



September 6, 2013

Subject: IIROC response to comments on the proposed amendments to IIROC Dealer Member Rules 800.49 and 200.1(h)

Dear Public Commenter:

IIROC staff is publishing this letter in response to the five public comment letters received on the proposed amendments to IIROC Dealer Member Rules 800.49 and 200.1(h). We thank you for your comments and have summarized and grouped them according to the Dealer Member Rule and issues raised. Our response follows each particular issue. As detailed in the Implementation Notice, we have made revisions to the proposed amendments to both Dealer Member Rules 800.49 and 200.1(h). Those revisions are considered to be non-material and are emphasized in our responses, where relevant.

DEALER MEMBER RULE 200.1(H)

1. *Marketplace disclosure requirement*

- (i) *Further clarification and details are required on the definition of ‘marketplace’, and whether or not a Dealer Member will be permitted to use the present format rather than change to the recommendation given the reference to ‘or marketplace disclosure language acceptable to the Corporation’ in the proposed amendments.*

IIROC staff response

Previously, Rule 200.1(h) required Dealer Members to set forth “the stock exchange or commodity futures exchange upon which a trade took place”. By replacing this language with ‘the marketplace or marketplaces upon which the trade took place’, all exchange facilities, including those which are not recognized exchange facilities, such as quotation and trade reporting systems and alternative trading systems, are captured. Under the proposed amendments, which appear at the beginning of proposed Rule 200.1(h), Dealer Members would have the choice to simply name the marketplace (which is the present format) or use marketplace disclosure language that is acceptable to IIROC. That choice is up to the Dealer Member.



2. Account types and clients eligible for exemptive relief

- (i) *In addition to the 'delivery against payment' (DAP) and 'receipt against payment' (RAP) trade accounts, IIROC should also consider adding 'Direct Participant' (DP) trade accounts to the list of account types that would be considered eligible for the exemption under the proposed amendments to Rule 200.1(h).*

IIROC staff response

There are two types of DPs (IIROC Dealer Members and non-IIROC Dealer Members). The proposed amendments would make DP accounts that are for IIROC Dealer Members eligible for the exemption. The issue with extending this exemption eligibility to DP accounts that are for non-IIROC Dealer Members is that the non-IIROC Dealer Members DP trades are not subject to either NI 24-101 or Rule 800.49 requirements, and we currently do not include those trades in IIROC's broker-to-broker (dealer) trade matching monthly compliance reports to Dealer Members.

3. Transition period

- (i) *IIROC should outline a transition period for Dealer Members to discontinue the issuance of client confirmations since Dealer Members may be required to update their systems in order to identify those accounts for which the client has provided consent to waive the receipt of trade confirmations.*

IIROC staff response

Dealer Members will have the discretion to exercise this exemption once all requirements have been satisfied, as well as the flexibility to update their systems at that time. Because the exemption is optional for Dealer Members who have satisfied the requirements listed in proposed Rule 200.1(h), a transition period is not necessary.

4. Compliant trade matching percentages

- (i) *What is meant by compliant? If a Dealer Member reports they have missed the 90% threshold, but has policies and procedures designed to meet the threshold are they compliant? If compliance means meeting the percentage threshold, is the requirement to be compliant for a certain portion of a given period (e.g. compliant for x months in a year) or is it a requirement to always be compliant? The latter would lead to a situation which is unworkable from an operational perspective and confusing to a client. There is also a concern that in many firms, there is a manual process to trigger confirmation processing and uncertainty and delay about the trigger might result in unnecessary stopping and starting of the confirmation reporting process.*



IIROC staff response

In order to be considered 'compliant' pursuant to part (vi) of the exemption under proposed Rule 200.1(h), Dealer Members must be able to demonstrate that they have met the required compliant trade percentage thresholds in NI 24-101 or proposed Rule 800.49, as applicable, for at least three consecutive quarters. It is insufficient to have in place policies and procedures designed to meet these thresholds, and yet fail to satisfy the required compliant target thresholds. IIROC staff believes that these standards are reasonable and do not impose unrealistic percentage thresholds on Dealer Members. Proposed Rule 200.1(h) has been revised to clarify this requirement.

