best price if, at the time of the execution of the order on a particular marketplace or foreign organized regulated market, the Participant enters orders on behalf of the client, non-client or principal account on each other protected marketplace and such orders have a sufficient volume and are at a price to fill the then disclosed volume<sup>6</sup> on that protected marketplace.

#### ***Status of Current Marketplaces as Protected Marketplaces***

Of the current marketplaces, only Chi-X, CNQ (including Pure Trading), Omega, TSX and TSXV meet all four conditions to qualify as a protected marketplace. None of BlockBook, Bloomberg, Liquidnet and MATCH Now qualify as a “protected marketplace”.

A Participant has an obligation to execute against better-priced orders on Chi-X, CNQ, Omega, Pure, TSX and TSXV before executing at an inferior price on any marketplace or foreign organized regulated market. For a description of the basic features of each these marketplaces, see “Summary Comparison of Current Equity Marketplaces” available on the RS website: [www.rs.ca](http://www.rs.ca).

A Participant owes a “best price” obligation to only the “visible” portion of a “better-priced” order on a protected marketplace. If a marketplace permits the entry of an “iceberg” order for which only a portion of the volume is disclosed, no “best price obligation” is owed to the portion of the order that is not visible at the time the Participant is determining its obligation under Rule 5.2. At the present time, iceberg orders are permitted on CNQ, Pure, TSX and TSXV.

If a protected marketplace has visible orders but the marketplace is not open for trading at that time, the “best price” obligation does not apply to such orders. A Participant may trade at any time taking into account all visible orders on marketplaces then open for trading. The “best price” obligation does apply to a special trading facility of a marketplace that conducts trading before or after “regular” trading hours if orders in such special facility are visible.

#### **Description of the Interim Amendments**

The “best price” obligation requires a Participant to make “reasonable efforts” to fill better-priced orders displayed on a protected marketplace at the time the Participant executes at an inferior price on another marketplace or foreign organized regulated market. The Interim Amendments:

- set out certain order handling methods which will be considered to be “reasonable efforts”;
- expand on the factors that RS will take into account in determining whether “reasonable efforts” have been made if a Participant is using an order handling method other than one which is automatically considered “reasonable efforts”;
- provide specific requirements for each Participant to adopt policies and procedures to ensure compliance with the “best price” obligation;
- clarify that “reasonable efforts” does not require a Participant to maintain a connection to each protected marketplace; and
- remove transaction costs as a factor to be taken into consideration in determining compliance with the “best price” obligation.

---

<sup>6</sup> The term “disclosed volume” is defined as including the volume of orders on a protected marketplace at a price better than the price of the intended trade but excludes:

- the undisclosed portion of any iceberg order;
- a Basis Order;
- a Call Market Order;
- a Market-on-Close Order;
- an Opening Order;
- a Special Terms Order; or
- a Volume-Weighted Average Price Order.

The Interim Amendments are effective as of the date of this Market Integrity Notice but may be varied or repealed following public comment and review by the Recognizing Regulators.

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

***Order Handling Methods That Are Automatically Considered “Reasonable Efforts”***

The Interim Amendments provide that the Market Regulator will accept that a Participant has made “reasonable efforts” to comply with the “best price” obligation if the Participant has:

- entered the order on a marketplace that will ensure compliance with the “best price” obligation;
- used an acceptable order router; or
- provided the order to another Participant for entry on a marketplace.

*Reliance on Marketplace Router or Functionality*

A Participant will be considered to have taken “reasonable efforts” to satisfy its “best price” obligation in respect of a particular order if the Participant has entered the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that will, upon receipt of the order:

- route all or any part of the order required to comply with Rule 5.2 to a protected marketplace;
- execute the order at a price that will comply with Rule 5.2; or
- automatically vary the price of the order to a price that will comply with Rule 5.2.

RS expects that the Participant will monitor and document the performance of any marketplace order router or marketplace trading system functionality. If the Participant becomes aware that the marketplace is failing to handle orders in a manner that will comply with Rule 5.2, the Participant can no longer rely on the arrangements with that marketplace to demonstrate “reasonable efforts” to obtain the “best price”.

RS expects that a marketplace which makes a router or functionality available to Participants to comply with their “best price” obligation will devote sufficient resources to the upgrade and maintenance of the router or functionality to be able to incorporate new protected marketplaces as they become available. In particular, RS expects that the marketplace will have taken reasonable efforts to obtain order information from each protected marketplace. RS expects that a marketplace offering these routers or functionality will obtain the order information either directly from the protected marketplace or from an information vendor. A marketplace would not be required to take into account a particular protected marketplace if order information from that particular protected marketplace is not available in a form and format that readily permits the use of such order information in the trading system of the marketplace. RS does not expect that each marketplace offering these routers or functionality will be in a position to integrate information from any new protected marketplace on its launch date. In the ordinary course, RS would expect that a marketplace should have integrated the new protected marketplace into its router or functionality within 90 days of the launch of the new marketplace. Unless RS has granted an exemption to a marketplace, if the marketplace has not integrated the new protected marketplace into its router or functionality within 90 days of launch of the new marketplace, a Participant would no longer be able to rely on its arrangements with the marketplace to demonstrate “reasonable efforts” to obtain the “best price”.

