

# IIROC NOTICE

## **Rules Notice Request for Comments**

UMIR and Dealer Member Rules

**Comments Due By: December 12, 2016**

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**16-0233**

**October 13, 2016**

## **Re-Publication of Proposed Provisions Respecting Best Execution**

### **Executive Summary**

IIROC is re-publishing for comment proposed amendments (“Proposed Amendments”) to the Universal Market Integrity Rules (“UMIR”) and the Dealer Member Rules (“DMR”) that would consolidate existing UMIR best execution requirements and DMR requirements for fair pricing of over-the-counter (“OTC”) securities into a single rule on best execution.

We originally published amendments relating to best execution on December 10, 2015 (“2015 Proposed Amendments”)<sup>1</sup> and received ten comment letters. This notice discusses the core requirements of the Proposed Amendments and the changes we made to the 2015 Proposed Amendments in response to both public comments received and our further consultations with industry stakeholders and the CSA.

If approved, the Proposed Amendments would:

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<sup>1</sup> IIROC Notice [15-0277](#) – *Proposed Provisions Respecting Best Execution* (December 10, 2015)



- modify the best execution obligation to explicitly require a Dealer Member to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to achieve best execution when acting for a client
- require each Dealer Member to train its employees involved in the execution of client orders to know and understand the application of the Dealer Member’s best execution policies and procedures
- prohibit policies and procedures that include the practice of sending client orders in bulk to a foreign intermediary for execution outside of Canada without considering other liquidity sources, including liquidity sources in Canada
- make several editorial changes or consequential amendments to certain UMIR provisions.

The primary differences from the 2015 Proposed Amendments include:

- introducing a definition for “foreign exchange-traded security”
- adding a new section to proposed Rule 3300 (“Proposed Rule”) that modifies the requirements for non-Executing Dealer Members’ best execution policies and procedures and allows non-Executing Dealer Members to rely on the policies and procedures of Executing Dealers in certain instances
- removing certain requirements pertaining to OTC transactions from the Proposed Rule and returning these provisions to guidance
- removing disclosure requirements related to:
  - the identity of foreign organized regulated markets to which orders may be sent
  - how the Dealer Member complies with UMIR 6.3 requirements
  - the description of the order handling and routing practices of an intermediary and providing information that specifically identifies where that description can be found
- adding the requirement to disclose whether routing decisions are made based on fees paid or payments received
- removing the requirement to consider a marketplace that has demonstrated the greatest liquidity for a particular security when determining where to enter an Opening Order
- adding the prices and volumes of previous trades as a best execution factor to be used when manually handling a client order for a listed security or a foreign exchange-traded security
- removing the requirement for a Dealer Member to consider the investment objectives of a client in its process to achieve best execution



- moving the provision for a Dealer Member to make arrangements to access a marketplace that has historically demonstrated a reasonable likelihood of liquidity for securities for which the Dealer Member accepts orders to guidance<sup>2</sup>
- broadening the requirement to provide the rationale for accessing or not accessing particular marketplaces
- simplifying the language of the Proposed Rule to make it more understandable and easier to read.

The text of the Proposed DMR Amendments is set out at Appendix “A”. The text of the Proposed UMIR Amendments is set out at Appendix “B”. A blackline marked to identify the changes made from the 2015 Proposed Amendments is set out in Appendix “D”. If approved, the Proposed Amendments would be effective approximately 180 days from the publication of the final notice of approval.

## Impacts

IIROC expects that the most significant impacts of the Proposed Amendments on Dealer Members are to:

- establish, maintain and ensure compliance with written policies and procedures for best execution with respect to all client orders
- provide and update appropriate disclosure to clients
- train employees involved in the execution of client orders to know and understand how to apply the Dealer Member’s best execution policies and procedures
- for non-Executing Dealers relying on an Executing Dealer to execute client orders, initially review the public best execution disclosure of the Executing Dealer and conduct subsequent reviews when changes are made to ensure the policies and procedures are appropriate for its clients.

## How to Submit Comments

Comments are requested on all aspects of the Proposed Amendments, including any matter which they do not specifically address. Comments on the Proposed Amendments should be in writing and delivered by **December 12, 2016** to:

Sonali GuptaBhaya,  
Director, Market Regulation Policy  
Investment Industry Regulatory Organization of Canada

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<sup>2</sup> See IIROC Notice [16-0234](#) - Rules Notice – Request for Comments – UMIR and Dealer Member Rules – Re-publication of Proposed Guidance Respecting Best Execution (October 13, 2016) (“Proposed Guidance Notice”).



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A copy should also be provided to the CSA by forwarding a copy to:

Market Regulation  
Ontario Securities Commission  
Suite 1903, Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8  
e-mail: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

***Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website at [www.iiroc.ca](http://www.iiroc.ca).***



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## 1. Discussion of Proposed Amendments

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

### 1.1 Best Execution Obligation

#### 1.1.1 Scope of Best Execution Obligation and Definition of “best execution”

IIROC’s best execution obligation currently rests in UMIR 5.1 and only applies when Participants execute client orders for listed securities.<sup>3</sup> While non-Participant Dealer Members are not currently subject to a specific IIROC best execution rule they are subject to a best execution obligation under Part 4 – Best Execution of National Instrument 23-101 (“Trading Rules”).

The Proposed Amendments would introduce a single IIROC rule that imposes best execution requirements on both Participant and non-Participant Dealer Members and would cover orders for listed securities, OTC securities and foreign exchange-traded securities.

The best execution obligation in the Proposed Amendments focuses on establishing, maintaining and ensuring compliance with written policies and procedures that are reasonably designed to achieve best execution when acting for a client (including both retail and institutional clients). Therefore, evaluating best execution compliance would be based on reasonably designed policies and procedures rather than on a trade-by-trade analysis. Also, the Proposed Amendments would more closely align the IIROC definition of “best execution” with the definition of “best execution” in the Trading Rules.

#### 1.1.2 Best Execution with respect to OTC Securities

IIROC considers obtaining “the most advantageous execution terms reasonably available under the circumstances” for OTC securities to be analogous to obtaining prices that are “fair and reasonable”. Therefore, we expect best execution policies and procedures for the execution of client orders for OTC securities to include any mark-up or mark-down in the price for principal transactions. As well, the Proposed Rule requires that the amount of any added commission to be fair and reasonable.

IIROC will use the data collected on debt securities transactions through the Market Trade Reporting System 2.0, including spreads over benchmarks, commissions, as well as comparing retail versus wholesale trades to help determine whether a Dealer Member’s

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<sup>3</sup> A Participant is defined in UMIR 1.1 as:

- (a) a dealer registered in accordance with securities legislation of any jurisdiction and who is
  - (i) a member of an Exchange,
  - (ii) a user of a QTRS, or
  - (iii) a subscriber of an ATS; or
- (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker.



policies and procedures are reasonably designed to obtain prices that are “fair and reasonable”.

### **1.2 Best Execution Factors**

The Proposed Rule would require each Dealer Member to consider the same broad factors listed in the Trading Rules in its own policies and procedures for achieving best execution:

- price
- speed of execution
- certainty of execution
- overall cost of the transaction, when costs are passed through to clients.

While Dealer Members would need to consider the above four factors when executing client orders, we understand that not all four factors may be relevant to the same extent for each client execution or for executions in certain types of securities. Therefore, IIROC expects that Dealer Members will weigh and apply each factor to the degree it is relevant for different types of executions.

As well, the Proposed Amendments require consideration of more specific factors when executing orders for listed and foreign exchange-traded securities, including:

- how order and trade information from all appropriate marketplaces is taken into account
- the fair pricing of Opening Orders
- factors related to executing on unprotected marketplaces
- prevailing market conditions when executing manually handled orders.

### **1.3 Best Execution Process**

The Proposed Rule requires Dealer Members to outline a process reasonably designed to achieve best execution and sets out certain elements that must be included in the process, some of which may be tailored to executing orders for certain types of securities.

The Proposed Rule requires a Dealer Member, when executing any client order, to include the following in its best execution process:

- consideration of a client’s instructions
- description of any material conflicts of interest that may arise when sending orders for handling or execution and explain how these conflicts are to be managed.

In addition, when executing orders for listed securities or foreign exchange-traded securities, a Dealer Member would need to include as part of its best execution process:





- identifying order handling and routing practices (including order routing practices during the pre-market open, post-market close, when not all marketplaces are open and available for trading and how changes to routing tables are determined)
- taking into account the order and trade information from all appropriate marketplaces
- explaining the rationale for accessing or not accessing particular marketplaces
- describing the circumstances under which a Dealer Member will move an order entered on one marketplace to another marketplace
- any arrangements to access a marketplace that has historically demonstrated a reasonable likelihood of liquidity for securities for which the Dealer Member accepts orders.

#### **1.4 Fair Pricing of OTC Securities**

The proposed provisions regarding the fair pricing of OTC securities are identical to the provisions currently found in DMR 3300 which state that Dealer Members must use reasonable efforts to obtain a price that is fair and reasonable in relation to prevailing market conditions.

#### **1.5 Non-Executing Dealer Members' Best Execution Policies and Procedures**

To avoid duplication of effort and for improved clarity, section 3300.5 in the Proposed Rule sets out the requirements for a non-Executing Dealer Member's best execution policies and procedures. Under the Proposed Rule, a non-Executing Dealer Member would still have to establish, maintain and ensure compliance with written policies and procedures reasonably designed to achieve best execution. However, a non-Executing Dealer could fulfill certain requirements<sup>4</sup> of the Proposed Rule by including a link to its Executing Dealer's policies and procedures if the non-Executing Dealer Member includes as part of its own best execution policies and procedures the requirement to:

- conduct an initial review of the public best execution disclosure of the Executing Dealer Member and review this disclosure when any changes are made to ensure the policies and procedures are complete and appropriate for its clients
- obtain an annual attestation from its Executing Dealer that the Executing Dealer has complied with and tested its best execution policies and procedures in accordance with Rule 3300
- follow up with its Executing Dealer if it identifies execution results that are inconsistent with the Executing Dealer's best execution disclosure and document the results of its inquiry.

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<sup>4</sup> These requirements include subsection 3400.4(b) related to providing a description of the process used to achieve best execution, section 3300.8 related to reviewing best execution policies and procedures and section 3300.11 related to disclosure of best execution practices.



### **1.6 Review of Best Execution Policies and Procedures**

The Proposed Amendments would require Dealer Members to review their best execution policies and procedures at least annually and whenever there is a material change to the trading environment or market structure that may impact a Dealer Member's ability to achieve best execution for its clients. A material change to the trading environment would include the introduction of a new marketplace or significant changes to an existing marketplace. As well, each Dealer Member would need to consider, taking into account the scope and size of its business, whether more frequent reviews are necessary. The Proposed Amendments would require a Dealer Member to outline a process for the review of its best execution policies and procedures which would need to include a detailed governance structure that specifies the following:

- who will conduct the review
- what information sources will be used
- the review procedures that will be used
- a description of any specific events that would trigger a review in addition to annual reviews
- how the Dealer Member evaluates whether best execution was achieved
- who will receive reports of the results of the reviews.

