

## Appendix C - Summary of comments received and CIRO's responses

### Comments Received in Response to Notice 24-0213 - Proposed Amendments Respecting Net Asset Value Orders and Intentional Crosses

On July 18, 2024, the Canadian Investment Regulatory Organization (CIRO) published Rules Bulletin **24-0213** to increase transparency around the execution of certain orders in Exempt Exchange-traded Funds (ETFs) where the price of the order references the net asset value (NAV) of the ETF, and to remove the prohibition of an “intentional cross” that is marked as jitney on one side of the trade.

We received seven comment letters from the following commenters:

Canadian Securities Traders Association - Trading Issues Committee (**CSTA**)  
 Investment Industry Association of Canada (**IIAC**)  
 Fidelity Clearing Canada ULC (**FCC**)  
 National Bank Financial (**NBF**)  
 Scotiabank (**Scotia**)  
 TD Securities (**TD**)  
 Virtu Canada Corp. (**Virtu**)

Copies of these comments are publicly available on CIRO's website at [Proposed Amendments Respecting Net Asset Value Orders and Intentional Crosses](#).

The following table provides a summary of the comments received:

Summary of Comments	Responses
<b>General Comments on the Proposed Amendments</b>	
Commenters were generally supportive of the Proposed Amendments on the basis that they will improve the market and the execution process.	We would like to thank all those who submitted comments as well as those market participants who provided their time and expertise through participation on CIRO's working group related to this proposal.
<b>Proposed Amendments related to the introduction of a “Net Asset Value Order”</b>	
<b>General Comments</b>	
All commenters were supportive of the proposed introduction of a “Net Asset Value Order”.	We acknowledge the comments.
One commenter suggested that the proposed Net Asset Value order should also be permitted for use with Canadian Depository Receipts (CDRs), as they share similar creation and redemption mechanisms to ETFs.	We acknowledge the comment but note that the Amendments relate only to the execution of ETFs at Net Asset Value.
One commenter suggested that Net Asset Value Orders should only be used in contexts where there is an economic rationale to avoid trading the ETF in the continuous market, and conveyed concern about the impact on secondary market liquidity if NAV-linked orders are used to by-pass the secondary market.	We acknowledge and appreciate the concern raised. We do not believe that it is CIRO's role to determine appropriate rationales for the use of specific order types by end investors, however we are mindful of potential impacts of an increase in trading activity outside the continuous market.

	<p>A particular method of constraining the use of Net Asset Value Orders, the imposition of a minimum size, was discussed in the Request for Comment. A minimum size requirement for Net Asset Value Orders might impose a barrier on the broader use by retail investors, whose investment and performance objectives may be less directly tied to a particular benchmark (i.e., NAV). As communicated in the Request for Comment, CIRO is of the view that the definition of a Net Asset Value Order should not be overly restrictive, such that it would prohibit investors from determining the most appropriate execution terms for their orders (including for retail investors). Investors and their Dealer Members are best suited to make these determinations, especially in the context of policies and procedures related to best execution, where it would be expected that a Dealer Member would consider the appropriateness of executing retail investor orders to purchase or sell an ETF as a Net Asset Value Order, rather than immediately executing the order in the continuous market to achieve the best available price at that time.</p>
<p><b>Proposed Amendments related to the removal of the prohibition of an “intentional cross” that is marked as jitney on one side of the trade</b></p>	
<p><b>General Comments</b></p>	
<p>All commenters were supportive of the proposed removal of the prohibition of an “intentional cross” marked as jitney on one side of the trade. Commenters noted that the restriction is unnecessary in current market structure, and disadvantages Participant Dealers relative to non-Participant Dealers. Particularly, commenters noted that the restriction disadvantages independent and/or smaller dealers from accessing market maker liquidity, which in turn negatively impacts their clients.</p>	<p>We acknowledge the comments.</p>
<p>One commenter questioned whether the use of the jitney marker is necessary for CIRO. The commenter noted that where a jitney marker needs to be manually added to an order, trading workflows can be interrupted.</p>	<p>We monitor equity trading in real time, and the use of the jitney marker provides an important element of information for this real-time surveillance function. The jitney marker allows for expeditious review of trading activity and contributes to an effective and complete audit trail of trading activity. CIRO is not considering removal of the requirement to mark an order as a jitney order.</p>
<p><b>Specific Questions</b></p>	
<p><b>Question 1 – Should we impose any restrictions on the entry of a Net Asset Value Order? (e.g., should we restrict the entry of a Net Asset Value Order to orders greater than a minimum size?) If so, please explain why and set out what the minimum size should be.</b></p>	
<p>Commenters were not supportive of a minimum size requirement for Net Asset Value Orders. In support of this view, several commenters also noted that it is</p>	<p>We acknowledge the comments.</p>