RS recognizes that, in certain circumstances, a marketplace may on a temporary basis cease taking into account orders on a particular protected marketplace as a result of interruption of service or the unavailability of quotes on the particular protected marketplace. For a discussion of RS’s expectations in these circumstances, see “Interruption of Marketplace Service” on pages 13 and 14 and “Unavailability of Quotes” on page 15.

*Reliance on Smart Order Router Technology*

A Participant will be considered to have taken “reasonable efforts” to satisfy its “best price” obligation in respect of a particular order if the Participant has entered the order on a marketplace using an order router developed and operated by the Participant or a service provider if:

- the order router has demonstrated an ability to access any order on a protected marketplace required to comply with Rule 5.2; and

- the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace.

RS expects that the Participant or service provider will monitor the performance of their order router to ensure that the router is performing adequately. In particular, RS expects that with the launch of a new marketplace which qualifies as a protected marketplace the performance of the order router will be re-evaluated.

If a Participant proposes to rely on the use of an order router developed and operated by the Participant or a service provider, RS expects that the Participant or service provider will make reasonable efforts to obtain order information from each protected marketplace. For a discussion of RS's expectations of "reasonable efforts" in this context, see "Availability of Marketplace Data" on pages 14 and 15.

RS recognizes that, in certain circumstances, an order router may on a temporary basis cease taking into account orders on a particular protected marketplace as a result of interruption of service or the unavailability of quotes on the particular protected marketplace. For a discussion of RS's expectations in these circumstances, see "Interruption of Marketplace Service" on pages 13 and 14 and "Unavailability of Quotes" on page 15.

#### *Reliance on Another Participant*

If a Participant routes orders to another Participant for entry on a marketplace, RS will consider the first Participant to have complied with their best price obligations and will look to the second Participant to ensure that "reasonable efforts" are undertaken to obtain "best price". The Participant that receives an order from another Participant as part of an introducing/carrying broker arrangement or as an individual jitney order takes on the obligation to undertake "reasonable efforts" to obtain the best price on the execution of the order in accordance with the other requirements of Rule 5.2.

#### ***Additional Factors to be Considered When Using Other Order Handling Methods***

If a Participant uses a means to enter an order on a marketplace other than one of the methods which will be automatically considered to comply with the "best price" obligation, the Interim Amendments expand the factors that may be taken into account by RS in determining whether a Participant has made "reasonable efforts" to obtain the best available prices on a "protected marketplace". For example, these additional factors will be relevant if a Participant uses an order router that does not meet the requirements described above under the heading "Reliance on Smart Order Router Technology" or if the Participant has decided to manually route a particular order or a particular component of its order flow.

Under the Interim Amendments, the additional factors that RS may take into account include the following:

#### *Launch of a New Marketplace*

RS acknowledges that a significant lead time is required for Participants, information vendors, service providers and other marketplaces to be able to adapt all of their systems to accommodate the introduction of a new protected marketplace. The lead time that is required reflects the need for co-ordination and the reality that all parties have other priorities and commitments with respect to their systems and technology initiatives. Section 12.3 of the Marketplace Operation Instrument provides that a new marketplace must provide at least two months public notice of technology requirements regarding interfacing with or access to the marketplace and that they must make testing facilities available to the public at least one month prior to the launch of trading operations. The longer the period of time that such technology specifications and testing facilities are available to the public prior to the launch of operations the easier for all market participants to adapt their systems to accommodate the launch of the new protected marketplace.

RS also recognizes there is a degree of uncertainty regarding whether new marketplaces are able to meet announced launch timeframes and there is some reluctance to make the required investments and commitments to systems and technology until the commencement of trading operations is either certain or in fact a reality. In connection with the launch of a new marketplace, if no or minimal testing is performed by the marketplace prior to launch, there will be a period after launch during which Participants may wish to assess the capacity, integrity and security of marketplace systems before directing order flow to such marketplace.

The Interim Amendments include as a relevant factor whether the protected marketplace provided testing facilities to the public for a sufficient period of time prior to launch in accordance with section 12.3 of the Marketplace Operation Instrument. If a new protected marketplace made testing facilities available for a sufficient period of time prior to launch, the Participant would be expected to take orders from the new protected marketplace into account and to obtain the best available price on that marketplace.

In the view of RS, a reasonable period of time during which to accommodate the launch of a new protected marketplace would be the longer of:

- three months following the launch of the new protected marketplace; and
- six months following the date that testing facilities were available to the public in accordance with section 12.3 of the Marketplace Operation Instrument.