We expect that frequent and thorough reviews of best execution policies and procedures will result in more effective and up-to-date methods to achieve best execution.

### **1.7 Training**

Section 3300.9 of the Proposed Rule requires Dealer Members to educate their employees involved in the execution of client orders so that these employees know and understand the relevant application of the best execution policies and procedures.

The current requirement in Part 4 of UMIR Policy 7.1 requires employees to know the rules and understand their obligation for best execution. The proposed requirement related to training places the onus on Dealer Members to train their employees who are involved in the execution or handling of client orders, to not only understand the best execution obligation, but understand how the best obligation must be met through the application of the Dealer Member's relevant policies and procedures. We hope this requirement will improve investor protection by focusing on the effective implementation and application of best execution policies and procedures.

### **1.8 Disclosure of Best Execution Policies**

In order to ensure that clients have access to sufficient information regarding the handling of their orders, section 3300.11 of the Proposed Rule would impose disclosure requirements on



Dealer Members that reflect requirements in the Proposed CSA Best Execution Amendments (defined below). This section would specifically require a Dealer Member to provide its clients in writing with specific information relating to how it achieves best execution, including:

- a description of the factors it considers for the purpose of achieving best execution
- a description of its order handling and routing practices
- the identity of marketplaces and types of intermediaries to which the Dealer Member may route client orders as well as the names of marketplaces that are not accessed
- the nature of any ownership by the Dealer Member with any marketplace or intermediary.

The Proposed Amendments would also require a Dealer Member to review this disclosure and update it on a frequency that is reasonable under the circumstances. These requirements are designed to provide clients with adequate access to information on order handling procedures to make informed choices when choosing a dealer or providing instructions to a dealer.

## **2. Analysis**

### **2.1 Best Execution Obligation**

Securities regulators internationally have recognized that in the context of multiple markets, both order handling and best execution rules are particularly important for investor protection. In Canada, Part 4 of the Trading Rules imposes an obligation on dealers to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. IIROC has also issued several guidance notices to interpret the current UMIR best execution requirement.

The evolution of the Canadian equity market continues to significantly affect the way in which orders are executed. Changes in market structure have resulted in a more complex trading environment and given rise to new trading dynamics. Recent changes include:

- the introduction of unprotected transparent marketplaces
- an increase, among certain Dealer Members, in sending order flow to foreign markets
- differences in features offered by marketplaces<sup>5</sup>.

In order to update current best execution requirements, the Proposed Amendments would:

- reflect proposed amendments by the CSA to the Trading Rules in 2014<sup>6</sup> (“Proposed CSA Best Execution Amendments”)

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<sup>5</sup> For example: order types accepted, the treatment of marketplace trading fees or rebates and the use of systematic order processing delays or “speed bumps”.

<sup>6</sup> CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 *Trading Rules* (2014), 37 OSCB 4873



- address concerns arising from the results of an IIROC survey (“Survey”)<sup>7</sup> which gauged current industry practices to achieve best execution
- incorporate certain suggestions made at a roundtable to discuss alternatives to the Proposed Dark Rules Anti-Avoidance Provision<sup>8</sup> and the practice of systematic routing of retail orders to U.S. broker-dealers (“Roundtable”).

## **2.2 Proposed CSA Best Execution Amendments**

The CSA proposed amendments relating to best execution in 2014 that would require dealers to disclose certain aspects of their best execution policies. These amendments would also provide guidance on accessing orders on a marketplace in the context of unprotected markets. The CSA noted that because many marketplace participants are exempt from the best execution requirements in the Trading Rules as they are subject to IIROC best execution requirements, the CSA expects that similar changes to best execution requirements would also be made to IIROC policies and guidance. The Proposed Amendments would meet this expectation.

## **2.3 IIROC Best Execution Survey**

IIROC conducted the Survey on best execution practices of Dealer Members (both non-Participant Dealer Members and Participants) to better understand how they comply with best execution requirements in a multiple marketplace environment. These responses helped us identify best execution practices that may be improved upon to increase investor protection and enhance market efficiency. We have already addressed certain areas of concern through IIROC’s Trading Conduct Compliance examination cycle and are now addressing others through the Proposed Amendments by including the following requirements to:

- consider factors related to executing on unprotected marketplaces, including whether client orders could be reasonably expected to execute at a “better price”
- describe how the Dealer Member evaluates whether best execution was achieved
- keep documentation of any material decision and changes made to best execution policies and procedures for five years and review the effectiveness of best execution policies and procedures at least annually
- identify factors to consider when not all marketplaces are open and available for trading when designing a process to achieve best execution
- provide clear and accessible disclosure to clients regarding order handling and routing practices intended to achieve best execution

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<sup>7</sup> IIROC [Notice 14-0082](#) – *Best Execution Survey Results* (March 28, 2014)

<sup>8</sup> IIROC [Notice 15-0023](#) – *Re-Publication of Proposed Dark Rules Anti-Avoidance Provision* (January 29, 2015)



- if providing market data as a service to clients, provide a description of any missing market data as well as an explanation of the risks of trading with the incomplete market data provided.

### **2.4 Addressing Concerns Regarding Southbound Order Flow**

IIROC hosted a Roundtable with industry stakeholders to discuss alternatives to the Proposed Dark Rules Anti-Avoidance Provision.<sup>9</sup> Presenters at the Roundtable proposed solutions that included enhancing best execution requirements and guidance to help Dealer Members better understand the circumstances under which routing to a foreign market may not achieve best execution. We have therefore clarified in the Proposed Amendments that a Dealer Member’s policies and procedures may not include the practice of sending client orders in listed securities in bulk to foreign intermediaries for execution outside of Canada, without considering other liquidity sources, including liquidity sources in Canada.

### **3. Changes from the 2015 Proposed Amendments**

We received ten comment letters on the 2015 Proposed Amendments and have revised the Proposed Rule to address certain comments. A detailed comment summary along with our responses are found at Appendix C. The following is a summary of the principal changes from the 2015 Proposed Amendments:

#### **3.1 Addition of “foreign exchange-traded security” Definition**

A comment on the 2015 Proposed Amendments indicated that best execution is an obligation that should apply to all client orders but the proposal was limited to listed securities. IIROC’s view is that best execution is an obligation owed to each client and therefore a Dealer Member is required to comply with its best execution obligation for any client order it accepts. To ensure the Proposed Amendments apply to the execution of all orders on Canadian marketplaces, we have introduced a definition of “foreign exchange-traded security” that would include a security other than a listed security, which is listed on a foreign organized regulated market. This definition would include any securities that are not listed in Canada but trade on a Canadian marketplace.

#### **3.2 Best Execution Policies and Procedures of Non-Executing Dealer Members**

Comments on the 2015 Proposed Amendments indicated that the requirements for non-Executing Dealer Members to develop best execution policies and procedures and to review the execution performance of any Executing Dealer Members they use were an unnecessary duplication of effort and would add significant costs and complexity as non-Executing Dealers would have to develop expertise in these areas.

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<sup>9</sup> IIROC [Notice 15-0105](#) – Roundtable to Discuss Alternatives to the Dark Rules Anti-Avoidance Provision and Solutions Respecting Routing of Retail Orders to U.S. Dealers (May 7, 2015)



Since an Executing Dealer Member does not necessarily know the needs and execution goals of a non-Executing Dealer Member's client, we believe that the non-Executing Dealer Member is in the best position to determine which policies and procedures are most appropriate to ensure its clients receive best execution. In response to comments, we modified the Proposed Rule to remove any duplication of effort but still require the non-Executing Dealer Member to take certain steps in order to comply with its best execution obligation.

As noted above, new section 3300.5 in the Proposed Rule would allow a non-Executing Dealer Member to fulfill certain requirements of the Proposed Rule by including a link to its Executing Dealer's public best execution disclosure if the non-Executing Dealer Member includes the following requirements as part of its own best execution policies and procedures:

- conduct an initial review of the public best execution disclosure of the Executing Dealer Member and review this disclosure when any changes are made to ensure the policies and procedures are complete and appropriate for its clients
- obtain an annual attestation from its Executing Dealer that the Executing Dealer has complied with and tested its best execution policies and procedures in accordance with Rule 3300
- follow up with its Executing Dealer if it identifies execution results that are inconsistent with the Executing Dealer's best execution disclosure and document the results of its inquiry.

### **3.3 OTC Transactions**

Commenters on the 2015 Proposed Amendments pointed out that certain provisions, including those related to maintaining documentation that supports the pricing of OTC transactions, were not in line with current industry practice and would be a large undertaking for dealers to adopt.

The 2015 Proposed Amendments moved existing guidance on executing OTC transactions provided in the Fair Pricing Guidance Note<sup>10</sup> to Rule 3300 and repealed the Fair Pricing Guidance Note. However, our intention was not to create new requirements but to consolidate and maintain current practices.

In light of these comments, the Proposed Amendments return all original provisions back to the Fair Pricing Guidance Note. The provisions in guidance would remain non-mandatory and not impose any new burdens on Dealer Members. However, the provisions under current Rule 3300 would remain intact and be included as part of the Proposed Rule.

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<sup>10</sup> IIROC Notice [11-0257](#) – *Guidance on fair pricing of over-the-counter securities* (September 1, 2011)



### **3.4 Disclosure Requirements**

The 2015 Proposed Amendments required certain disclosure related to foreign organized regulated markets.<sup>11</sup> A commenter indicated that these requirements were confusing as Dealer Members do not directly route orders to foreign organized regulated markets. As well, the commenter explained that it would be difficult to maintain a list of all foreign markets that could be used to execute its clients' orders. We agree with this analysis and have removed these particular requirements from the Proposed Rule.

We have also removed the requirement to disclose:

- how a Dealer Member complies with the requirements of UMIR 6.3 in light of comments received that this information is not relevant to the average retail client and could not be detailed enough to add value to the client relationship
- a description of the order handling and routing practices of an intermediary or information that specifically identifies where that description can be found in response to comments that this description may not be available from all intermediaries and would be difficult to provide.

Finally, in response to comments from the CSA, we added the requirement for a Dealer Member to disclose whether it bases its routing decisions on fees paid or payments received.

### **3.5 Factors to Consider When Entering Opening Orders**

With respect to Opening Orders, the 2015 Proposed Amendments required best execution policies and procedures to consider a marketplace that has demonstrated:

1. the greatest liquidity for a particular security at the opening of trading, and
2. the fair pricing of Opening Order executions.

We have removed the requirement to consider the marketplace that has demonstrated the greatest liquidity for a particular security at the opening of trading in response to comments that indicated this requirement might establish a monopoly for the market open and preclude the development of competition.

### **3.6 Best Execution Factors**

The Proposed Amendments add the requirement to use the prices and volumes of previous trades as a factor to achieve best execution when manually handling a client order for a listed

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<sup>11</sup> This disclosure included:

- the identity of any foreign organized regulated market to which the Dealer Member might route orders for handling or execution
- the circumstances in which the Dealer Member might route orders to a foreign organized regulated market.
- a statement as to whether fees are paid or payments or other compensation is received by the Dealer Member for a client order routed, or traded resulting from a client order routed to any foreign organized regulated market.



security or a foreign exchange-traded security. We made this change to more closely reflect current requirements in Policy 5.2.

