

CSA Notice and Request for Comment Proposed Amendments to National Instrument 23-101 *Trading Rules*

April 7, 2016

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed amendments to National Instrument 23-101 *Trading Rules* (NI 23-101) (the Proposed Amendments).

We are publishing the text of the Proposed Amendments in Annex B to this notice, together with certain other relevant information at Annexes C through D. The text of the Amendments will also be available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The substance and purpose of the Proposed Amendments is to amend NI 23-101 to lower the active trading fee cap¹ applicable to trading in certain securities. In setting out the maximum fee that can be applied to the execution of an order entered to execute against displayed volume, the Proposed Amendments would distinguish between securities that are listed on both a Canadian and a U.S. exchange (Inter-listed Securities) and securities that are listed on a Canadian exchange, but not listed on a U.S. exchange (Non-Inter-listed Securities).

Summary of the Proposed Amendments

The Proposed Amendments would amend section 6.6.1 of NI 23-101 to cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00.

¹ An active trading fee refers to the fee applied for executing an order that was entered to execute against a displayed order on a particular marketplace.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex D of this notice.

Annexes

- A. Background and description of the Proposed Amendments;
- B. Proposed Amendments to National Instrument 23-101 *Trading Rules*;
- C. National Instrument 23-101 *Trading Rules*, blacklined to show the proposed changes to NI 23-101; and
- D. Local Matters.

Authority of the Proposed Amendments

In those jurisdictions in which the Proposed Amendments are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulatory authority in respect of the subject matter of the amendments.

In Ontario, the proposed amendments to NI 23-101 are being made under the following provisions of the *Securities Act* (Ontario Act):

- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.

Deadline for Comments

Please submit your comments to the Proposed Amendments, in writing, on or before July 6, 2016. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses listed below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Comments Received will be Publicly Available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your email and address, may appear on certain CSA web sites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Ontario Securities Commission web site at www.osc.gov.on.ca and on the Autorité des marchés financiers web site at www.lautorite.qc.ca.

X. Questions

Please refer your questions to any of the following:

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Roland Geiling Derivatives Product Analyst Direction des bourses et des OAR Autorité des marchés financiers roland.geiling@lautorite.qc.ca	Kathleen Blevins Senior Legal Counsel Alberta Securities Commission kathleen.blevins@asc.ca
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ANNEX A

Background and description of the Proposed Amendments

On May 15, 2014, the CSA published for comment proposed amendments to NI 23-101 that would, amongst other changes, introduce trading fee caps for exchange-traded securities (the 2014 Notice).² The fee caps were proposed to address concerns raised by marketplace participants related to the implications of the Order Protection Rule (OPR) on their active trading fee costs, given that OPR necessitates that marketplace participants trade with the best-priced displayed orders, regardless of the level of trading fees charged by marketplaces displaying those orders.

In a separate notice published today, the CSA has finalized the amendments proposed in the 2014 Notice. As a result, for equity securities and exchange-traded funds priced at or above \$1.00, an active trading fee cap of \$0.0030 per share or unit traded will come into force on July 6, 2016. For further details, please refer to the CSA Notice of Approval published concurrently with this notice.

In the 2014 Notice we indicated that the \$0.0030 per share fee cap for securities priced at or above \$1.00 was set at the same level as the cap set in the U.S. under Rule 610(c) of Regulation National Market System (NMS). We proposed this cap because it is an established benchmark that was created by the U.S. Securities and Exchange Commission in the context of similar order protection requirements.

However, in the 2014 Notice we acknowledged that the U.S. trading fee cap for securities priced at or above \$1.00 was considered by some to be too high. These concerns were also reflected in the comments received to the 2014 Notice where a number of commenters indicated that the cap was not reflective of the lower average price of Canadian securities relative to the average price of U.S. securities.

We recognize the views of some stakeholders that the fee cap should be lower. However, our market is highly integrated with the U.S. and there is significant trading activity in Inter-listed Securities. As a result, we are concerned about the potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by those marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.

