

Nova Scotia Securities Commission

**Rule 23-101 (Amendment)
Trading Rules**

-and-

**Amendments to National Instrument 23-101
Trading Rules**

-and-

**Amendments to
Companion Policy 23-101CP - To
National Instrument 23-101 Trading Rules**

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the "Act"), the Nova Scotia Securities Commission (the "Commission") has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 23-101 Trading Rules and Amendments to Companion Policy 23-101CP - To National Instrument 23-101 Trading Rules, copies of which are attached hereto and are hereinafter called the "Rule" and "Companion Policy", respectively, have been adopted as a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.


NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;

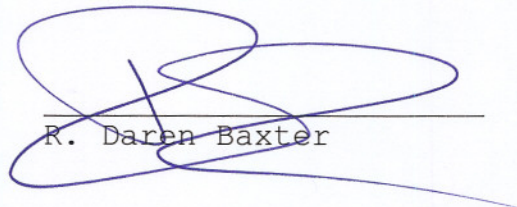
(b) pursuant to the authority contained in section 19 of the Act and subject to publication in the *Royal Gazette* or the Commission's website, issues the Companion Policy as a policy statement of the Commission; and

(c) declares that the rule approved and made pursuant to clause (a) and the policy statement issued pursuant to clause (b) shall both take effect on **January 28, 2010**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 13th day of November, 2009.



H. Leslie O'Brien, Q.C.



R. Daren Baxter

Attachments

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1.1 Amendments

(1) This Instrument amends National Instrument 23-101 *Trading Rules*.

(2) The following definitions are added to section 1.1:

“automated functionality” means the ability to

- (a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;
- (b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;
- (c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;
- (d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and
- (e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;

“protected bid” means a bid for an exchange-traded security, other than an option

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected offer” means an offer for an exchange-traded security, other than an option,

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider; and

“protected order” means a protected bid or protected offer”.

(2.1) The following definitions are added to section 1.1:

“calculated-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

- (a) is not known at the time of order entry; and
- (b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

“closing-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is

- (a) entered on a marketplace on a trading day; and
- (b) subject to the conditions that
 - (i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

- (ii) the order be executed subsequent to the establishment of the closing price;

“directed-action order” means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

- (a) when entered on or routed to a marketplace is to be immediately
 - (i) executed against a protected order with any remainder to be booked or cancelled; or
 - (ii) placed in an order book;
- (b) is marked as a directed-action order; and
- (c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

“non-standard order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted; and

“trade-through” means the execution of an order at a price that is,

- (a) in the case of a purchase, higher than any protected offer, or
- (b) in the case of a sale, lower than any protected bid.

(3) Subsection 3.1(2) is amended by adding “and the *Derivatives Act*” between “*Securities Act*” and “(Québec)”.

(3.1) Part 6 is amended by adding the following:

(a) “and Locked or Crossed Orders” after “Trading Hours” in the title of Part 6; and

(b) **6.2 Locked or Crossed Orders** – A marketplace participant shall not intentionally

- (a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
- (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

(4) Part 6, as amended by subsection (3.1), is repealed and replaced by the following:

“PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection – (1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and
- (b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

- (a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

- (b) the execution of a directed-action order;
- (c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
- (d) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;
- (e) a trade-through that results when executing
 - (i) a non-standard order;
 - (ii) a calculated-price order; or
 - (iii) a closing-price order;
- (f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay – (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

- (a) all other marketplaces;
- (b) all regulation services providers;
- (c) its marketplace participants; and
- (d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

- (a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;
- (b) all regulation services providers;
- (c) its marketplace participants; and
- (d) any information processor disseminating information under Part 7 of NI 21-101.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

- (a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and
- (b) all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection – (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

(a) to prevent trade-throughs other than the trade-throughs listed below:

- (i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

- (ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
- (iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;
- (iv) a trade-through that results when executing
 - (A) a non-standard order;
 - (B) a calculated-price order; or
 - (C) a closing-price order;
- (v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally

- (a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
- (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – A marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

6.8 Application of this Part – In Québec, this Part does not apply to standardized derivatives.”.

(5) Part 7 is amended by:

(a) repealing paragraph 7.2(c) and replacing it with the following:

“(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, and
- (ii) the conduct of the recognized exchange, as applicable; and”;

(b) repealing paragraph 7.4(c) and replacing it with the following:

“(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, and
- (ii) the conduct of the recognized quotation and trade reporting system, as applicable; and”;

(c) amending section 7.5 by striking out “under this Part” and substituting “under Parts 7 and 8”.