### **3.7 Best Execution Process**

With respect to requirements relating to the process a Dealer Member uses to achieve best execution, we:

- removed the requirement to include the investment objectives of the client
- clarified that only *material* conflicts of interest need to be included
- broadened the requirement for providing a rationale for accessing or not accessing orders on particular marketplaces to providing a rationale for accessing or not accessing particular marketplaces
- moved to guidance the requirement for a Dealer Member to make arrangements to access a marketplace that has historically demonstrated a reasonable likelihood of liquidity for securities for which the Dealer Member accepts orders.

## **4. Impacts of the Proposed Amendments**

### **4.1 Dealer Impacts**

We believe that the most significant impacts of the Proposed Amendments on Dealer Members are to:

- establish, maintain and ensure compliance with written policies and procedures for best execution with respect to all securities
- provide and update appropriate disclosure to clients
- train employees involved in the execution of client orders to know and understand the application of the Dealer Member's best execution policies and procedures
- for non-Executing Dealers relying on an Executing Dealer to execute client orders, initially review the public best execution disclosure of the Executing Dealer and conduct subsequent reviews when changes are made to ensure the policies and procedures are appropriate for its clients.

#### *4.1.1 Written Best Execution Policies and Procedures*

While the requirement to establish best execution policies and procedures is not new, responses to the Survey indicate that some Dealer Members may have to enhance their current written policies and procedures. We expect that these Dealer Members will need to invest time to modify these policies and procedures to ensure compliance with the requirements in the Proposed Rule.

#### *4.1.2 Disclosure of Best Execution Policies*

The proposed requirement to provide best execution disclosure would require Dealer Members to review any current disclosure of best execution policies and procedures and





modify such disclosure, where necessary, to ensure it complies with the Proposed Rule. While we do not expect this disclosure to be highly detailed, it should provide enough information for clients to understand how and when the handling of their orders will occur and why the handling of their orders may differ. We anticipate that Dealer Members will require time to draft disclosure that meets the requirements in the Proposed Rule.

As well, we expect that Dealer Members with a website will have to devote time to ensure that the mandated information is easily accessible, clearly located on its website and updated as required.

#### *4.1.3 Training*

We expect Dealer Members will need time to ensure that all applicable employees have the requisite knowledge and understanding of how to apply the Dealer Member's best execution policies and procedures.

#### *4.1.4 Review of Executing Dealer's Best Execution Disclosure*

Each non-Executing Dealer Member will need time to review the public best execution disclosure of its Executing Dealer to ensure the best execution policies and procedures are appropriate for its clients.

### **4.2 Marketplace Impacts**

We do not expect the Proposed Amendments to have any material technological impact on marketplaces.

### **4.3 Other Impacts**

IIROC will need to amend its compliance modules to reflect the Proposed Amendments and train staff on the new requirements.

## **5. Implementation**

IIROC expects that, if the Proposed Amendments are approved by the CSA, the Proposed Amendments would be implemented approximately 180 days after the publication of the Notice of Approval.

## **6. Policy Development Process**

### **6.1 Regulatory Purpose**

The Proposed Amendments would assist Dealer Members in:

- complying with best execution obligations in a multi-marketplace environment
- promoting just and equitable principles of trade and the duty to act fairly, honestly and in good faith
- fostering fair, equitable and ethical business standards and practices



- promoting the protection of investors.

## **6.2 Regulatory Process**

The Board of Directors of IIROC (“Board”) has determined the Proposed Amendments to be in the public interest and on September 13, 2016 approved them for public comment.

The Market Rules Advisory Committee of IIROC considered this matter as proposed in concept by IIROC staff. MRAC is an advisory committee comprised of representatives of each of the marketplaces for which IIROC acts as a regulation services provider, Participants, institutional investors and subscribers, and the legal and compliance community.<sup>12</sup> Certain commenters on the 2015 Proposed Amendments were also consulted during the formation of the Proposed Amendments.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the CSA, IIROC may recommend that revisions be made to the applicable proposed amendments. If the revisions and comments received are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the proposed amendments as revised will be subject to approval by the CSA. If the revisions or comments are material, the proposed amendments including any revisions will be submitted to the Board for approval for republication or implementation as applicable.

## **7. Appendices**

Appendix A – Text of DMR Amendments

Appendix B – Text of UMIR Amendments

Appendix C – Comment Summary

Appendix D – Blackline of Proposed Rule Indicating Changes Made to 2015 Proposed Amendments

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<sup>12</sup> Consideration by MRAC should not be construed as approval or endorsement of the Proposed Amendments. Members of MRAC are expected to provide their personal advice on topics and that advice may not represent the views of their respective organizations as expressed during the public comment process.



## **Appendix A – Proposed DMR Amendments**

The Dealer Member Rules are hereby amended by replacing Rule 3300 with the following:

### **“RULE 3300 BEST EXECUTION OF CLIENT ORDERS**

#### **3300.1. Definitions**

For the purposes of this Rule 3300:

- (a) “best execution” means obtaining the most advantageous execution terms reasonably available under the circumstances.
- (b) “over-the-counter securities” includes debt securities as well as contracts for difference and foreign exchange contracts, but does not include:
  - (i) listed securities;
  - (ii) primary market transactions in securities; and
  - (iii) over-the-counter derivatives with non-standardized contract terms that are customized to the needs of a particular client and for which there is no secondary market.
- (c) “foreign exchange-traded security” means a security, other than a listed security, that is listed on a foreign organized regulated market.

Terms defined or interpreted in the Universal Market Integrity Rules and used in this Rule 3300 have the respective meanings ascribed to them in the Universal Market Integrity Rules other than the following:

“listed security” means a security listed on an Exchange, other than an option.

#### **3300.2. Best Execution Obligation**

A Dealer Member must establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to achieve best execution when acting for a client.

#### **3300.3. Best Execution Factors**

- (a) The policies and procedures required under section 3300.2. must consider the following broad factors for the purpose of achieving best execution for all client orders:
  - (i) price;



- (ii) the speed of execution;
  - (iii) the certainty of execution;
  - (iv) the overall cost of the transaction, when costs are passed on to clients;
- (b) The policies and procedures required under section 3300.2. must consider the following factors, which encompass more specific considerations of the broad factors listed in (a) for the execution of client orders for listed securities:
- (i) considerations taken into account when determining appropriate routing strategies for clients;
  - (ii) considerations of the fair pricing of Opening Orders when determining where to enter an Opening Order;
  - (iii) considerations when not all marketplaces are open and available for trading;
  - (iv) how order and trade information from all appropriate marketplaces, including unprotected marketplaces and foreign organized regulated markets, is taken into account;
  - (v) factors related to executing on unprotected marketplaces; and
  - (vi) factors related to sending orders to a foreign intermediary for execution,
- (c) The policies and procedures required under section 3300.2. must identify the factors used to achieve best execution including the following “prevailing market conditions”, when manually handling a client order for a listed security or a foreign exchange-traded security that trades on a marketplace in Canada:
- (i) the direction of the market for the security;
  - (ii) the depth of the posted market;
  - (iii) the last sale price and the prices and volumes of previous trades;
  - (iv) the size of the spread; and
  - (v) the liquidity of the security.

#### **3300.4. Best Execution Process**

The policies and procedures required under section 3300.2. must outline a process designed to achieve best execution which includes:

- (a) for the execution of all client orders:
  - (i) requiring the Dealer Member, subject to compliance by the Dealer Member with any regulatory requirement, to consider the instructions of a client;



- (ii) describing any material conflicts of interest that may arise when sending orders for handling or execution and how these conflicts are to be managed;
- (b) for the execution of orders for listed securities and foreign exchange-traded securities that trade on a marketplace in Canada:
  - (i) identifying the Dealer Member's order handling and routing practices intended to achieve best execution;
  - (ii) taking into account order and trade information from all appropriate marketplaces;
  - (iii) the rationale for accessing or not accessing particular marketplaces;
  - (iv) the circumstances under which a Dealer Member will move an order entered on one marketplace to another marketplace.

### **3300.5. Non-Executing Dealer Member Best Execution Policies and Procedures**

A Dealer Member that employs another Dealer Member to provide execution services on its behalf may include in its policies and procedures a reference to a link to the executing Dealer Member's best execution disclosure to comply with sections 3300.4(b), 3300.8 and 3300.11 provided that the non-executing Dealer Member's best execution policies and procedures include:

- (a) an initial review of the public best execution disclosure of the executing Dealer Member and a review when changes to the disclosure are made, to ensure the policies and procedures are complete and appropriate for its clients;
- (b) obtaining an annual attestation from the executing Dealer Member that the executing Dealer Member has complied with and tested its best execution policies and procedures in accordance with this Rule 3300;
- (c) following up with the executing Dealer Member if it identifies execution results that are inconsistent with the executing Dealer Member's best execution disclosure and documenting the results of its inquiry.

### **3300.6. Bulk Sending of Orders to Foreign Intermediaries**

A Dealer Member's policies and procedures may not include the practice of sending client orders in listed securities in bulk to a foreign intermediary for execution outside of Canada, without considering other liquidity sources, including liquidity sources in Canada.



### **3300.7. Fair Pricing of Over-the-Counter Securities**

A Dealer Member must not:

- (a) purchase over-the-counter securities for its own account from a client or sell over-the-counter securities for its own account to a client except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable, taking into consideration all relevant factors, including the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the Dealer Member is entitled to a profit, and the total dollar amount of the transaction; and
- (b) purchase or sell over-the-counter securities as agent for a client for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors, including the availability of the securities involved in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the Dealer Member, and the amount of any other compensation received or to be received by the Dealer Member in connection with the transaction.

### **3300.8. Review of Best Execution Policies and Procedures**

A Dealer Member must review its best execution policies and procedures required under section 3300.2. at least annually, and specifically whenever there is a material change to the trading environment or market structure that may impact a Dealer Member's ability to achieve best execution for its clients. Each Dealer Member must consider, taking into account the scope and size of its business, whether more frequent reviews of its best execution policies and procedures are necessary.

A Dealer Member must outline a process to review its best execution policies and procedures, including detail of a governance structure, that specifies:

- (a) who will conduct the review;
- (b) what information sources will be used;
- (c) the review procedures that will be employed;
- (d) a description of any specific events that would trigger a review in addition to annual reviews;
- (e) how the Dealer Member evaluates whether its policies and procedures are effective in achieving best execution; and
- (f) who will receive reports of the results.

A Dealer Member must retain records of its reviews of its best execution policies and procedures, as well as any material decisions made and changes to them, for five years. A



Dealer Member must promptly correct any deficiencies identified in the course of its best execution policies and procedures review.

### **3300.9. Training**

A Dealer Member must ensure its employees involved in the execution of client orders know and understand the application of the Dealer Member's written best execution policies and procedures that they must follow.