- (ii) *If the Dealer Member is non compliant in any quarter how will this impact the ability to offer non receipt of confirmations to their clients?*

IIROC staff response

Please see response to (iii).

- (iii) *If a Dealer Member is in compliance with the trade matching percentages for a period of months and then has one instance of non-compliance, would the proposed amendments require them to resume sending the client a trade confirmation? The client, whom this Rule is intended to protect, would only become confused as to when they receive trade confirmations. From the client's perspective, the receipt of trade confirmation would be random and unpredictable.*

IIROC staff response

Yes, the proposed amendments would require the Dealer Member to resume sending the client trade confirmations. Should the Dealer Member choose to take advantage of the trade confirmation exemption at a later date, it would be required to re-satisfy the requirements to use the exemption, including demonstrating compliant thresholds for three consecutive quarters. In re-satisfying the trade confirmation exemption requirements, a Dealer Member does not need to obtain an updated written consent from each client to waive the receipt of trade confirmations, if in the original written consent agreement the client expressly gives further consent to allow the Dealer Member to resume suppression of trade confirmations when there is an interruption in the Dealer Member's ability to suppress the sending of trade confirmations. **The revisions to Rule 800.49(6) have changed the frequency of the compliance monitoring to quarterly instead of monthly.**

- (iv) *Once the compliant threshold requirements are met, is the Dealer Member immediately eligible for exemptive relief?*



IIROC staff response

In order to qualify for the exemptive relief, Dealer Members must demonstrate that trade percentage thresholds have been satisfied for at least three consecutive quarters, as well as satisfy the other requirements in parts (i) to (v) of the exemption under proposed Rule 200.1(h).

Before a Dealer Member may use the trade confirmation exemption for the very first time for a particular type of trade (i.e. broker-to-broker or institutional), IIROC staff expects the Dealer Member to first notify its IIROC Financial and Operations Compliance manager, by e-mail, of its intention to use the trade confirmation exemption. The purpose of the notification is to strengthen IIROC's oversight of these activities and to minimize any possible confusion to clients. That notification is only expected for the Dealer Member's first use of the trade confirmation exemption for that particular type of trade (i.e. broker-to-broker or institutional) and is not expected for subsequent trade confirmation exemptions for that particular type of trade (i.e. broker-to-broker or institutional).

In the Dealer Member's notification to IIROC, the Dealer Member must clearly state that it has the necessary procedures and systems in place to reliably meet the trade confirmation exemption requirements for that particular type of trade (i.e. broker-to-broker or institutional) and that it does not anticipate any repeated switching on and off of the sending of trade confirmations to clients as a result of it not consistently meeting those exemption requirements.

- (v) *Further clarification is required regarding the documentation of accounts if a Dealer Member is not compliant with the requirements outlined in Rule 800.49 or NI-24-101. Would a Dealer Member be required to review all of the accounts if they are not compliant with the applicable requirements and be required to distribute the trade confirmations immediately? Based on the results of their monthly compliant trade percentage threshold, a Dealer Member may be required to start/stop the trade confirmations for clients. One comment letter suggests that Rule 200.1(h) be amended to indicate that if a Dealer Member is not in compliance with Rule 800.49 or NI 24-101 for more than three consecutive quarters, then it would be mandatory for the Dealer Member to distribute the trade confirmations to all clients.*

IIROC staff response

Dealer Members will be required to immediately resume delivery of trade confirmations if they fail to satisfy the requirements set out in parts (i) to (vi) of the exemption under proposed Rule 200.1(h). Proposed Rule 200.1(h) has been revised to indicate that if a Dealer Member is not in compliance with proposed Rule 800.49 or NI 24-101, as applicable, for more than three consecutive quarters, then the Dealer Member must



begin delivering trade confirmations to all clients for that particular type of trade (i.e. broker-to-broker or institutional).