As such, if a new protected marketplace provided only the minimum of one month for the availability of testing facilities as required by section 12.3 of the Marketplace Operation Instrument, RS would consider a reasonable period to be five months from the launch of the new protected marketplace before a Participant would be expected to fill better-priced orders on the new protected marketplace.

*Interruption of Marketplace Service*

RS will take into account as a relevant factor whether the protected marketplace has recently had a material malfunction or interruption of services. This factor may be taken into account in a decision by a Participant to initially connect to the protected marketplace or to continue to direct order flow to that particular protected marketplace.

If, in the course of ongoing marketplace operations, a Participant experiences an interruption of service with a particular protected marketplace, RS would expect that the Participant would document the nature of the interruption and the provision of notice of the interruption to the protected marketplace, any relevant service provider used by the Participant and the technology staff of the Participant so that the causes of the interruption could be identified and the responsible party could take remedial action. If a protected marketplace has experienced a material malfunction or interruption of service on any trading day, RS would not expect the Participant, depending upon the circumstances, to take that marketplace into account for the balance of the trading day should trading resume on that marketplace. For example, if the interruption was “momentary” as the marketplace moved trading to its back-up systems or if the nature and duration of the interruption of service are known at the outset of the interruption of service and the marketplace resumes trading as scheduled, the Participant would be expected to take that marketplace into account on the resumption of trading.

If the Participant has experienced persistent or prolonged material malfunctions or interruptions of service, including delays in:

- the processing of orders;
- the execution of trades;
- the communication of the status of orders or trades; or
- the dissemination to the applicable data vendor of order or trade information,

the Participant would not be expected to route orders to such marketplace until such time as the protected marketplace had demonstrated that its systems are reliable and fully-functioning. Participants are required to continue to monitor the system performance of the marketplace and to once again take into account best available prices on that marketplace once it has returned to normal operations.

As a general guideline, RS would view malfunctions or interruptions of service which affects the ability of a Participant to conduct trading on a marketplace on three days in any thirty day period to constitute a material malfunction or interruption of service that is “persistent or prolonged”. In these circumstances, RS would accept that a Participant was acting reasonably if the Participant did not route further orders to that protected marketplace until such time as the protected marketplace had demonstrated that its systems are reliable and fully-functioning. Once a Participant has determined that a particular protected marketplace was having persistent or prolonged material malfunctions or interruptions of service, RS would expect that the Participant would continue to monitor and document the system performance of that marketplace and, as a general guideline, RS would expect that a Participant would consider orders on that marketplace if there has not been a material malfunction or interruption of service for a period of at least thirty days and consideration of that marketplace is not otherwise excluded by the application of one of the other factors. RS acknowledges that information on the reliability and status of a marketplace system may not be readily available<sup>7</sup> and that a Participant may have to rely on representations made by the marketplace.

*Availability of Marketplace Data*

RS will take into account as a relevant factor whether order information from the protected marketplace is available through an information vendor used by the Participant in a form and format that readily permits the use of such order information in the trading systems of the Participant. In the absence of an information processor and a single official consolidated market display, RS acknowledges that each Participant must rely on one or more information vendors to provide order and trade information

---

<sup>7</sup> Marketplace information may become available if the CSA proceeds with amendments to the Marketplace Operation Instrument to require periodic reports of market quality information. See proposed Part 14.1 of the Marketplace Operation Instrument in the Joint Notice.



from the various marketplaces trading a particular security. RS is aware that not all information vendors make information available from all marketplaces, or even all protected marketplaces. RS expects that a Participant will request their information vendors to access the data of all protected marketplaces. RS recognizes that a reasonable period of time is required to permit a Participant to integrate additional data feeds (whether from an existing information vendor or an additional information vendor) into the trading system of the Participant. If an information vendor used by the Participant makes order and trade information available from a particular protected marketplace, RS would expect, in the ordinary course, that the Participant would take steps to be able to integrate that data into the trading systems of the Participant within 90 days following the date that the information vendor is first able to make the data available. If the Participant is not able to integrate the data within that time period, RS would expect that the Participant would document the steps which the Participant and the information vendor had taken prior to the expiry of the 90-day period in order to be able to demonstrate that they had diligently pursued the integration of the data as part of the reasonable efforts to comply with the “best price” obligation of the Participant.

If the information vendor used by a Participant does not make available order information from a particular protected marketplace in a format that can be readily integrated into the Participant's systems and the Participant determines that the trading activity on that particular marketplace is such that the Participant must consider that particular marketplace in accordance with its “best execution” obligations under Rule 5.1<sup>8</sup>, RS would expect that the Participant would make alternate arrangements with information vendors in order to obtain information on orders and trades on that protected marketplace. In the ordinary course, RS would expect that the Participant would implement these arrangements within 90 days following the date the Participant determined that the protected marketplace must be considered in accordance with the Participant's “best execution” obligations. Once again, if the Participant is not able to enter a new arrangement and integrate the data within that time period, RS would expect that the Participant would document the steps which the Participant and the information vendor had taken prior to the expiry of the 90-day period in order to be able to demonstrate that they had diligently pursued the integration of the data from the particular protected marketplace.