### **3300.10. Subject to Order Protection Rule**

Despite any instruction or consent of the client, achieving best execution for a client order for any listed security is subject to compliance with the Order Protection Rule under Part 6 of the Trading Rules by:

- (a) the marketplace on which the order is entered; or
- (b) the Dealer Member, if the Dealer Member has marked the order as a directed-action order in accordance with UMIR 6.2.

### **3300.11. Disclosure of Best Execution Policies**

A Dealer Member must provide in writing to its clients:

- (a) a description of the Dealer Member's obligation under section 3300.2;
- (b) a description of the factors the Dealer Member considers for the purpose of achieving best execution;
- (c) a description of the Dealer Member's order handling and routing practices intended to achieve best execution for client orders for listed securities, including:
  - (i) the identity of any marketplace to which the Dealer Member might route the orders for handling or execution;
  - (ii) the identity of each type of intermediary (foreign and domestic) to which the Dealer Member might route the orders for handling or execution;
  - (iii) the circumstances in which the Dealer Member might route the orders to a marketplace or intermediary identified or referred to in the disclosure made under (i) and (ii);
  - (iv) the circumstances, if any, under which the Dealer Member will move an order entered on one marketplace to another marketplace;
  - (v) the nature of any ownership by the Dealer Member or affiliated entity of the Dealer Member in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under (i) and (ii);



- (vi) if any of the orders may be routed to an intermediary referred to in the disclosure made under (ii), pursuant to an arrangement with any such intermediary,
  - (A) a statement that the order will be subject to the order handling and routing practices of the intermediary;
  - (B) a statement that the Dealer Member has reviewed the order handling and routing practices of the intermediary and is satisfied that they are reasonably designed to achieve best execution;
- (vii) a statement as to:
  - (A) whether fees are paid or payments or other compensation is received by the Dealer Member for a client order routed, or traded resulting from a client order routed, to any marketplace or intermediary identified or referred to in the disclosure made under (i) and (ii);
  - (B) the circumstances under which the costs associated with those fees paid or the amounts or compensation received will be passed on to the client; and
  - (C) whether routing decisions are made based on fees paid or payments received,
- (d) when providing market data as a service to clients, a description of any missing market data, including an explanation of the risks of trading with incomplete trading data provided.

A Dealer Member must make the required disclosure for each class or type of client if the factors and order handling and routing practices used for such clients materially differ.

A Dealer Member must specifically identify in the required disclosure:

- (a) the class or type of client to which the disclosure applies;
- (b) the class or type of securities to which the disclosure applies; and
- (c) the date of the most recent changes to the disclosure made in accordance with this Rule 3300.

A Dealer Member must:

- (a) make the disclosure required under this Rule 3300 publicly available on the Dealer Member's website; and
- (b) clearly identify to clients where on the website the disclosure is found; or
- (c) if the Dealer Member does not have a website, deliver the disclosure required under this Rule 3300 to the client
  - (i) upon account opening; or
  - (ii) if the client has an account already open with the Dealer Member at the time this Rule 3300 comes into force, no later than the 90<sup>th</sup> day after this Rule 3300 comes into force.





A Dealer Member that provides disclosure under this Rule 3300 must:

- (a) review the disclosure on a frequency that is reasonable in the circumstances, and at a minimum on an annual basis; and
- (b) promptly update the disclosure to reflect the Dealer Member's current practices.

If a Dealer Member makes any change to the disclosure it is required to make under this Rule 3300, the Dealer Member must:

- (a) for the website disclosure, identify and maintain the change on the website for a period of 6 months after the change has been made; or
- (b) for any disclosure required to be delivered to a client, deliver the change to the client no later than the 90<sup>th</sup> day after the completion of the review and update.”.



## **Appendix B - Text of UMIR Amendments**

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 5.1 is deleted.
2. Policy 5.1 is deleted.
3. Part 3 of Policy 7.1 is amended by:
  - (a) adding “DMR,” to the heading of the first column of the table,
  - (b) deleting “Rule 5.1” from the first column of the table,
  - (c) adding “DMR 3300” after “Rule 8.1” in the first column of the table.
4. Part 4 of Policy 7.1 is amended by:
  - (a) deleting the phrase “and Best Execution” from the title of the Part;
  - (b) deleting the following:

“or 5.1. A Participant must have policies and procedures in place to “diligently pursue the execution of each client order on the most advantageous execution terms reasonably available under the circumstances”. The policies and procedures must:

    - outline a process designed to achieve best execution;
    - require the Participant, subject to compliance by the Participant with any Requirement, to follow the instructions of the client and to consider the investment objectives of the client;
    - include the process for taking into account order and trade information from all appropriate marketplaces and foreign organized regulated markets; and
    - describe how the Participant evaluates whether “best execution” was obtained.

In order to demonstrate that a Participant has “diligently pursued” the best execution of a particular client order, the Participant must be able to demonstrate that it has abided by the policies and procedures. At a minimum, the written compliance procedures must address employee education and post-trade monitoring”;



- (c) replacing “Rules 5.3” with “Rule 5.3” after the phrase “order handling is allowed under UMIR”;
  - (d) replacing “5.1” with “Dealer Member Rule 3300” before the phrase “as this is done to ensure that the client gets a good execution.”; and
  - (e) deleting the phrase “and best execution, particularly in a multiple market environment” in the first bullet under the heading “Education”.
5. Part 3 of Policy 5.3 is amended by replacing the phrase “Part 4 – Specific Procedures Respecting Client Priority and Best Execution” with “Part 4 – Specific Procedures Respecting Client Priority”.
6. Part 5 of Policy 6.4 is amended by:
- (a) adding the phrase “and the Dealer Member Rules” after “In particular, the following provisions of UMIR”;
  - (b) replacing the phrase “Part 5 dealing with the “best execution obligation” of a Participant in respect of a client order” with “Dealer Member Rule 3300 with respect to the “best execution obligation” of a client order”.
7. Part 1 of Policy 8.1 is amended by replacing the phrase “in accordance with the best execution obligations under Rules 5.1 and 5.2” with the phrase “in accordance with its best execution obligation under Dealer Member Rule 3300”.
8. Rule 10.16 is amended by replacing “Rule 5.1” with “Dealer Member Rule 3300” in clause (e) of subsection (1).



**Appendix C**  
**Comments Received in Response to**  
**IIROC Notice 15-0277 – Rules Notice - Request For Comments – UMIR**  
***Proposed Provisions Respecting Best Execution***

On December 10, 2015, IIROC issued Notice 15-0277 requesting comments on Proposed Provisions Respecting Best Execution (“Proposed Amendments”). IIROC received comments on the Proposed Amendments from:

Aequitas NEO Exchange (“Aequitas”)

BMO Financial Group (“BMO”)

The Canadian Advocacy Council for Canadian CFA Institute Societies (“CAC”)

Canadian Securities Exchange (“CSE”)

CIBC World Markets Inc. (“CIBC”)

Investment Industry Association of Canada (“IIAC”)

RBC Dominion Securities Inc. and RBC Direct Investing Inc. (collectively, “RBC”)

RBC Global Asset Management Inc. (“RBC GAM”)

Scotia Capital Inc. (“Scotia”)

TD Waterhouse and TD Securities (collectively, “TD”)

TSX Markets (“TSX”)

A copy of the comment letters received in response to the Proposed Guidance is publicly available on IIROC’s website ([www.iiroc.ca](http://www.iiroc.ca)). The following table presents a summary of the comments received on the Proposed Amendments



together with IIROC’s responses to those comments. A copy of the Proposed Amendments, marked to indicate the suggested revisions to the text, is found at Appendix D.

Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<b>3300.1. Definitions</b>	<b>TMX</b> – Definition of ‘listed security’ should be expanded to include securities that are not listed on a Canadian exchange that may be traded on Canadian marketplaces (or portions of Proposed Amendments that apply to listed securities should be revised to apply to all trading in securities on a marketplace for which IIROC is the regulation services provider).	We agree and have included a definition of “foreign exchange-traded security” in Rule 3300 (“Rule”) that will capture securities that are not listed on a Canadian exchange but are traded on Canadian marketplaces.
<b>3300.2. Best Execution Obligation</b>	<b>RBC</b> – Requests more guidance on the level of detail expected in policies and procedures, including whether policies and procedures would differ between Executing Dealers and dealers generally.	We expect the level of detail in policies and procedures may vary among Dealer Members given the size, complexity and business model of the Dealer Member.  The Rule includes a new section (3300.5 Non-Executing Dealer Member Best Execution Policies and Procedures) that sets out the requirements for a non-Executing Dealer Member to rely on the policies and procedures and public disclosure of its Executing Dealer Member. Guidance regarding compliance with section 3300.5 has also been added.
	<b>BMO</b> – Supportive of evaluating best execution using a principles-based approach and believe assessing compliance on the basis of policies and procedures is appropriate. Wants clarity as to whether an “executing dealer” would include: <ul style="list-style-type: none"> <li>• a third-party smart order router,</li> <li>• an algo provider that is also a dealer, and</li> <li>• a marketplace that provides similar execution services.</li> </ul>	An “executing dealer” is a Participant that executes trades on behalf of another IIROC Dealer. This would not include a third-party smart order router, an algo provider that is also an IIROC Dealer or a marketplace that provides execution services.
<b>3300.3. Best Execution Policies and Procedures</b>	<b>IIAC</b> – 3300.3(a) is overly prescriptive and includes a list of items that may not be relevant to all firms. Language should be amended to allow for flexibility in respect of items that are not relevant to particular firms. It is unrealistic to anticipate and	We do not expect firms to include items that are not relevant to its business. We understand that it is not possible to document all variables in a written policy; however, we do expect all material factors to be



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	document all of these variables into a written policy.	included. We have also moved the requirements respecting the execution of orders for OTC securities into Guidance.
	<b>RBC, Scotia, IIAC</b> – Question the appropriateness to consider a client’s investment objectives when creating a process designed to achieve best execution. Suitability and execution are separate functions in most organizations and trading desks may not have access to a client’s investment objectives.	It was not the intention of this provision to require the Dealer Member to consider the suitability of each trade at the same time as client instructions. We have therefore removed the term “investment objectives” from this provision.
	<b>RBC GAM</b> – Supportive of requirement on Dealer Members to consider instructions and investment objectives of a client.	We acknowledge the comment.
<b>3300.3 Best Execution Policies and Procedures</b>	<b>Scotia</b> – The requirement to describe conflicts of interest in a Dealer Member’s best execution process does not take into account the conflicts sections found in other rules.	We acknowledge that Dealer Members are required to set out material conflicts of interest in Dealer Member Rule 42 – Conflicts of Interest. However, we believe that including any material conflicts relating to the handling of orders in a Dealer Member’s best execution policies and procedures will help ensure that these conflicts are addressed and are specifically re-assessed on an annual basis.
	<b>IIAC</b> – It is unclear if firms are expected to publish all possible conflicts of interest. Dealer Members question how they might identify these conflicts prior to an actual trade being submitted for execution.	We have modified this provision to require Dealer Members to publish all <i>material</i> conflicts of interest that may arise.
	<b>RBC GAM</b> – Supportive of requirement on Dealer Members to describe any conflicts of interest that may arise when sending orders for handling or execution.	We acknowledge the comment.
	<b>Aequitas, RBC GAM, TMX</b> – Other measures that affect execution quality, not just historical liquidity, should be considered.	We have moved the reference to historical liquidity to Guidance. We note that a Dealer Member is able to use other relevant factors not included in the Rule to determine when it should consider accessing a marketplace.
	<b>TMX</b> – When applied to unprotected marketplaces (visible or dark), requirement may be inconsistent with OPR. Should be	We have moved this requirement to Guidance.