<p>expected that NAV orders will be large-in-size and noted that any minimum size requirement is unnecessary with no clear benefit.</p>	
<p>One commenter expressed concern about Net Asset Value Orders becoming the default order for certain investors. While this commenter was not supportive of a minimum size, it was suggested that dealer policies and procedures should consider this issue and where a minimum size was not included in policies, there should be documented rationale as to why trading in the continuous market was avoided.</p>	<p>Please see comment above under <i>General Comments – Net Asset Value Orders</i>.</p> <p>As was communicated in the Request for Comment, CIRO is of the view that the definition of a Net Asset Value Order should not be overly restrictive and prevent an investor from determining the most appropriate execution terms for their orders (including as relates to a minimum size for a Net Asset Value Order). Investors and their Dealer Members are best suited to make these determinations, especially in the context of policies and procedures related to best execution, where it would be expected that a Dealer Member would consider the appropriateness of executing a small-sized ETF order as a Net Asset Value Order, rather than immediately executing the order in the continuous market to achieve the best available price at that time.</p>
<p><b>Question 2 - Should we impose any restrictions on the use of an intentional cross with jitney? (e.g., should we impose a minimum size threshold that would apply when entering an intentional cross with jitney on one side of the trade?) If you believe a minimum size threshold is appropriate, please explain why and set out what the threshold should be.</b></p>	
<p>Most commenters were not supportive of additional restrictions on the use of an intentional cross with jitney, including a minimum size. These commenters noted that other CIRO rules currently apply and would appropriately govern trading behaviour. These rules include UMIR 5.3 <i>Client Priority</i>, UMIR 6.3 <i>Exposure of Client Orders</i>, UMIR 8.1 <i>Client-Principal Trading</i>, and Part C of IDPC Rule 3100 <i>Best Execution of Client Orders and Transactions</i>.</p>	<p>As was noted in the Request for Comment, CIRO is of the view that the prohibition on the use of jitney on one side of an intentional cross is an outdated prohibition that was historically relevant, but at a time when Canadian market structure was very different (i.e., prior to the introduction of multiple competing marketplaces). We proposed to remove it on the basis that there is no longer a justification for the prohibition. Given this approach, we do not believe that sufficient rationale exists to impose any further condition on the use of intentional crosses marked as jitney on one side (such as a minimum size requirement).</p>
<p>One commenter suggested that jitney crosses be subject to restrictions similar to those on intentional crosses.</p>	<p>It is our understanding that this comment refers to the application of price improvement requirements pursuant to certain UMIR provisions such as UMIR 6.3 <i>Exposure of Client Orders</i>.</p> <p>The execution of an intentional cross marked as jitney on one side, is still subject to all applicable provisions of UMIR unless an exception is available. The Amendments only revise the definition to remove the prohibition on the use of jitney on one side of an intentional cross.</p>