#### *Unavailability of Quotes*

Compliance with the “best price” obligation is measured by reference to the information which was available to the Participant at the time of the entry of an order. Given the speed at which trades occur and at which orders are entered, changed or cancelled, a Participant cannot necessarily execute with every order that appeared to be “available” at the time the Participant decided which marketplace to access. However, if a protected marketplace has demonstrated that, of the immediately tradeable orders sent to that particular protected marketplace, an inordinate proportion of:

- market orders are executed at a worse price than indicated on that marketplace at the time the decision was made to route the order to that particular protected marketplace; and
- limit orders fail to execute for the price and volume indicated on that marketplace at the time the decision was made to route the order to that particular protected marketplace,

a Participant may take this factor into account when determining whether to connect to or otherwise obtain access to that marketplace. RS acknowledges that information on the “fill” rates of a particular marketplace may not be readily available and that a Participant may have to rely on representations made by the marketplace.

Adverse results for immediately tradeable orders would be expected to occur on a marketplace that does not have sufficient “depth of book” to support the trading of average or above-average sized orders of liquid securities. Participants who intend to rely on this factor when making order routing decisions must monitor their “fill” rates for orders entered on the various protected marketplaces. A Participant would be expected to continue to monitor and document the trading activity on a protected marketplace which it had stopped utilizing due to the unavailability of quotes. If the monitoring discloses that trading activity on a particular marketplace has “matured” to the level that the marketplace has a demonstrated capacity to handle small or average size orders for a specific security, the Participant must consider order information from such marketplace in making “reasonable efforts” to comply with the “best price” obligation.

#### *Adherence to Policies and Procedures*

In determining if a Participant has undertaken “reasonable efforts” in obtaining best price, regardless of the method chosen by the Participant to enter orders on a marketplace, RS will consider whether the Participant has followed the policies and procedures regarding the “best price” obligation which the Participant has adopted in accordance with Rule 7.1 of UMIR. (See “Adoption of Policies and Procedures” on page 16 and 17.) In conducting a trade desk review or other inquiry to determine

---

<sup>8</sup> Reference is made to “Rule 5.1 – Best Execution Obligation” on pages 8 and 9 of Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006). RS expects that each Participant will monitor of trading activity on each marketplace for the purpose of determining whether the marketplace should be considered for compliance with the “best execution” obligation. RS also expects each Participant to document their analysis of trading activity on each marketplace that supports their decisions. See “Adoption of Policies and Procedures” on pages 16 and 17.

whether the Participant has undertaken “reasonable efforts” to obtain the best price, RS will first ascertain whether the Participant’s policies and procedures are adequate to ensure compliance with the “best price” obligation and then whether the Participant has followed those policies and procedures. In particular, the trade desk review will be looking to determine whether a Participant has monitored and documented:

- trading activity levels on each marketplace (including any marketplace which the Participant has stopped utilizing due to the unavailability of quotes);
- the performance of any marketplace router or functionality which the Participant has relied on to satisfy “best price” obligations;
- the performance of any smart order router or functionality developed and operated by the Participant or a service provider and on which the Participant has relied on to satisfy “best price” obligations; and
- the system performance of any protected marketplace that the Participant has determined has had a material malfunction or interruption of service.

*Additional Unspecified Factors*

The Interim Amendments provide that RS may consider additional factors beyond those specifically listed in Policy 5.2. Such additional factors may be a response to a number of developments including the emergence of new marketplaces, the introduction of new functionality by marketplaces or the recognition of a single consolidated market display produced by an information processor. If RS proposes to take into consideration a factor which is not specifically listed in Policy 5.2, RS will provide guidance on the application of such new factor through the issuance of a Market Integrity Notice at least 90 days prior to the date that RS proposes to take such new factor into account.

***Adoption of Policies and Procedures***

Rule 7.1 requires each Participant to adopt written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the requirements of UMIR, including the “best price” obligation under Rule 5.2. RS expects that each Participant will have adopted policies and procedures which set out the steps or process to constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:

- initially in determining whether orders on a protected marketplace need to be considered; and
- on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.

The policies and procedures adopted by the Participant must take into account the relevant factors and other requirements set out in Policy 5.2 giving effect to the Interim Amendments.