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p>modified so that the “reasonable likelihood of liquidity” provided by a marketplace is a threshold for requiring further evaluation on whether arrangements to access that marketplace is necessary for best execution.</p>	
	<p><b>IIAC, CIBC</b> – With respect to 3300(a)(iii)(A): This section can be interpreted to require Dealer Members to maintain audio recordings as part of their OTC transaction records, which is not industry practice and would be a large undertaking for dealers to adopt. It is unclear how long these records should be maintained.</p>	<p>We have moved this requirement to Guidance.</p>
<p><b>3300.3 Best Execution Policies and Procedures</b></p>	<p><b>IIAC</b> – Introducing brokers and non-executing brokers generally do not have the expertise or resources to conduct due diligence respecting the determination of the market value of hard-to-value securities.</p>	<p>We have moved this requirement to Guidance and expect that it would be primarily applicable to Executing Dealers.</p>
	<p><b>Aequitas, CAC</b> – Supportive of establishing and maintaining a process to review and evaluate best execution policies and procedures across all Dealer Members regardless of whether they perform their execution services themselves or outsource it to another Dealer Member, as investors rely on the Dealer Member with whom they directly interact.</p>	<p>We acknowledge the comments. We have modified this requirement to provide a non-Executing Dealer with the flexibility to rely on its Executing Dealer’s best execution policies and procedures provided that all requirements in section 3300.5 are met.</p>
	<p><b>IIAC</b> – Non-executing Dealer Members may not have the expertise or resources to develop policies or review the routing practices and outcomes of an executing dealer.</p>	
	<p><b>Scotia</b> – With respect to 3300.3(a)(iv)(B): An Executing Dealer Member’s policies and procedures should not be made available to the non-executing dealer as they may contain information that is proprietary or not relevant to the performance of execution services.</p>	<p>Section 3300.5 now requires a non-Executing Dealer Member to review the <i>public</i> best execution disclosure of its Executing Dealer. This should allay concerns regarding the exposure of proprietary information.</p> <p>We have also included in Guidance that a non-Executing Dealer may ask for further detailed information than what is publicly included in the Executing Dealer’s best execution disclosure if the non-Executing Dealer deems it important in determining whether the policies and procedures are appropriate for its clients’ orders.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
		<p>While we do not expect that proprietary information or information not relevant to the performance of execution services will be passed on to the non-Executing Dealer, we do expect the Executing Dealer to provide the non-Executing Dealer with information that it would provide to other clients upon request.</p>
	<p><b>IIAC</b> – Information under 3300.3(b)(i)(B), (C) and (D) may not be available to dealers, or very expensive to access through vendors.</p> <p>3300.3(b)(i)(A) is a larger challenge for OTC transactions, and in certain instances, such information may be very stale or non-existent.</p>	<p>These factors are identical to those included in 23-101CP and do not differ greatly from the factors currently outlined in UMIR 5.1 as general factors to be considered.</p> <p>Our expectation is that these factors will be considered for client orders when seeking best execution.</p>
	<p><b>IIAC</b> – Non-Executing Dealer Members should be able to rely on confirmation from its executing broker that the appropriate monitoring and testing has been conducted and is achieving best execution. Executing Dealer Members should not have to provide specific details and data to enable non-executing brokers to test.</p>	<p>We have modified the Rule to allow non-Executing Dealer Members to rely on the monitoring and testing of its Executing Dealer if all requirements in section 3300.5 are met.</p>
	<p><b>IIAC, CIBC</b> – With respect to 3300.3(b)(i): The four factors are not as relevant to OTC transactions as they are to listed equities. For example, in situations where the client does not have a firm order and only requested a quote, more clarity is required on how ‘speed of execution’ in 3300.3(b)(i)(B) come into play as a factor when significant research or analysis may be required prior to a dealer member replying to a client with a potential price.</p>	<p>We understand that not all four factors may be equally relevant to each client execution or all asset classes. We expect that each factor will be weighted and applied to the extent that they are relevant. The Guidance also provides further detail as to how these broad factors may be applied to OTC transactions.</p> <p>We note that the four broad factors align with the factors that are listed in 23-103CP as elements that may be considered by a dealer or adviser when seeking best execution for all securities transactions.</p> <p>We confirm that IIROC does not require a Dealer Member to accept an order in every situation.</p>
	<p><b>Scotia</b> – With respect to 3300.3(b)(i)(B) and (C): This section should be clarified to only apply to listed markets. The speed of execution in OTC trading relates to whether the Dealer Member is prepared to accept the liability associated to the trade. There are no marketplaces in which the transaction can be executed. The certainty of execution in OTC trading is determined by the</p>	





Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p>Dealer Member being prepared to accept the liability associated to the credit or rate instrument. It would not be reasonable to assume that a Dealer Member would be or should be willing to accept and enter into a trade in every situation.</p>	
	<p><b>TD</b> – With respect to 3300(b)(ii)(B): Opening orders should not be restricted to the marketplace that has demonstrated the greatest liquidity for a particular security, as it may establish a monopoly for the market open and preclude the development of competition. Opening orders should be evaluated on ‘fair pricing’ rather than ‘greatest liquidity’.</p>	<p>We have removed the factor for demonstrating the greatest liquidity for a particular security at the opening of trading. Under the Rule, Dealer Members must consider the fair pricing of Opening Orders when determining where to enter an Opening Order.</p>
	<p><b>RBC</b> – With respect to 3300.3(b)(ii)(B) and (E)(1): IIROC should provide more guidance on the expectations of Dealer Members to monitor and react to these factors.</p>	<p>We expect that historical trading information would provide evidence of whether the marketplace has demonstrated fair pricing of Opening Orders and whether client orders may reasonably be expected to execute on an unprotected marketplace at a better price.</p>
	<p><b>CAC</b> – Supportive of requirement on Dealer Members to consider whether clients’ orders could reasonably be expected to execute at a better price on an unprotected marketplace.</p>	<p>We acknowledge the comment.</p>
	<p><b>CIBC</b> – Additional guidance requested for Canadian broker dealers executing client orders in securities solely listed in foreign jurisdictions.</p>	<p>The requirement in section 3300.3.(a) specifically applies to all client orders. We have added more guidance regarding the application of the best execution obligation when a Dealer Member executes client orders in securities solely listed in foreign jurisdictions.</p>
	<p><b>IIAC</b> – With respect to 3300(b)(ii)(B) and (F)(2): Reference to a “particular security” could be interpreted to place the requirement on a trade-by-trade basis in certain circumstances.</p>	<p>We agree and have removed the reference to a “particular security”.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<b>3300.3 Best Execution Policies and Procedures</b>	<b>Aequitas</b> – Supportive of tying the issue of southbound order flow to best execution obligations.	We acknowledge the comment.
	<b>CAC</b> – Dealer Members should handle client orders with the same level of care as proprietary orders; all orders should be required to use the same foreign exchange rates and trading mechanisms so that there is no mark up on client orders. A Dealer Member’s disclosure should include the foreign exchange rates accessed.	Part 6 of Policy 6.4 <i>Trades to be on a Marketplace</i> stipulates that 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 compliance with Rule 6.4 restricting avoidance of Part 6 of NI 23-101.  This would mean that the same exchange rate, for similar sized orders must be used for compliance with Rule 6.4.
	<b>TD</b> – Canadian investors would be disadvantaged if they were denied access to OTC market makers, which are a dominant source of US retail liquidity. The proposed provisions would preclude routing to OTC market makers, which runs counter to best execution and may be contrary to client’s instructions.	The Rule does not introduce a prohibition from routing an order outside of Canada, but requires that other liquidity sources, including those in Canada, be considered.
	<b>TMX</b> – Supportive of addressing concern that systematic routing of small orders southbound could be disincentive for investors who rest their orders on Canadian marketplaces. Rather than referring to “a specific” FORM, recommends that IIROC should expand the standard such that systematic routing to “two or more” US wholesalers would also not comply with Best Execution. Also recommends that IIROC should provide a statement that prevents a dealer from giving any weight to the availability of <i>de minimis</i> price improvement on dark markets in US as a factor when considering best execution for small orders.	We acknowledge the comment. We clarify in Guidance that this provision prevents a Dealer Member from entering into an agreement wherein all of its client orders will be directed outside of Canada without considering order and trade information from other liquidity sources. We explain that this prohibition is meant to prevent a pattern whereby client orders are directed to a foreign intermediary and execute, after taking into account any foreign exchange considerations, outside of the Canadian best bid or offer.