As previously discussed in our response to (iii), should the Dealer Member choose to take advantage of the trade confirmation exemption at a later date, it would be required to re-satisfy the requirements to use the exemption, including demonstrating compliant thresholds for three consecutive quarters. In re-satisfying the trade confirmation exemption requirements, a Dealer Member does not need to obtain an updated written consent from each client to waive the receipt of trade confirmations, if in the original written consent agreement the client expressly gives further consent to allow the Dealer Member to resume suppression of trade confirmations when there is an interruption in the Dealer Member's ability to suppress the sending of trade confirmations.

- (vi) *The exemption from sending trade confirmations should not be predicated on a Dealer Member being compliant with percentage thresholds. If the client has consented (and in many instances requested) to not receive trade confirmations, and they receive the necessary information they require electronically, what aim is achieved by the requirement to also meet trade matching compliant percentage thresholds?*

IIROC staff response

The exemptive relief is to enhance overall compliance by Dealer Members. Only Dealer Members who have policies and procedures and successfully meet compliant thresholds will qualify for the exemptive relief.

- (vii) *Will the client also have to meet the compliance percentages in order to request in writing non receipt of confirmations?*

IIROC staff response

No, the client does not have to meet the compliance percentage thresholds in order to request non receipt of confirmations, although the request must be in writing.

- (viii) *Does the Dealer Member have to meet the trade matching requirements in both equity and debt and in all dollar value categories?*

IIROC staff response

The requirement is for Dealer Members to meet the quarterly trade percentage set out in proposed Rule 800.49 or NI 24-101, as applicable, for a minimum of three consecutive quarters, in addition to the requirements set out in parts (i) to (v) under the exemption in proposed Rule 200.1(h). For proposed Rule 800.49, the percentage threshold is determined by dividing the sum of the quarter's compliant trades by the total number of non-exchange trades that are executed during the quarter by the Dealer Member with other Dealer Members. For DAP/RAP account trades of Institutional Customers subject to



NI 24-101, IIROC will not allow a Dealer Member to cease sending a trade confirmation for either an equity trade or debt trade if the Dealer Member has triggered any of the reporting requirements under NI 24-101, which means IIROC will not separate equity and debt reporting with respect to NI 24-101. **The revisions to Rule 800.49(6) have changed the frequency of the compliance monitoring to quarterly instead of monthly.**

- (ix) *Will there be a requirement for the Dealer Member to monitor the client account(s) for ongoing compliance and if so with what frequency?*

IIROC staff response

Although there is no formal requirement to monitor client account(s), Dealer Members are encouraged to monitor client accounts to ensure compliance.

- (x) *Are the Dealer Member and/or the client required to be compliant in both entered and entered/matched if they only have the responsibility to enter the transactions and provide sufficient lead time for the matching market participant?*

IIROC staff response

As detailed in part (vi) under “Exemption” in the proposed amendments to Rule 200.1(h), it is the Dealer Member that is required to be in compliance with the trade matching requirements under the Corporation’s Rules [Rule 800.49] or securities legislation [NI 24-101] relevant to the trade. Under section 4.1 of Part 4 of NI 24-101, the exception reporting requirement is based on matched trades and therefore, a Dealer Member cannot conclude that they only have the responsibility to enter the transactions and provide sufficient lead time for the matching market participant.

DEALER MEMBER RULE 800.49

1. Don’t know trades (“DK Trades”)

- (i) *Rule 800.49 reads as follows: “The monthly compliant trade percentage for a Dealer Member is determined by dividing the sum of month’s compliant trades (which does not include DK Trades) by the total number of non-exchange trades that are executed during the month by the Dealer Member with other Dealer Members.” When saying non-exchange trades that are executed during the month, does that include DK Trades?*

IIROC staff response

Yes, “DK Trades” are to be included in the total number of non-exchange trades that are executed during the month by the Dealer Member with another Dealer Member. A DK Trade is a non-exchange trade that has been subsequently DK’d by the other Dealer Member to the trade. **The revisions to Rule 800.49(6) have changed the frequency of compliance monitoring to quarterly instead of monthly,**



therefore, DK Trades are to be included in the total number of non-exchange trades that are executed during the quarter by the Dealer Member with another Dealer Member.