(6) Paragraph 8.3(d) is repealed and replaced by the following:

“(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101

and any other information reasonably required to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, and
 - (ii) the conduct of the ATS; and”.
- (7) Section 9.3 is amended by striking out “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” and substituting “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets”.
- 1.2 Effective Date – (1) This Instrument, other than subsections 1.1(2.1) and 1.1(4), comes into force on January 28, 2010.
- (2) Subsections 1.1(2.1) and 1.1(4) come into force on February 1, 2011.

AMENDMENTS TO COMPANION POLICY 23-101CP – To National Instrument 23-101 Trading Rules

1.1 Amendments

(1) This instrument amends Companion Policy 23-101CP.

(2) Part 1.1 is amended by adding the following after section 1.1.1:

“1.1.2 Definition of automated functionality – Section 1.1 of the Instrument includes a definition of “automated functionality” which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

1.1.3 Definition of protected order – (1) A protected order is defined to be a “protected bid or protected offer”. A “protected bid” or “protected offer” is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term “displayed on a marketplace” refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are “reserve” or hidden volumes are not considered to be “displayed on a marketplace”. The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as “orders” that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be “protected orders” under the definition in the Instrument and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a “special terms order” on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.”.

(2.1) Part 1.1 is amended by adding the following after section 1.1.3:

1.1.4 Definition of calculated-price order – The definition of “calculated-price order” refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

- (a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;
- (b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;
- (c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;
- (d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and
- (e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.5 Definition of directed-action order – (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked “DAO” by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

- (a) execute the order and cancel the remainder using an immediate-or-cancel marker,
- (b) execute the order and book the remainder,

- (c) book the order as a passive order awaiting execution, and
- (d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC's Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender's instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace's own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

1.1.6 Definition of non-standard order – The definition of “non-standard order” refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

(2.2) Part 6 is amended by adding the following:

(a) “and Locked or Crossed Markets” after “Trading Hours” in the title of Part 6; and

(b) **6.2 Locked and Crossed Markets** – (1) Section 6.2 of the Instrument provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a “protected order” means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders.

(2) Section 6.2 of the Instrument prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

- (a) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,
- (b) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;
- (c) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(3) Part 6, as amended by subsection (2.2), is repealed and replaced with the following:

“PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and

procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

- (a) steps taken by the marketplace to evaluate its policies and procedures;
- (b) any breaches or deficiencies found; and
- (c) the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection – (1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

- (a) steps taken by the marketplace participant to evaluate its policies and procedures;
- (b) any breaches or deficiencies found; and
- (c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

6.3 List of Trade-throughs – Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of “permitted” trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

- (a) (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).
- (ii) Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of

the Instrument respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Instrument respectively.

(b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.

(c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across marketplaces in certain circumstances. This could occur for example:

- (i) where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and
- (ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as displayed across marketplaces may have changed, thus causing a trade-through.

(d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets – (1) Section 6.5 of the Instrument provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

(2) Section 6.5 of the Instrument prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

- (a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,
- (b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

- (c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;
- (d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of a directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

6.5 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.”.

(4) Part 7 is amended by:

- (a) striking out “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” and substituting “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets” in section 7.3;
- (b) adding the following as section 7.5:

“7.5 Agreement between a Marketplace and a Regulation Services Provider – The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.”.

- (c) adding the following as section 7.6:

“7.6 Coordination of Monitoring and Enforcement – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.”.

1.2 **Effective Date** – (1) This instrument, other than subsections 1.1(2.1) and 1.1(3), comes into force on January 28, 2010.

(2) Subsections 1.1(2.1) and 1.1(3) come into force on February 1, 2011.