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p><b>Scotia</b> – IIROC should clarify that it is not expecting Dealer Members to quote on every security and construct an economic model in cases where pricing is not easily obtained and there is no obvious comparable or fungible security. The proposed provisions mandate that if there are no obvious comparable securities, then the Dealer Member must use an economic model to price an OTC instrument. Economic models are not used to determine a spread, but a spread when input into a model will produce a price which will then be used as a quote back to the customer. Spreads are derived by looking at the market in general and many of the other factors noted in 3300.3(b)(iii). The use of “must” in this paragraph may inhibit a Dealer Member from being able to provide appropriate pricing.</p>	<p>We confirm that Dealer Members have the right to reject client orders and that IIROC does not expect Dealer Members to provide a quote on every security. We note that the provision to construct an economic model has been moved from the Rule to Guidance.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p><b>CIBC</b> – This requirement appears to refer to equity-linked or structured notes and may not be appropriate for high yield securities or other one-off OTC debt products. Wording should be changed to “should, where appropriate,” rather than “must”.</p>	<p>We note that this provision has been moved to Guidance and is not a mandated obligation.</p>
<p><b>3300.4. Fair Pricing of Over-the-Counter Securities</b></p>	<p><b>CAC</b> – It may be hard for Dealer Members to describe policies and procedures where the OTC security is sourced from another dealer. IIROC should publish the information on spreads and commissions under MTRS 2.0 so that an investor can determine whether the dealer member is adhering to its own best execution policy.</p>	<p>We have removed many of these requirements from the Rule and placed them in Guidance.</p>
	<p><b>RBC GAM</b> – IIROC should provide more guidance on what constitutes “fair and reasonable pricing” with respect to less liquid securities in which a limited number of Dealer Members are infrequently providing quotes.</p>	<p>The Rule and Guidance on “fair and reasonable pricing” has not changed from current requirements.</p>
	<p><b>CIBC</b> – With respect to 3300.4(b): When a broker acts as agent, it is typically because there is no obvious market price and the client is relying on the broker to execute quietly and in the client’s size. To be in a position to put buyer and seller together, the broker will have expended considerable expense over the life of the security (which may include (a) bank lender, (b) DCM</p>	<p>We have moved this provision to Guidance.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p>originator, (c) market maker when it was liquid, (d) security analysis etc.). Dealers should be given more flexibility to build this into the fair agency price. The last sentence should be changed to “the value of services rendered by the dealer that enables the transaction, and the amount of any other compensation received or to be received by the Dealer Member in connection with the transaction.” For deeply distressed bonds, this amount will represent a material percentage of the notional value of the transaction.</p>	
<p><b>3300.5. Review of Best Execution Policies and Procedures</b></p>	<p><b>RBC</b> – Supportive of requirement on Dealer Members to outline a process for review including detailed governance structure. IIROC should provide more guidance on the level of detail expected as part of the review by the Dealer Member of its policies and procedures, including what type of supporting documentation should be maintained.</p>	<p>We have explained in Guidance that the level of detail of reviews may vary among Dealer Members but all material aspects must be covered. We have also clarified in Guidance that we expect Dealer Members to review policies and procedures for accuracy and effectiveness. We expect evidence of testing of effectiveness of policies and procedures along with any conclusions and recommended changes, including the timing of implementation of any changes.</p>
	<p><b>BMO</b> – Supportive of requirement for annual review. Dealers may have different interpretations of what is deemed a material change to the trading environment or market structure which may lead to some inconsistencies as to when best execution policies and procedures are reviewed.</p>	<p>We note that there may be variances among Dealer Members in determining what constitutes a material change to the trading environment or market structure.</p>
	<p><b>TD</b> – Requests IIROC to confirm whether it is appropriate to have shared oversight of best execution between related entities rather than each firm establishing independent governance structures.</p>	<p>We agree that there may be instances when it is appropriate to share oversight of best execution between related entities. However, the policies and procedures must clearly delineate the functions and responsibilities of each entity to ensure there are no gaps in the required oversight.</p>
<p><b>3300.6. Training</b></p>	<p><b>CAC</b> – There should be more guidance regarding the training of employees.</p>	<p>We have added more information regarding the training of employees in Guidance. The Rule requires an employee involved in the</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p><b>BMO</b> – Requests clarity as to whether a combination of disseminating best execution policies and procedures and holding training sessions or requesting employee signoff would meet the proposed requirement.</p> <p><b>IIAC</b> – Wants further clarity as to what type of employees must be trained and whether trade desk employees and investment advisors need to be trained.</p>	<p>execution of client orders to be trained in both the content and application of best execution policies and procedures.</p> <p>We have added in Guidance that depending on its role, an advisor may not need to have a detailed understanding of the application of the best execution policies and procedures of its employer, however, it would be expected that an advisor have an overall understanding of the best execution policies and procedures and be able to answer basic questions from clients regarding these policies and procedures.</p> <p>A Dealer Member may use a combination of methods to ensure its employees understand and can appropriately apply the Dealer Member’s policies and procedures.</p>
<p><b>3300.8. Disclosure of Best Execution Policies</b></p>	<p><b>CAC, RBC GAM</b> – Supportive of requirement on Dealer Members to disclose their policies and procedures.</p>	<p>We acknowledge the comments.</p>
	<p><b>IIAC</b> – Most clients, in particular retail clients, are not interested in, or necessarily capable of understanding the detailed disclosure required under 3300.8. For institutional and self-directed clients, articulating a detailed policy is impractical, as they frequently direct how they want their order to be traded.</p> <p>With respect to 3300.8(a): It is not useful to clients in choosing the services of a dealer, as the prescribed disclosure will likely become generic boilerplate disclosure.</p>	<p>We expect that the disclosure required under the Rule will not be highly granular. The purpose of this information is to provide clients with sufficient information to make an informed decision about whether to use the services of the Dealer Member and better understand how, when and why the handling of their orders might differ.</p>
	<p><b>Aequitas, RBC GAM</b> – Supportive of disclosure of order handling and routing practices.</p>	<p>We acknowledge the comments.</p>
	<p><b>Aequitas, CAC, RBC GAM</b> – In addition to requiring disclosure of order handling and routing practices, dealers should provide standardized reporting that can be used by investors to understand and compare execution services.</p>	<p>We will be discussing standardized reporting with the CSA and plan on consulting broadly with industry representatives.</p>
	<p><b>CIBC</b> – Without standardized reporting, regulators may have a challenge in determining whether disclosure by dealer members fulfills Best Execution requirements.</p>	



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p><b>CAC, RBC GAM</b> – Standardized reporting should include information such as when and under what circumstances a dealer member will choose a particular venue, realized fill rates, potential for adverse selection, incentive considerations (including whether rebates were received or paid), and spread capture.</p>	
	<p><b>RBC GAM</b> – IIROC may consider forming a committee of industry representatives from the buy- and sell-side communities and the exchanges to agree upon a comment set of metrics for standardized reporting.</p>	
	<p><b>IIAC, BMO</b> – With respect to 3300.8(c)(i): Where a retail client, through a smart order router, achieves best price, we question the value add to the client relationship by presenting a list of marketplaces that the Dealer Member participates, since they must have some access under OPR. General disclosure should be appropriate.</p>	<p>We think it is important for clients to understand where their orders may or may not be sent. This would provide, among other things, information as to whether a client’s orders have the potential to be executed on a dark, unprotected market where price improvement opportunities may exist.</p> <p>We would accept a general statement stating that all equity marketplaces in Canada are accessed by the Dealer Member rather than listing each marketplace.</p>
	<p><b>IIAC</b> – With respect to 3300.8(c)(ii): We agree with the requirement on the Dealer Member to review its outsourcing requirements, but a disclosure/attestation to the client does not add additional value to the client relationship above and beyond disclosure of the obligation of achieving best execution.</p>	<p>We believe that it is important for clients to understand the types of intermediaries that are used by a Dealer Member to better understand how their orders are handled.</p>
	<p><b>BMO, Scotia</b> – The identity of intermediaries used is proprietary information and should not be disclosed unless there is an ownership interest that could be considered a conflict of interest. The type of intermediaries used and the selection criteria should be described instead.</p>	<p>The requirement is to identify each type of intermediary that the Dealer Member may route orders for handling or execution. A list specifically naming each intermediary is not required.</p>
	<p><b>Scotia</b> – With respect to 3300.8(c)(i) to (iii): It is unclear what foreign organized regulated market refers to, as Dealer Members would typically route foreign orders to intermediaries and not directly to FORMs, as Dealer Members are not participants in markets outside of Canada. It would require a significant effort</p>	<p>We have deleted the reference to a foreign organized regulated market.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	to maintain global lists of all foreign markets that an order could potentially execute on.	
	<b>IIAC</b> – With respect to 3300.8(c)(iv): This may be not be relevant to the average retail client, and could not be detailed enough to add value to the client relationship, as the application of the exceptions in UMIR 6.3 are trade and situation specific.	We have removed this requirement.
	<b>IIAC, BMO</b> – With respect to 3300.8(c)(v): Agree that it could be relevant for a client to understand if a Dealer Member participates in afterhours markets. Question the value add on disclosing the circumstances on when a Dealer Member may move an order from one marketplace to another. Moving an order from one marketplace to another is generally done on an exception basis and therefore it may be difficult to describe all such circumstances when this would occur.	The description of when, if ever, an order would be moved from one marketplace to another may include a description of any factors considered that would result in this action. We do not expect that every specific situation would necessarily be included in this description.  We believe that this information may be useful to some clients and provides further background as to how orders are handled by a Dealer Member.
	<b>IIAC</b> – With respect to 3300.8(c)(vi): While certain disclosure such as the requirement in 3300.8(c)(vi) may be relevant to a client making an informed decision, the requirement in general should not serve as a mechanism to educate a client in UMIR.	This information is not intended to specifically educate a client in UMIR, however we expect that it may prove helpful to clients looking to understand how their orders are handled.
	<b>Scotia</b> – With respect to 3300.8(c)(vi): This paragraph should be more specific regarding the types of arrangements to be disclosed. General disclosure of all arrangements could release proprietary or sensitive information. It may be appropriate that some of these arrangements be disclosed to specific clients.	We expect that arrangements with marketplaces and intermediaries will be disclosed. It is important to note that the requirement only requires the disclosure of each type of intermediary used and not specific names.
	<b>Scotia</b> – With respect to 3300.8(c)(vii)(C): This may not be possible for Dealer Members as routing arrangements of foreign dealers and other intermediaries may not be available or mandated by their current reporting regime. Dealer Member’s review and approval of the intermediaries’ policies and procedures under 3300.8(c). IIROC should provide feedback on how Dealer Members can disclose routing where the intermediary is not required to provide this information.	We have removed this requirement.
	<b>Scotia</b> – With respect to 3300.8(c)(viii): Points out that Dealer	The purpose of this requirement is to <i>publicly</i> disclose whether fees are paid or compensation is received by





Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p>Members already disclose to retail clients where a commission or fee has been charged under other rules. Requests IIROC to clarify the purpose of this rule and its application.</p> <p><b>BMO</b> - With respect to 3300.8(c)(viii): Agrees that general disclosure with respect to fees paid is appropriate. If fees are passed on to clients, this will generally be client-specific and not necessarily based on specific circumstances.</p> <p><b>CIBC</b> – Requests guidance to confirm that broker dealers will continue to have flexibility to make sensible routing changes at a granular level to adapt to changing market forces without having to provide detailed disclosure to clients.</p>	<p>the Dealer Member. This disclosure should encompass information for all client orders and should investors understand and compare services provided by Dealer Members.</p> <p>This provision also addresses the concern with the practice of certain Dealer Members disclosing that fees are passed on to clients but not disclosing that rebates from marketplaces are withheld by the Dealer Member.</p> <p>As noted above, we expect that the disclosure required under the Rule will not be highly granular. The purpose of this information is to provide clients with sufficient information to make an informed decision about whether to use the services of the Dealer Member and better understand how, when and why the handling of their orders might differ. Therefore, Dealer Members will have flexibility to adapt to changing market forces without providing detailed disclosure to clients.</p>
	<p><b>Aequitas, RBC, RBC GAM, CSE</b> – IIROC should make consolidated market data available at a reasonable cost rather than requiring disclosure to clients that there is missing market data.</p> <p><b>BMO</b> – Market data used may vary across desks and will often be based on specific business decisions which are considered proprietary in nature.</p> <p><b>CAC</b> – Supportive of requirement to inform investors, when Dealer Members provide market data, with a description of any missing market data, including an explanation of the risks trading with incomplete trading data.</p> <p><b>CAC</b> – IIROC should maintain a central list on its website with hyperlinks to each of the Dealer Member’s policies and</p>	<p>It is outside of IIROC’s jurisdiction to mandate the cost of providing market data.</p> <p>The requirement is to disclose this information only when providing market data as a service to clients. We do not expect Dealer Members to disclose under this requirement.</p> <p>We acknowledge the comment. We do not have any plans to create such a list in the near future.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	procedures.	
	<p><b>CIBC</b> – Required disclosures should be made to clients rather than the public. General disclosure may be appropriate for the public while more granular disclosure may be appropriate for individual clients.</p> <p>Required disclosures under 3300.8 are too granular and prescriptive.</p>	<p>As noted above, we expect that the disclosure required under the Rule will not be highly granular. The purpose of this information is to provide clients with sufficient information to make an informed decision about whether to use the services of the Dealer Member and better understand how, when and why the handling of their orders might differ. The proposal does not preclude a Dealer Member from providing more granular information to their clients where appropriate.</p>
	<p><b>BMO</b> – Wants clarity as to whether it is necessary to mail a formal document to clients if information is posted on website. Requests guidance on how dealers are to “clearly identify” to clients where on the website the disclosure is found. Prefers to make information changes on website available to clients upon request instead of archiving prior versions on website.</p>	<p>We confirm that there is no requirement to mail a formal document to clients if the required disclosure is made available on a Dealer Member’s website.</p> <p>If the Dealer Member does not have a website, it must mail the required information upon account opening or if the account is already open, no later than the 90<sup>th</sup> day the Rule comes into force. As well, any changes to the disclosure must be delivered to the client no later than 90 days after the update.</p> <p>We would consider the disclosure to be “clearly identified” if it is easily accessible on the Dealer Member’s website.</p> <p>We do not expect Dealer Members to separately archive previous versions of their best execution policies and procedures on its website but rather identify on current versions the changes made in the last six months. This is expected to help clients be more easily aware of recent changes to a Dealer Member’s best execution policies and procedures.</p>
	<p><b>CAC</b> – Supportive of requirement on Dealer Members to review their best execution policies and procedures on at least an annual basis.</p>	<p>We acknowledge the comment.</p>