RS acknowledges that each Participant may also take into account additional factors which are reasonable and of particular importance to the type of business conducted by the Participant. However, any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument. For example, section 12.3 of the Marketplace Operation Instrument establishes minimum standards to be met by new marketplaces with respect to the availability of technical information and testing facilities. In addition, section 12.1 of the Marketplace Operation Instrument sets out requirements regarding the capacity of the trading system of a marketplace. Finally, the relevant factors enumerated in Part 1 of Policy 5.2 as provided by the Interim Amendments allow a Participant to take into account the actual operational performance of a protected marketplace. In these circumstances, RS would consider it unreasonable for a Participant to adopt as part of its policies and procedures a provision which would allow the Participant to disregard order information from a marketplace that did not have a minimum number of successful “industry wide” tests prior to launch or did not have certain redundancies or back-up capacity.

RS expects that each Participant will re-evaluate the appropriateness of its policies and procedures with the launch of each new marketplace, particularly a marketplace that qualifies as a protected marketplace. RS also expects that each Participant will monitor and document the levels of trading activity on each marketplace taken into account by the Participant in determining whether to establish or to maintain access to a particular marketplace (either for compliance with the “best price” obligation or the “best execution” obligation). In particular, if a Participant has ceased to take into account orders from a particular protected marketplace as a result of an interruption of marketplace services or the unavailability of quotes, the policies and procedures should indicate how the Participant will monitor and document developments on that particular protected marketplace that would

be relevant to determining when orders on that particular protected marketplace should once again be taken into consideration for the purposes of complying with the “best price” obligation.

On a monthly and quarterly basis, RS makes publicly available summary data on trading activity on each marketplace related to the percentage of trades, volume and value of each of the marketplaces regulated by RS. The summary is available on the RS website (at [www.rs.ca](http://www.rs.ca)) and may be accessed on the homepage under the heading “Marketplaces We Regulate”.

### ***Connectivity to Marketplaces***

Rule 5.2 requires Participants to make reasonable efforts to fill better-priced orders on a protected marketplace before executing a trade at an inferior price on another marketplace or foreign market. RS has indicated in previous guidance that UMIR does not require that a Participant maintain trading access to every Canadian marketplace on which a security may trade. The Interim Amendments have amended the provisions of Part 1 of Policy 5.2 to specifically confirm that making “reasonable efforts” to obtain best price does not require that a Participant become a member, user or subscriber of each protected marketplace.

If a Participant directs its order flow to a marketplace that offers a smart order router that will route, upon receipt, all or any part of an order entered by the Participant to a protected marketplace with “better-priced” orders to comply with the Rule 5.2, RS will consider the Participant to have complied with their best price obligations. In order to access the marketplace router, the marketplace may require that the Participant be a member, user or subscriber of each protected marketplace to which orders may be routed. Alternatively, the marketplace (or a Participant acting on its behalf) may itself be a member, user or subscriber of each protected marketplace and the marketplace may take on the responsibility for the order in a manner comparable to that of a “jitney”. In this latter case, since the particular marketplace has taken on the responsibility to consider prices on protected marketplaces and to access those protected marketplaces, the Participant would not be required to determine whether to directly connect to any new protected marketplace or to indirectly access any new protected marketplace through a Participant that had access to that marketplace.

### ***Transaction Costs***

In the Joint Notice, RS and the Recognizing Regulators set out a number of concept proposals and proposed rule changes that, among other things, would establish:

- that one of the general factors to be taken into account under the “best execution” obligation would be the overall cost of the transaction; and
- a maximum amount that a marketplace would be able to charge for access to a quote for trade-through purposes.

In contemplation of the adoption of one or both of these changes, the Interim Amendments repealed the current factor under Part 1 of Policy 5.2 that allows the consideration of the transaction costs and other costs that would be associated with executing the trade on a marketplace. With the repeal of this factor, each Participant when following its policies and procedures to obtain the “best price” will take account of the price of the orders displayed by each of the protected marketplaces without regard to any transaction fee that would be payable or any rebate or fee that may be earned if the order was executed on a particular marketplace. The repeal of this factor simplifies the logic for determining which marketplace an order should be routed to as the decision will now be made by comparing only the displayed prices on each of the protected marketplaces subject to the application of the factors identified in the Policy to Rule 5.2.

### **Summary of the Impact of the Interim Amendments**

The most significant impacts of the adoption of the Interim Amendments are:

- confirmation that “reasonable efforts” does not automatically require a Participant to have a direct connection to each protected marketplace;
- providing that each Participant must adopt policies and procedures for obtaining “best price” which must take into account the factors set out in Policy 5.2 together with other factors that are relevant to the business conducted by the Participant;
- providing that a Participant will be considered to have made “reasonable efforts” if the Participant has entered the order using an acceptable order router or similar facility operated by the Participant, a service provider, marketplace or other Participant;
- expanding the factors taken into account in determining whether a Participant has made “reasonable efforts” to obtain the best available prices to include whether:

- order information from the protected marketplace is available through a data vendor used by the Participant,
  - the protected marketplace has recently launched operations or had any material malfunction or interruption of services,
  - the protected marketplace has demonstrated an inordinate proportion of “inferior fills” with respect to tradeable orders routed to it; and
- removing differences in transaction costs between protected marketplaces as a factor that may be taken into account in determining whether a Participant has made “reasonable efforts”.