<p>One commenter believes that jitney orders remain subject to UMIR 8.1 as the jitney participant is a client of the executing dealer.</p>	<p>The execution of an intentional cross marked as jitney on one side, is still subject to all applicable provisions of UMIR unless an exception is available. Where an executing dealer treats the originating dealer as a client account, UMIR 8.1 continues to apply. Additionally, the originating dealer is still responsible for any other applicable CRO rules, including Part C of IDPC Rule 3100 (Best Execution of Client Orders and Transactions).</p>
<p><b>Question 3 - While CRO would generally expect that a Net Asset Value Order should be executed as soon as is practical after publication of NAV by the issuer of the ETF, should this be directly included as a requirement for entry of a Net Asset Value Order (i.e., where NAV is published after trading hours have ended on all Canadian marketplaces, should Participants be required to execute those trades as soon as trading hours begin on a Canadian marketplace the following trading day)?</b></p>	
<p>Most commenters were not supportive of this requirement. A variety of reasons were provided, including that this is already industry practice, that there is no market integrity rationale to require it, and that the narrow settlement cycle of T+1 already imposes a restriction on the timing of the execution of a Net Asset Value Order. One commenter suggested that the Net Asset Value Order designation will ensure transparency of these orders, and thus there is no reason to require that these orders be entered as soon as trading hours begin. One commenter suggested that there may be circumstances that may cause a delay, but that this would be unusual.</p>	<p>We acknowledge the comments and agree with the view that there is no market integrity rationale to require Net Asset Value Orders to be executed prior to the start of regular trading hours. We further agree with the view that the designation required under the Amendments will negate any confusion that might arise if Net Asset Value Orders were to be executed during regular trading hours.</p>
<p>One commenter supported a requirement that Net Asset Value Orders be executed within a pre-defined window (before regular trading hours on the primary marketplace), on the basis that this would ensure trades are executed on a timely basis once NAV has been published.</p>	<p>We agree that Net Asset Value Orders should be executed on a timely basis but have not identified a particular market integrity concern that would warrant the imposition of a requirement to trade before the start of regular trading hours. The rationale for requiring a designation under UMIR 6.2 for the execution of these orders was to ensure appropriate transparency and understanding of the context of the orders to market participants. We believe this objective is achieved without imposing a specific window during which the orders must be executed.</p>
<p>One commenter, while noting that execution prior to the open is current convention, suggested that market participants benefit from timely execution and that mandating a relevant timeframe should not be an inconvenience for executing dealers.</p>	<p>It is also our understanding that execution prior to the start of regular trading is current convention. To the extent that a client of a Participant would benefit from observing their trades execute during this particular window of time, they can request that their executing dealer do so. We have not identified a market integrity concern that would require this within UMIR.</p>
<p><b>Question 4 - The Proposed Amendments would add a new designation of a “Net Asset Value Order” in UMIR 6.2(1)(b) that would be required to be applied with the entry of a “Net Asset Value Order” on a marketplace, and which would be required to be disclosed for display by the marketplace on which the “Net Asset Value</b></p>	