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
<b>General / Other</b>	<b>Aequitas, RBC</b> – Supportive of IIROC’s efforts to adapt to changes in market structure by introducing proposed updates to best execution requirements.	We acknowledge the comment.
	<b>Scotia</b> – Supportive of development of regulatory framework which includes transparency and fairness in listed and OTC markets.	We acknowledge the comment.
	<b>CAC</b> – Believes that 180-day transition period before the Proposed Amendments would become effective after publication of notice of approval is a reasonable period of time for Dealer Members to comply with the amendments.	We acknowledge the comment.
	<b>IIAC</b> – Supportive of a principles and policy based approach to best execution, rather than regulation on a trade-by-trade basis.	We acknowledge the comment.
	<b>IIAC, BMO, RBC</b> – There are drastic differences in the two markets (listed and OTC securities) which make a singular approach impractical and unworkable. IIROC should reconsider this approach.	The over-arching best execution requirement in National Instrument 23-101 applies to both listed and OTC securities. We believe it is appropriate to adopt a consistent approach in IIROC’s rules.
	<b>CIBC</b> – Proposed provisions appear to apply equity-like best execution requirements to OTC debt markets when these are distinct business models, products and practices.	We understand that equity and OTC debt markets have distinct business models, products and practices. We have moved many of the proposed requirements related to OTC debt markets to Guidance.
	<b>IIAC, CIBC</b> – Status of Guidance Note 11-0257 should be clarified.	Guidance Note 11-0257 will remain in effect.
	<b>IIAC</b> – It is unclear whether best execution policies and procedures, testing and disclosure requirements apply to trades undertaken on other markets.	We confirm that best execution obligations also apply to trades undertaken in foreign markets. This has been clarified in the Guidance.
	<b>CSE</b> – With respect to process of developing proposed provisions: Implementation of any new “best execution” standard should be subjected to a thorough cost benefit review, including its impact on independently owned Dealer Members.	We note that IIROC conducts an internal review of the impacts of new requirements on industry stakeholders before publishing a new provision for comment.



Original Proposed Amendments Rule Section	Commentator and Summary of Comment	IIROC Response to Commentator and Additional IIROC Commentary
	<p><b>TMX</b> – Supportive of migrating UMIR best execution requirements to DMR to prevent possibility of regulatory arbitrage for non-Participant Dealer Members.</p>	<p>We acknowledge the comment.</p>
	<p><b>TMX</b> – Suggests guidance be modified so that the evaluation in the 2<sup>nd</sup> last paragraph of Question 12 applies to “protected visible markets” only and the evaluation in the last paragraph of Question 12 applies to both dark pools and “unprotected visible markets”.</p>	<p>We have modified the language to consolidate our guidance with respect to executing on dark pools and unprotected visible markets.</p>



## Appendix D – Blackline indicating changes from 2015 Proposed Amendments

### RULE 3300 BEST EXECUTION OF CLIENT ORDERS

#### 3300.1. Definitions

For the purposes of this Rule 3300:

- (a) “best execution” means obtaining the most advantageous execution terms reasonably available under the circumstances.
- (b) “over-the-counter securities” includes debt securities as well as contracts for difference and foreign exchange contracts, but does not include:
  - (i) listed securities;
  - (ii) primary market transactions in securities; and
  - (iii) over-the-counter derivatives with non-standardized contract terms that are customized to the needs of a particular client and for which there is no secondary market.
- (c) “foreign exchange-traded security” means a security, other than a listed security, that is listed on a foreign organized regulated market.

Terms defined or interpreted in the Universal Market Integrity Rules and used in this Rule 3300 have the respective meanings ascribed to them in the Universal Market Integrity Rules other than the following:

“listed security” means a security listed on an Exchange, other than an option.

#### 3300.2. Best Execution Obligation

A Dealer Member must establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to achieve best execution when acting for a client.

#### 3300.3. Best Execution Factors

- (a) The policies and procedures required under section 3300.2. must ~~include the consideration of~~ consider the following broad factors for the purpose of achieving best execution for all client orders:  
~~including, with respect to the execution of all client orders, the following broad factors when executing all client orders:~~
  - (i) ~~prices and volumes of historical trading activity;~~



- (ii) the speed of execution;
- (iii) the certainty of execution;
- (iv) the overall cost of the transaction, when costs are passed through to clients;

(b) The policies and procedures required under section 3300.2. must consider, with respect to the execution of client orders for listed securities, the following factors, which encompass more specific considerations of the broad factors listed in (a) for the execution of client orders for listed securities:

- (i) considerations taken into account when determining appropriate routing strategies for clients;
- (ii) considerations of the fair pricing of Opening Orders when determining where to enter an Opening Order ~~Opening Orders on a marketplace that has demonstrated the greatest liquidity for a particular security at the opening of trading and fair pricing of Opening Order executions;~~
- (iii) considerations when not all marketplaces are open and available for trading; and
- (iv) how order and trade information from all appropriate marketplaces, including unprotected marketplaces and foreign organized regulated markets, is taken into account;
- (v) factors related to executing on unprotected marketplaces; and including whether:
  - ~~(1) client orders could reasonably be expected to execute on the unprotected marketplace at a better price;~~
  - ~~(2) the displayed volume on protected marketplaces has historically not been adequate to fully execute client orders on advantageous terms; and~~
  - ~~(3) the unprotected marketplace has historically demonstrated a reasonable likelihood of liquidity for securities for which the Dealer Member accepts orders; and~~
- (vi) factors related to sending orders to a foreign intermediary to execute ~~ing on a foreign organized regulated markets~~ for execution, including:
  - ~~(1) whether the foreign organized regulated market has historically demonstrated a reasonable likelihood of liquidity for listed securities for which the Dealer Member accepts orders to execute;~~
  - ~~(2) the extent of trading in the particular security on the foreign organized regulated market relative to the volume of trading on marketplaces;~~



- ~~(3) the extent of exposure to settlement risk in a foreign jurisdiction; and~~
- ~~(4) the extent of exposure to fluctuations in foreign currency exchange;~~

~~The sending of client orders in bulk to a specific foreign organized regulated market without considering other liquidity sources, including liquidity sources in Canada, is not in compliance with achieving best execution.~~

- (c) The policies and procedures required under section 3300.2. must identify the factors used to achieve best execution ~~when manually handling the execution of a client order for a listed security, including~~ the following “prevailing market conditions”, when manually handling a client order for a listed security or a foreign exchange-traded security that trades on a marketplace in Canada:
  - (i) the direction of the market for the security;
  - (ii) the depth of the posted market;
  - (iii) the last sale price and the prices and volumes of previous trades;
  - (iv) the size of the spread; and
  - (v) the liquidity of the security.

#### **3300.4. Best Execution Process**

The policies and procedures required under section 3300.2. must outline a process designed to achieve best execution which includes:

- (a) ~~with respect to the execution of~~ for the execution of all client orders:
  - (i) requiring the Dealer Member, subject to compliance by the Dealer Member with any regulatory requirement, to consider the instructions of a client, ~~including the execution goals, of a client and the investment objectives of the client;~~
  - (ii) describing any material conflicts of interest that may arise when sending orders for handling or execution and how these conflicts are to be managed;
- (b) ~~with respect to the execution of orders~~ for the execution of orders for listed securities and foreign exchange-traded securities that trade on a marketplace in Canada:
  - (i) identifying the Dealer Member’s order handling and routing practices intended to achieve best execution, ~~including in the pre-market open and post-market close and identifying how changes to routing tables are determined;~~



- ~~(B) requiring, where the Dealer Member does not subscribe to a marketplace that has historically demonstrated a reasonable likelihood of liquidity for securities for which the Dealer Member accepts orders, the Dealer Member to make arrangements to access that marketplace from another Dealer Member that is a participant of that marketplace;~~
  - ~~(ii) taking into account order and trade information from all appropriate marketplaces; including if relying on re-price and reject functionality offered by a marketplace to comply with the Order Protection Rule under Part 6 of the Trading Rules;~~
  - ~~(iii) the rationale for accessing or not accessing ~~orders on~~ particular marketplaces;~~
  - ~~(iv) the circumstances under which a Dealer Member will move an order entered on one marketplace to another marketplace.~~
- ~~(c) with respect to the execution of orders for over-the-counter securities, a process to support the pricing of over-the-counter securities transactions that requires maintaining:~~
- ~~(A) transactions records, including audio recordings, that allow the Dealer Member to reconstruct the basis on which an over-the-counter security transaction price was determined to be fair;~~
  - ~~(B) documentation related to due diligence respecting the determination of the market value of hard-to-value securities including recent transaction prices for the issue and/or transaction prices for issues with similar credit quality and features reviewed by the Dealer Member or if the features and credit quality are not known, documentation that includes information obtained on these factors from established industry sources such as the current rating or other information that may affect the market value of the securities such as credit quality, the specific features and terms of the security, and any material information about the security such as issuer plans to call the issue and defaults;~~
  - ~~(C) documentation of any reliance by the Dealer Member on bid-wanted procedures to establish fair pricing and when the market value of an issue is not known, documentation of its due diligence efforts to verify the results of the bid-wanted process against other data;~~
  - ~~(D) documentation of the basis on which a structured product transaction is fairly priced if it is hard-to-value, unless the fair market value of a particular structured product is readily ascertainable;~~





~~(E) documentation by introducing brokers with respect to due diligence reviews of carrying brokers' prices against other possible sources;~~

~~With respect to contracts for difference, additional supporting documentation is generally not necessary since the prevailing market price of the underlying assets at the time of the transaction is the primary consideration for determining the fairness of pricing. In the case of foreign exchange contracts, additional documentation is also generally not necessary if the exchange rate of the underlying currency pair is readily available and is the primary consideration for determining the fairness of pricing.~~

- ~~(d) when a Dealer Member employs another Dealer Member to provide execution services on its behalf, the requirement:~~
- ~~i. for the Dealer Member to supervise the execution activities performed on its behalf for compliance with best execution;~~
  - ~~ii. for the Dealer Member providing execution services to promptly provide its best execution policies and procedures and any material changes to the originating Dealer Member.~~

### **3300.5. Non-Executing Dealer Member Best Execution Policies and Procedures**

A Dealer Member that employs another Dealer Member to provide execution services on its behalf may include in its policies and procedures a reference to a link to the executing Dealer Member's best execution disclosure to comply with sections 3300.4(b), 3300.8 and 3300.11 provided that the non-executing Dealer Member's best execution policies and procedures include:

- (a) an initial review of the public best execution disclosure of the executing Dealer Member and a review when changes to the disclosure are made, to ensure the policies and procedures are complete and appropriate for its clients;
- (b) obtaining an annual attestation from the executing Dealer Member that the executing Dealer Member has complied with and tested its best execution policies and procedures in accordance with this Rule 3300;
- (c) following up with the executing Dealer Member if it identifies execution results that are inconsistent with the executing Dealer Member's best execution disclosure and documenting the results of its inquiry.