- (ii) *If we send 10 trades and 2 are DK Trades, from what we understand we would achieve an 80% compliant rate. If we correct those 2 DK Trades, then they would in fact be non-compliant trades. However, if those 10 trades were sent on time and the 2 DK Trades were only unDK Trades the following day with no change and matched by the other dealer, the trades should become compliant, bringing us to 100%. Often trades are DK Trades when a dealer has no instructions, yet when the instructions come in, the trades are then matched. The first submitter should not be penalized for the other dealer's lack of instructions. If our rate is below the target we will need to file an exception report to IIROC.*

Furthermore, if we are asked to explain the discrepancies we would then be forced to disclose dealers who were DKing our trades due to lack of instructions which would then affect our business relationship with such dealers.

IIROC staff response

The first submitter should not be penalized for the other Dealer Member's lack of instructions. IIROC will not know the reason for a DK Trade without an explanation from one or both of the Dealer Members involved in the DK Trade. In addition, given that the requirement to report or confirm a trade will be extended from "within one hour or trade execution" to "at or before 6 p.m. on the day of trade", IIROC expects Dealer Members will be less inclined to DK the other Dealer Member's trade for lack of instructions.

IIROC needs the explanation from both Dealer Members in order to determine which Dealer Member may have an unresolved systemic operational problem in reporting trades. IIROC also believes that your firm should also be concerned that the Dealer Member you are trading with has systemic operational problems in reporting trades, which could affect the settlement of your trades with that Dealer Member.

2. Extension of trade reporting requirement

- (i) *Members agree that the change from "within one hour or trade execution" to "at or before 6:00 p.m. on the day of the trade" will enable clients who presently use batch processing to achieve higher rates of compliance. However, while Dealer Members are generally pleased with the change to a 6:00 p.m. cut off time, this time frame may be early given that daily batch trade file submission to CDS occurs closer to midnight on T. We would appreciate some clarification as to why the cut-off times have not been made consistent.*

IIROC staff response

See response to (ii).



- (ii) *In order to ensure compliance some Dealer Members may need to extend their hours of operation. With the potential to enter non exchange trades until 6 p.m., the other Dealer Member may have insufficient time or the staffing available to ensure that the trade is matched or DK'd when necessary. While larger Dealer Members may have the ability to adjust staffing hours, small and midsize firms may not have the same flexibility. While we do not believe that mandating staffing until the cut off time is an option, this may have a negative impact on some Dealer Members in consistently meeting the compliance timeline.*

IIROC staff response

It is IIROC's understanding that Dealer Members or their service providers have control over the time when they submit batch trades to CDS. The 6 p.m. cut-off time was chosen by IIROC as it offered a balance for:

- Dealer Members that do not want to have staff working to report the day's trades well beyond when the markets closed (4:30 p.m.);
- Dealer Members that do market-on-close trades and/or accumulation type trades, which sometimes occur up to 5:00 p.m.;
- Dealer Members that use batch trade file submission and want to continue to use batch trade file submission, but did not see the benefit in submitting trade files within the hour of trade execution; and
- Dealer Members that have made the effort and investment in people, systems and processes to comply with meeting the current "one-hour requirement", which was implemented several years ago.

IIROC must still have timely trade reporting and matching requirements in order to achieve a high quality regulatory and investment industry standard that strengthens market integrity, while maintaining efficient and competitive capital markets.

- (iii) *In order to take advantage of an extension, some Dealer Members may need to extend their hours of operation to ensure that contacts are available to discuss a particular transaction. There may be potential for non-compliance among Dealer Members (and clients) that cannot incur the extra costs of maintaining staff until an extended cut-off time (whether it is 6:00 p.m. or otherwise). While we do not think it is appropriate to mandate staffing requirements, the compliance rates will continue to be affected in the instances where firms and clients do not have the resources to extend their hours.*

IIROC staff response

The intent of the extension is to offer Dealer Members that have difficulty reporting trades within the hour of trade execution some additional time. For firms that currently do not have a problem reporting trades within an hour of the trade execution, IIROC does not



expect them to be negatively impacted by the extension.