With the adoption of the Off-Marketplace Amendments and the immediate implementation of the Interim Amendments, certain of the guidance previously provided by RS with respect to obtaining “best price” in a multiple marketplace environment trading the same securities has been repealed and replaced with the issuance of Market Integrity Notice 2008-010 - *Guidance – Complying with “Best Price” Obligations* (May 16, 2008). In particular, guidance related to Rule 5.2 from the following notices has been repealed and replaced:

- Market Integrity Notice 2006-017 – *Guidance – Securities Trading on Multiple Marketplaces* (September 1, 2006);
- Market Integrity Notice 2006-020 – *Guidance – Compliance Requirements For Trading On Multiple Marketplaces* (October 30, 2006);
- Market Integrity Notice 2007-015 – *Guidance – Specific Questions Related to Trading on Multiple Marketplaces* (August 10, 2007); and
- Market Integrity Notice 2007-021 – *Guidance – Expectations Regarding “Best Price” Obligations* (October 24, 2007).

#### **Appendices**

- Appendix “A” sets out the text of the Interim Amendments to the Rules and Policies respecting the “best price” obligation; and
- Appendix “B” contains the text of the relevant provisions of the Rules and Policies as they read on the adoption of the Interim Amendments. Appendix “B” also contains a marked version of the current provisions highlighting the changes introduced by the Interim Amendments.

#### **Questions / Further Information**

For further information or questions concerning this notice contact:

James E. Twiss,  
Chief Policy Counsel,  
Market Policy and General Counsel’s Office,  
Market Regulation Services Inc.,  
Suite 900,  
145 King Street West,  
Toronto, Ontario. M5H 1J8  
  
Telephone: 416.646.7277  
Fax: 416.646.7265  
e-mail: james.twiss@rs.ca

ROSEMARY CHAN,  
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL

**Appendix “A”**

**Provisions Respecting the “Best Price” Obligations**

The Universal Market Integrity Rules are hereby amended as follows:

1. Subsection (3) of Rule 5.3 is repealed.

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

1. Part 1 of Policy 5.2 is deleted and the following substituted:

**Part 1 – Qualification of Obligation**

The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that an order receives the best price. “Reasonable efforts” does not require that a Participant become a member, user or subscriber of each protected marketplace.

The Market Regulator will accept that a Participant has made “reasonable efforts” to obtain the “best price” if the Participant:

- enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if:
  - the order router has demonstrated an ability to access orders on a protected marketplace, and
  - the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace,
- enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order:
  - route all or any part of the order required to comply with Rule 5.2 to a protected marketplace,
  - execute the order at a price that will comply with Rule 5.2, or
  - automatically vary the price of the order to a price that will comply with Rule 5.2; or
- provides the order to another Participant for entry on a marketplace.

In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:

***Factors Related to Initial Consideration of a Particular Marketplace***

- whether the marketplace qualifies as a “protected marketplace”;
- whether the protected marketplace has recently:
  - commenced operations, or
  - had any material malfunction or interruption of service;
- whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and
- whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered.

***Factors Related to On-going Compliance***

- whether a “better-priced” order is on a protected marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be initially considered;
- whether the Participant has experienced:
  - disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or
  - an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being executed only in part for a volume less than that displayed at the time the order was entered by the Participant; and
- whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace need to be considered on an on-going basis.

2. Policy 7.1 is amended by adding the following as Part 6:

**Part 6 – Specific Provisions Respecting the Best Price Obligation**

Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:

- initially in determining whether order on a protected marketplace need to be considered; and
- on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.

The policies and procedures adopted by the Participant:

- must take into account the factors and other requirements enumerated in Policy 5.2; and
- may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument.

Appendix “B”

Text of the Rules and Policies to Reflect Interim Amendments  
Respecting the “Best Price” Obligation