- a.—including, with respect to the execution of client orders for over-the-counter securities, the following factors which encompass more specific considerations of the broad factors listed in (i):
- (A) the fair market value of the security at the time of the transaction and of any securities exchanged or traded in connection with the transaction;
  - (B) the expense involved in effecting the transaction;
  - (C) the fact that the Dealer Member is entitled to a profit;
  - (D) the total dollar amount of the transaction;
  - (E) the yield, which should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market;
  - (F) the service provided and expense involved in effecting the transaction (relating to the Dealer Member's compensation component of the transaction);
  - (G) the availability of the security in the market;
  - (H) the size of issue and market saturation from both the issuer and the industry/sector;
  - (I) the rating and call features of the security (relating to market value).

Where pricing information cannot be obtained on the basis of the pricing factors cited above, such as when there are no comparable trades for an over-the-counter security, pricing considerations may be based on comparable or "similar" securities that may serve as a reasonably fungible alternative investment and take account of equivalent factors including:

- (J) credit quality of both securities;
- (K) collateralization;
- (L) spreads (over Canadian securities of similar duration) at which the securities are usually traded;
- (M) general structural similarities (such as calls, maturity, embedded options);
- \_\_\_\_\_ (N) the size of the issue or float;
- \_\_\_\_\_ (O) recent turnover; and
- \_\_\_\_\_ (P) transferability.

In circumstances where neither the pricing factors cited above nor similar securities can be used to establish the prevailing market price, the Dealer Member must use pricing information derived from an economic model, which takes into account factors such as credit quality, interest rates, industry sector, time to maturity, call provisions and other embedded options, coupon rate and face value, and all applicable pricing terms and conversions (e.g. coupon frequency and accrual methods), to determine a fair and reasonable price.



~~With respect to contracts for difference, the prevailing market price of the underlying assets at the time of the transaction is the primary consideration for determining fair pricing.~~

~~With respect to foreign exchange contracts, the exchange rate of the underlying interest (the currency pair) is the primary consideration for determining fair pricing.~~

### **3300.4. — Using and Providing Execution Services**

~~When a Dealer Member employs another Dealer Member to provide execution services on its behalf:~~

- ~~i. — for the Dealer Member to must supervise the execution activities performed on its behalf for compliance with best execution;~~
- ~~ii. — for the Dealer Member providing execution services to must promptly provide its best execution policies and procedures and any material changes to the originating Dealer Member.~~

### **3300.6. Bulk Sending of Orders to Foreign Intermediaries**

~~The A Dealer Member's policies and procedures may not include the practice of sending client orders in listed securities in bulk to a specific foreign organized regulated market foreign intermediary for execution outside of Canada, without considering other liquidity sources, including liquidity sources in Canada, are not reasonably designed to achieve best execution and do not comply with the best execution obligation set out in section 3300.2.~~

### **3300.7. Fair Pricing of Over-the-Counter Securities**

A Dealer Member must not:

- (a) purchase over-the-counter securities for its own account from a client or sell over-the-counter securities for its own account to a client except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable, taking into consideration all relevant factors, including the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction, the expense involved in effecting the transaction, the fact that the Dealer Member is entitled to a profit, and the total dollar amount of the transaction; and
- (b) purchase or sell over-the-counter securities as agent for a client for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors, including the availability of the securities involved



in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the Dealer Member, and the amount of any other compensation received or to be received by the Dealer Member in connection with the transaction.

### **3300.8. Review of Best Execution Policies and Procedures**

A Dealer Member must ~~at least annually~~ review its best execution policies and procedures required under section 3300.2. at least annually, and specifically whenever there is a material change to the trading environment or market structure that may impact a Dealer Member's ability to achieve best execution for its clients. Each Dealer Member must consider, taking into account the scope and size of ~~the Dealer Member's~~ its business, whether more frequent reviews of its best execution policies and procedures are necessary.

A Dealer Member must outline a process to review its best execution policies and procedures, including detail of a governance structure, that specifies:

- (a) who will conduct the review;
- (b) what information sources will be used;
- (c) the review procedures that will be employed;
- (d) a description of any specific events that would trigger a review in addition to annual reviews;
- (e) how the Dealer Member evaluates whether ~~best execution was achieved~~ its policies and procedures are effective in achieving best execution; and
- (f) who will receive reports of the results.

A Dealer Member must retain records of its reviews of its best execution policies and procedures, as well as any material decisions made and changes to them, for five years. A Dealer Member must promptly correct any deficiencies identified in the course of its best execution policies and procedures review. ~~any necessary change to best execution policies and procedures identified in the course of a review must be promptly corrected by the Dealer Member.~~

### **3300.9. Training**

A Dealer Member must ensure its employees involved in the execution of client orders know and understand the application of the Dealer Member's written best execution policies and procedures that they must follow. ~~In particular, with respect to the execution of client orders for listed securities, employees should be trained to understand the policies and procedures reasonably designed to achieve best execution in a multiple market environment. In addition, where the handling of a client order is manual and where the employee of the Dealer Member exercises any discretion relating to the execution of the order, the Dealer Member must ensure that such~~



~~employee understands the application of the Dealer Member's written best execution policies and procedures applicable to such activity.~~

### **3300.10. Subject to Order Protection Rule**

~~Notwithstanding~~ Despite any instruction or consent of the client, achieving best execution for a client order for any listed security is subject to compliance with the Order Protection Rule under Part 6 of the Trading Rules by:

- (a) the marketplace on which the order is entered; or ~~by~~
- (b) the Dealer Member, ~~if~~ if the Dealer Member has marked the order as a directed-action order in accordance with UMIR 6.2.

### **3300.11. Disclosure of Best Execution Policies**

A Dealer Member must provide in writing to its clients:

- (a) a description of the Dealer Member's obligation under section 3300.2;
- (b) a description of the factors the Dealer Member considers for the purpose of achieving best execution;
- (c) a description of the Dealer Member's order handling and routing practices intended to achieve best execution for client orders for listed securities, including:
  - (i) the identity of any marketplace ~~and foreign organized regulated market~~ to which the Dealer Member might route the orders for handling or execution;
  - (ii) the identity of each type of intermediary (foreign and domestic) to which the Dealer Member might route the orders for handling or execution;
  - (iii) the circumstances in which the Dealer Member might route the orders to a marketplace, ~~foreign organized regulated market~~ or intermediary identified or referred to in the disclosure made under (i) and (ii);
  - ~~(iv) how the Dealer Member, if a Participant, complies with the requirements of UMIR 6.3 – Exposure of Client Orders;~~
  - (iv) the circumstances, if any, under which the Dealer Member will move an order entered on one marketplace to another marketplace;
  - (v) the nature of any ownership by the Dealer Member or affiliated entity of the Dealer Member in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under (i) and (ii);
  - (vi) if any of the orders may be routed to an intermediary referred to in the disclosure made under (ii), pursuant to an arrangement with any such intermediary,



- (A) a statement that the order will be subject to the order handling and routing practices of the intermediary;
  - (B) a statement that the Dealer Member has examined reviewed the order handling and routing practices of the intermediary and is satisfied that they are reasonably designed to achieve best execution; ~~and~~
  - ~~(C) a description of the order handling and routing practices of an intermediary or information that specifically identifies where that description can be found;~~
- (vii) a statement as to:
- ~~(A) whether fees are paid or payments or other compensation is received by the Dealer Member for a client order routed, or traded resulting from a client order routed, to any marketplace; foreign organized regulated market or intermediary identified or referred to in the disclosure made under (i) and (ii); and~~
  - ~~(B) a description of the circumstances under which the costs associated with those fees paid or the amounts or compensation received will be passed on to the client; and~~
  - ~~(C) whether routing decisions are made based on fees paid or payments received,~~
- (d) when providing market data as a service to clients, a description of any missing market data, including an explanation of the risks of trading with incomplete trading data provided.

A Dealer Member must make the required disclosure for each class or type of client if the factors and order handling and routing practices used for such clients materially differ. ~~materially for that class or type of client relative to any other class or type of client, or relative to all of the clients of the Dealer Member in aggregate.~~

A Dealer Member must specifically identify in the required disclosure:

- (a) the class or type of client to which the disclosure applies;
- (b) the class or type of securities to which the disclosure applies; and
- (c) the date of the most recent changes to the disclosure made in accordance with this Rule 3300.

A Dealer Member must:

- (a) make the disclosure required under this Rule 3300 publicly available on the Dealer Member's website; and
- (b) clearly identify to clients where on the website the disclosure is found; or
- (c) if the Dealer Member does not have a website ~~to allow it to comply with (a) and (b)~~, deliver the disclosure required under this Rule 3300 to the client
  - (i) upon account opening; or



- (ii) if the client has an account already open with the Dealer Member at the time this Rule 3300 comes into force, no later than the 90<sup>th</sup> day after this Rule 3300 comes into force.

A Dealer Member that provides disclosure under this Rule 3300 must:

- (a) review the disclosure on a frequency that is reasonable in the circumstances, and at a minimum on an annual basis; and
- (b) ~~based on the review under (a)~~, promptly update the disclosure to reflect the Dealer Member's current practices.

If a Dealer Member makes any change to the disclosure it is required to make under this Rule 3300, the Dealer Member must,

- (a) for the website disclosure, identify and maintain the change on the website for a period of 6 months after the change has been made; or
- (b) for any disclosure required to be delivered to a client, deliver the change to the client no later than the 90<sup>th</sup> day after the completion of the review and update.