<b>Order” is entered. Have you identified any concerns with public disclosure of an order that is a “Net Asset Value Order”?</b>	
Commenters were supportive of the new designation and no concerns were identified.	We acknowledge the comments.
<b>Question 5 - The definition of a “Net Asset Value Order” as proposed does not require the execution price to be the exact NAV as published by the issuer of the ETF, but instead at a price that references the published NAV. This reference price may include fees incurred by the executing Participant and/or commissions embedded in the execution price. Please identify any concerns with this proposed approach.</b>	
The majority of commenters were supportive of allowing the execution price of a Net Asset Value Order to be at a reference to the published NAV. One commenter suggested that any deviation from NAV would be minimal and that CIRO could enquire about trades where the execution price did not appear to be clearly related to NAV.	We acknowledge the comments and note that Participants are still responsible for compliance with all applicable CIRO requirements related to the execution of a Net Asset Value Order. This would include all required documentation related to any markup or markdown to published NAV.
One commenter raised a concern about execution prices referencing NAV, suggesting that this would effectively disclose fees charged by the dealer.	While the Amendments allow a Net Asset Value Order to be executed at a price that references the published NAV, this is not a requirement. Where an executing dealer is concerned about the effective disclosure of fees, the Net Asset Value Order may be executed at the NAV price as published by the issuer.
<b>Question 6 - Have we identified all the material impacts on clients, issuers, Participants, Access Persons, marketplaces or CIRO as a result of the Proposed Amendments? If not, please list any other impacts that you believe will materially impact one or more parties and why. In particular, please provide comments on the potential costs associated with the proposed introduction of a Net Asset Value Order, and associated designation requirements under UMIR 6.2.</b>	
Commenters were generally of the view that material impacts of the Proposed Amendments were identified, and that costs would be reasonable.	We acknowledge the comments.
One commenter raised uncertainty around a suggested 90-day implementation period and suggested that CIRO engage trading systems vendors to determine the appropriate implementation timing.	By leveraging an existing FIX tag (see response below), we hope that the required implementation efforts will be minimized. However, we have revised the implementation period to 180 days in response to comments received.
One commenter suggested the use of an existing FIX tag for ease of implementation.	Our intended approach aligns with the comment received. We intend to leverage the existing FIX tag for “CrossType” and add an additional value for a Net Asset Value Order.
Two commenters raised similar concerns about the requirement to include the LEI of the client of the jitney Participant on a jitney cross. It was suggested that the requirement is impractical, and where orders are not communicated through electronic means, there may be no means of supplying the underlying LEI. It was noted that a different approach was used for orders that are marked as “bundled”, or “multiple client”, (where an LEI is not required) and a similar approach for jitney crosses was suggested, where the jitney Participant should be responsible for keeping the	We acknowledge the concerns raised, however there is no exception to the requirement to provide the underlying client’s LEI (or other client identifier) on jitney crosses. LEIs are an important regulatory requirement and assist CIRO’s ability to perform a range of regulatory functions, including surveillance, investigations and data analysis. Where a dealer groups together orders for more than one client to send to a marketplace (i.e., bundled and multiple client), it is impossible to accurately mark that order with an LEI, and as commenters noted, in these

<p>underlying records of the client. Lastly, concerns were raised about client confidentiality when providing LEIs to the executing dealer.</p>	<p>circumstances an LEI is not required. Where the jitney side of an intentional cross represents a single entity, our expectation continues to be that the order will be marked appropriately and where required, contain the LEI of the end client. It is the responsibility of the originating dealer to provide the appropriate level of detail to the executing dealer to ensure compliance with this requirement. Where client confidentiality concerns exist the LEI can be encrypted, and while it has been suggested that this may result in required technology work, we note that the client identifier requirements have been in place for a number of years and would expect that similar challenges would have been resolved for any order that is not communicated through electronic means.</p>
<p><b>Question 7 - Overall, do you agree with CIRO’s qualitative assessment that the benefits of the Proposed Amendments are proportionate to their costs? Please provide reasons for your views.</b></p>	
<p>All commenters agree that the benefits are proportionate to the costs.</p>	<p>We acknowledge the comments.</p>
<p><b>Question 8 – Would 90 days for implementation be sufficient time for: Participants and marketplaces to undertake required systems changes to support the new “Net Asset Value Order” designation, and Participants to update their processes and policies and procedures to ensure the use, and supervision of, the new “Net Asset Value Order” designation as appropriate?</b></p>	
<p>Most commenters believed that 90 days may not be sufficient time to complete necessary technology work, including work required by technology vendors. One commenter suggested that at least 180 days may be necessary.</p>	<p>We have revised the implementation period to 180 days.</p>
<p>Given the proposed 90-day implementation period, one commenter recommended that CIRO clarify in the final rule publication whether existing practices will be permitted while dealers undertake technology work to accommodate the new order designation.</p>	<p>As noted above, we have revised the implementation period to 180 days. It is expected that on implementation, dealers that wish to execute a Net Asset Value Order will comply with the order designation requirements in (amended) UMIR 6.2. After the 180-day implementation period, dealers that are not able to execute Net Asset Value Orders in compliance with UMIR (<i>i.e.</i>, with the required designation) will be precluded from their usage.</p>