Text of Provisions Following Adoption of Interim Amendments	Text of Current Provisions Marked to Reflect Adoption of Interim Amendments
<p><b>5.2 Best Price Obligation</b></p> <p>(1) A Participant shall make reasonable efforts at the time of the execution of an order to ensure that:</p> <p>(a) in the case of an offer, the order is executed at the best bid price; and</p> <p>(b) in the case of a bid, the order is executed at the best ask price.</p> <p>(2) Subsection (1) does not apply to the execution of an order which is:</p> <p>(a) required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4 to be executed other than on a marketplace in order to maintain a fair or orderly market;</p> <p>(b) a Special Terms Order unless:</p> <p>(i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or</p> <p>(ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display; or</p> <p>(c) directed or consented to by the holder of the account to be entered on a marketplace as:</p> <p>(i) a Call Market Order,</p> <p>(ii) a Volume-Weighted Average Price Order,</p> <p>(iii) a Market-on-Close Order,</p> <p>(iv) an Opening Order,</p> <p>(v) a Basis Order, or</p> <p>(vi) a Closing Price Order.</p>	<p><b>5.2 Best Price Obligation</b></p> <p>(1) A Participant shall make reasonable efforts at the time of the execution of an order to ensure that:</p> <p>(a) in the case of an offer, the order is executed at the best bid price; and</p> <p>(b) in the case of a bid, the order is executed at the best ask price.</p> <p>(2) Subsection (1) does not apply to the execution of an order which is:</p> <p>(a) required or permitted by a Market Regulator pursuant to clause (b) of Rule 6.4 to be executed other than on a marketplace in order to maintain a fair or orderly market;</p> <p>(b) a Special Terms Order unless:</p> <p>(i) the security is a listed security or quoted security and the Marketplace Rules of the Exchange or QTRS governing the trading of a Special Terms Order provide otherwise, or</p> <p>(ii) the order could be executed in whole, according to the terms of the order, on a marketplace or with a market maker displayed in a consolidated market display; or</p> <p>(c) directed or consented to by the holder of the account to be entered on a marketplace as:</p> <p>(i) a Call Market Order,</p> <p>(ii) a Volume-Weighted Average Price Order,</p> <p>(iii) a Market-on-Close Order,</p> <p>(iv) an Opening Order,</p> <p>(v) a Basis Order, or</p> <p>(vi) a Closing Price Order.</p> <p><del>(3) For the purposes of subsection (1), the Participant may take into account any transaction fees that would be payable to the marketplace in connection with the execution of the order as set out in the schedule of transaction fees disclosed in accordance with Marketplace Operation Instrument.</del></p>

Text of Provisions Following Adoption of Interim Amendments	Text of Current Provisions Marked to Reflect Adoption of Interim Amendments
<p><b>Policy 5.2 – Best Price Obligation</b></p> <p><b>Part 1 – Qualification of Obligation</b></p> <p>The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that an order receives the best price. “Reasonable efforts” does not require that a Participant become a member, user or subscriber of each protected marketplace.</p> <p>The Market Regulator will accept that a Participant has made “reasonable efforts” to obtain the “best price” if the Participant:</p> <ul style="list-style-type: none"> <li>• enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if: <ul style="list-style-type: none"> <li>○ the order router has demonstrated an ability to access orders on a protected marketplace, and</li> <li>○ the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace,</li> </ul> </li> <li>• enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order: <ul style="list-style-type: none"> <li>○ route all or any part of the order required to comply with Rule 5.2 to a protected marketplace,</li> <li>○ execute the order at a price that will comply with Rule 5.2, or</li> <li>○ automatically vary the price of the order to a price that will comply with Rule 5.2; or</li> </ul> </li> <li>• provides the order to another Participant for entry on a marketplace.</li> </ul> <p>In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:</p> <p><b><i>Factors Related to Initial Consideration of a Particular Marketplace</i></b></p> <ul style="list-style-type: none"> <li>• whether the marketplace qualifies as a “protected marketplace”;</li> <li>• whether the protected marketplace has recently:</li> </ul>	<p><b>Policy 5.2 – Best Price Obligation</b></p> <p><b>Part 1 – Qualification of Obligation</b></p> <p>The “best price obligation” imposed by Rule 5.2 is subject to the qualification that a Participant make “reasonable efforts” to ensure that an order receives the best price. “Reasonable efforts” does not require that a Participant <u>become a member, user or subscriber of each protected marketplace.</u></p> <p><u>The Market Regulator will accept that a Participant has made “reasonable efforts” to obtain the “best price” if the Participant:</u></p> <ul style="list-style-type: none"> <li>• <u>enters the order on a marketplace by means of an order router developed and operated by the Participant or a service provider if:</u> <ul style="list-style-type: none"> <li>○ <u>the order router has demonstrated an ability to access orders on a protected marketplace, and</u></li> <li>○ <u>the Participant or service provider has taken reasonable efforts to obtain order information from each protected marketplace,</u></li> </ul> </li> <li>• <u>enters the order on a marketplace that has taken reasonable efforts to obtain order information from each protected marketplace and that, in accordance with the arrangements between the Participant and the marketplace, will, upon receipt of the order:</u> <ul style="list-style-type: none"> <li>○ <u>route all or any part of the order required to comply with Rule 5.2 to a protected marketplace,</u></li> <li>○ <u>execute the order at a price that will comply with Rule 5.2, or</u></li> <li>○ <u>automatically vary the price of the order to a price that will comply with Rule 5.2; or</u></li> </ul> </li> <li>• <u>provides the order to another Participant for entry on a marketplace.</u></li> </ul> <p><u>In determining whether a Participant has made “reasonable efforts” in other circumstances, the Market Regulator will consider, among other factors:</u></p> <ul style="list-style-type: none"> <li>• <del>the transaction costs and other costs that would be associated with executing the trade on a marketplace; and</del></li> </ul>



