



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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January 9, 2008

Dear Sirs/Mesdames:

Re: IIROC Notice 08-0163 – Provisions Respecting Implementation of Trade-Through Protection

1. Should specific provisions be added to UMIR to protect better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market?

We are very concerned with the proposed supplement to the CSA anti-avoidance provision with one that specifically protects better priced orders on a marketplace when a participant is considering a trade on a foreign organized regulated market.

If this specific obligation is introduced to foreign markets, there will be significant problems in developing systems to comply or monitor this. There are a number of issues that do not necessarily apply to transactions on Canadian marketplaces. For instance, the issues surrounding exchange rates raise a number of questions, including what rate applies, where is the foreign exchange conversion done, and at what time in the transaction, and who is exposed to the foreign exchange risk from the trade time to conversion. Even if systems could be designed to comply with this requirement, the benefits of implementing this provision would be marginal, as in practice, arbitrage activity narrows this spread to an insignificant amount in virtually all client orders requiring protection.

There is also the issue of the lack of a consolidated feed for foreign markets as well as questions relating to whether fees are taken into account. In many cases the costs of

undertaking a trade on a foreign market may be less, but this may not be able to be considered under the proposed provision.

This provision would also create regulatory asymmetry, as foreign regulators do not have such provisions. Domestically it also creates a non level playing field in respect of IIROC members and those regulated by the CSA or other SROs.

- 2. If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, should such the requirement be limited to the handling of:**
- intentional crosses;
 - pre-arranged trades;
 - block orders with a market value of \$100,000 or more?

If there are specific cases that IIROC is concerned about, these should be addressed specifically, not in a broad brush approach. It is important to ensure that regulation is appropriately targeted to address the matter of concern, without imposing undue burdens on the industry through more general and wide ranging regulation that goes beyond the perceived problem area. Where there are concerns with these specific types of trades, and IIROC can demonstrate that there have been actual occurrences that are materially disadvantaging clients or market participants, then regulation may be appropriate, only if other methods of dealing with the problem have been shown to be ineffective.

- 3. If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, are there any exemptions or other limitations on the requirement that would be appropriate?**

This should be limited to trades in accounts that are denominated in Canadian currency. By extension, there should be no requirement to protect a domestic market for a trade in an inter-listed security where it is being traded in a market that trades in the currency of the account.

- 4. Should a Participant that trades as principal with a non-Canadian account in a trade that is not executed on a marketplace or a foreign organized regulated market (in accordance with the exemption for “off-marketplace” trades provided in clause (e) of Rule 6.4 of UMIR) be required to consider better-priced orders on a marketplace that are on the same side of the transaction as the Participant?**

It is not appropriate to impose a trade through obligation on trades that are exempt from printing on the marketplace, as enumerated in section 6.4 of the UMIR. The circumstances in 6.4(e) are not comparable to trading on a foreign market for interlisted securities. Dealers engaging in the exempted transactions must report the trade as required, and such transactions are auditable. Although trades that are negotiated or occur during market hours should be priced within the context of the market, the requirement to conduct business openly and fairly and in accordance with just and equitable principles is sufficient under these circumstances.

Thank you for considering our comments. If you have any further questions or comments, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink that reads "Ben Russell". The signature is written in a cursive style. Below the name, there is a solid horizontal line that underlines the signature.