3. Monthly compliance report

- (i) *Members agree that the requirement to complete a monthly compliance report will increase the focus of members and clients on the requirements of the Rule. However, it is recommended that IIROC provide further details on the reporting requirements (i.e. provide a format for the report to ensure consistency in the content). Dealer Members were also interested in the availability of online reporting, similar to what is available for reporting under National Instrument 24-101.*

IIROC staff response

IIROC will provide further details on the reporting requirements including whether online reporting would be made available to Dealer Members, as well as the timeframe in which the report is to be provided. **The revisions to Rule 800.49(6) have changed the frequency of the compliance monitoring to quarterly instead of monthly, therefore, the monthly compliance report will now be a quarterly compliance report.**

- (ii) *The requirement to submit a monthly compliance report will likely increase the focus on meeting the revised compliance timeframe. However, further guidance and information is required on the actual report. It was suggested that a standard report format be provided, due date for filing and the option to file online as with the quarterly reports pursuant to NI 24-101. The standard format will ensure consistency in the level of detail and information contained within the report, as well as ensure that all submissions meet the requirements for any follow up required. We question as well as to whether a Nil report will be required.*

IIROC staff response

See response to (i).

- (iii) *More guidance is required on the timeframe in which the report is to be provided (the draft language only provides for reports to be made “promptly”). It has been suggested that quarterly reporting, similar to what is required by NI 24-101, would be more appropriate and efficient than what is proposed in the Notice since confusion between the two rules may occur.*

IIROC staff response

See response to (i).

- (iv) *The notice issued in connection with the proposed amendments introduces inconsistencies between Dealer Member Rules and NI 24-101. Currently NI 24-101 requires reporting at noon on T+1 where compliance trade matching thresholds are below 90%. Rule 800.49 introduces a two-tiered standard (85% or more prior to June 30, 2012 and 90% or more after*



July 1, 2012) which is similar to, but not the same, as NI 24-101. Furthermore NI 24-101 requires quarterly reporting where Rule 800.49 requires monthly reporting. We believe that the Dealer Member Rules should be harmonized with NI 24-101.

IIROC staff response

IIROC's two-tiered, phased-in approach was based on the CSA's Notice and Request for Comments on Proposed Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement [October 30, 2009, (2009) 32 OSCB]¹, which had proposed reporting thresholds of 70 per cent, 80 per cent and 90 per cent that were to be phased in July 1, 2015, July 1, 2016 and July 1, 2017, respectively, under Part 7 – Transition. However, the revised percentages of NI 24-101 have since been revised in the CSA Notice of Amendments to NI 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101CP Institutional Trade Matching and Settlement [April 16, 2010, (2010) 33 OSB]² to remove the reporting thresholds on T phased in approach and maintain the current requirement to match trades by noon on T+1 with a reporting threshold of 90 per cent.

The revisions to Rule 800.49(6) have changed the compliance monitoring requirement from monthly to quarterly and removed the staged implementation of the compliant trade percentage threshold. They were agreed to in order to reduce the potential confusion among Dealer Members that also execute institutional trades that are subject to quarterly compliance monitoring and a 90% compliant trade percentage threshold under NI 24-101.

- (v) *How will compliancy rates be measured going forward? For instance, will Dealer Members be required to build in house reporting tools? Furthermore, we request clarification on whether or not the proposed thresholds will continue to be based on the number of trades.*

IIROC staff response

Going forward, CDS will measure the compliance rates and will provide them to Dealer Members. The thresholds will continue to be based on the number of trades.

- (vi) *We understand the reason for the request for monthly submissions however, for the longer term, is there a plan to move to the quarterly submissions to be consistent with the requirements under NI 24-101?*

IIROC staff response

¹ http://www.osc.gov.on.ca/documents/en/Securities-Category2/rule_20091030_24-101_pro-amd.pdf

² http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20100416_24-101_notice-amd.pdf



The revisions to Rule 800.49(6) have changed the compliance monitoring requirement from monthly to quarterly and were agreed to in order to reduce the potential confusion among Dealer Members that also execute institutional trades that are subject to quarterly compliance monitoring under NI 24-101.

Sincerely,

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