Text of Provisions Following Adoption of Interim Amendments	Text of Current Provisions Marked to Reflect Adoption of Interim Amendments
<ul style="list-style-type: none"> <li>○ commenced operations, or</li> <li>○ had any material malfunction or interruption of service;</li> <li>• whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and</li> <li>• whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered.</li> </ul> <p><b>Factors Related to On-going Compliance</b></p> <ul style="list-style-type: none"> <li>• whether a “better-priced” order is on a protected marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered;</li> <li>• whether the Participant has experienced: <ul style="list-style-type: none"> <li>○ disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or</li> <li>○ an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being executed only in part for a volume less than that displayed at the time the order was entered by the Participant; and</li> </ul> </li> <li>• whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be considered on an on-going basis.</li> </ul>	<p><b><u>Factors Related to Initial Consideration of a Particular Marketplace</u></b></p> <ul style="list-style-type: none"> <li>• <u>whether the marketplace qualifies as a “protected marketplace”;</u></li> <li>• <u>whether the protected marketplace has recently:</u> <ul style="list-style-type: none"> <li>○ <u>commenced operations, or</u></li> <li>○ <u>had any material malfunction or interruption of service;</u></li> </ul> </li> <li>• <u>whether, in the absence of an information processor, a data vendor used by the Participant has made order information from the protected marketplace available in a form and format that readily permits the use of such order information in the trading systems of the Participant; and</u></li> <li>• <u>whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered.</u></li> </ul> <p><b><u>Factors Related to On-going Compliance</u></b></p> <ul style="list-style-type: none"> <li>• <u>whether a “better-priced” order is on a protected <del>another</del> marketplace which the Participant has determined to consider in accordance with the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be initially considered <del>that:</del></u> <ul style="list-style-type: none"> <li><del>○ disseminates order data in real time and electronically through one or more information vendors;</del></li> <li><del>○ permits dealers to have access to trading in the capacity as agent;</del></li> <li><del>○ provides fully automated electronic order entry, and</del></li> <li><del>○ provides fully automated order matching and trade execution.;</del></li> </ul> </li> <li>• <u>whether the Participant has experienced:</u> <ul style="list-style-type: none"> <li>○ <u>disruptions in trading activity as a result of any material malfunction or interruption of service of a particular protected marketplace, or</u></li> <li>○ <u>an inordinate proportion of immediately tradeable orders entered on a particular protected marketplace being executed at an inferior price to that displayed at the time the order was entered by the Participant or not being executed or being executed only in part for a volume less than that displayed at</u></li> </ul> </li> </ul>

Text of Provisions Following Adoption of Interim Amendments	Text of Current Provisions Marked to Reflect Adoption of Interim Amendments
	<p><u>the time the order was entered by the Participant; and</u></p> <ul style="list-style-type: none"> <li>• <u>whether the Participant has followed the policies and procedures adopted by the Participant for determining whether orders on a protected marketplace needs to be considered on an on-going basis.</u></li> </ul>
<p><b>Policy 7.1 – Trading Supervision Obligation</b></p> <p><b>Part 6 – Specific Provisions Respecting the Best Price Obligation</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 compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:</p> <ul style="list-style-type: none"> <li>• initially in determining whether orders on a protected marketplace needs to be considered; and</li> <li>• on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.</li> </ul> <p>The policies and procedures adopted by the Participant:</p> <ul style="list-style-type: none"> <li>• must take into account the factors and other requirements enumerated in Policy 5.2; and</li> <li>• may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument.</li> </ul>	<p><b>Policy 7.1 – Trading Supervision Obligation</b></p> <p><b><u>Part 6 – Specific Provisions Respecting the Best Price Obligation</u></b></p> <p><u>Each Participant must adopt written policies and procedures that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace. These policies and procedures must address the factors which the Participant will take into account:</u></p> <ul style="list-style-type: none"> <li>• <u>initially in determining whether orders on a protected marketplace needs to be considered; and</u></li> <li>• <u>on an on-going basis once the Participant has determined that orders on a particular protected marketplace should be considered.</u></li> </ul> <p><u>The policies and procedures adopted by the Participant:</u></p> <ul style="list-style-type: none"> <li>• <u>must take into account the factors and other requirements enumerated in Policy 5.2; and</u></li> <li>• <u>may take into account other additional factors which are reasonable and of particular importance to the type of business conducted by the Participant provided any additional factors identified by a Participant must not be inconsistent with the requirements set out in Policy 5.2 or the provisions of the Marketplace Operation Instrument.</u></li> </ul>