However, the concerns noted above do not apply for Non-Inter-listed Securities and in determining a method by which we could address some of the concerns raised in relation to trading fee costs, we considered the comments received to the 2014 Notice,

² Published on May 15, 2014, at: (2014) 37 OSCB 4873.

specifically that the trading fee should reflect the value of the stocks traded. We calculated the volume-weighted average price for Inter-listed Securities³ and found that the \$0.0030 cap for Inter-listed Securities represents 1.2 basis points. We then calculated the volume-weighted average price for Non-Inter-listed Securities and applied the same basis point equivalent. The results are illustrated in the table below.

	Volume-Weighted Average Price	Trading Fee Cap	Basis Point Equivalent
Inter-listed Securities	\$25.26	\$0.0030 per share or unit	1.2 bps
Non-Inter-listed Securities	\$14.30	\$0.0017 per share or unit	1.2 bps

The Proposed Amendments would cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00. If the Proposed Amendments are approved, the \$0.0030 per share or unit cap would continue to apply to Inter-listed Securities priced at or above \$1.00.

³ The volume-weighted average price is calculated from June 29, 2014 to June 28, 2015.

ANNEX B

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1. ***National Instrument 23-101 Trading Rules is amended by this Instrument.***

2. ***Section 6.6.1 is repealed and replaced with the following:***

6.6.1 Trading Fees

(1) In this section

“exchange-traded fund” means a mutual fund,

- (a) the units of which are listed securities or quoted securities, and
- (b) that is in continuous distribution in accordance with applicable securities legislation; and

“inter-listed security” means an exchange-traded security that is listed on a recognized exchange and on an exchange that is a national securities exchange in the United States of America.

(2) A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a displayed order on the marketplace,

- (a) for an inter-listed security,
 - (i) that is greater than \$0.0030 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00, and
 - (ii) that is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00; or
- (b) for a security that is not an inter-listed security,
 - (i) that is greater than \$0.0017 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00, and
 - (ii) that is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00..

3. This Instrument comes into force on .

ANNEX C

Blacklined version of NI 23-101 identifying changes to implement the Proposed Amendments

NATIONAL INSTRUMENT 23-101 TRADING RULES

Table of Contents

PART	TITLE
PART 1	DEFINITION AND INTERPRETATION
1.1	Definition
1.2	Interpretation - NI 21-101
PART 2	APPLICATION OF THIS INSTRUMENT
2.1	Application of this Instrument
PART 3	MANIPULATION AND FRAUD
3.1	Manipulation and Fraud
PART 4	BEST EXECUTION
4.1	Application of this Part
4.2	Best Execution
4.3	Order and Trade Information
PART 5	REGULATORY HALTS
5.1	Regulatory Halts
PART 6	ORDER PROTECTION
6.1	Marketplace Requirements for Order Protection
6.2	List of Trade-throughs
6.3	Systems or Equipment Failure, Malfunction or Material Delay
6.4	Marketplace Participant Requirements for Order Protection
6.5	Locked or Crossed Orders
6.6	Trading Hours
6.6.1	Trading Fees
6.7	Anti-Avoidance
6.8	Application of this Part
PART 7	MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM
7.1	Requirements for a Recognized Exchange
7.2	Agreement between a Recognized Exchange and a Regulation Services Provider
7.2.1	Obligations of a Recognized Exchange to a Regulation Services Provider
7.3	Requirements for a Recognized Quotation and Trade Reporting System
7.4	Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider
7.4.1	Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider
7.5	Co-ordination of Monitoring and Enforcement
PART 8	MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS
8.1	Pre-condition to Trading on an ATS
8.2	Requirements Set by a Regulation Services Provider for an ATS
8.3	Agreement between an ATS and a Regulation Services Provider
8.4	Agreement between an ATS and its Subscriber
8.5	[Repealed]
PART 9	MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTER-DEALER BOND BROKER
9.1	Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker
9.2	Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider
9.3	Exemption for an Inter-Dealer Bond Broker

PART 10	MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE
10.1	Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace
10.2	Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider
10.3	[Repealed]
PART 11	AUDIT TRAIL REQUIREMENTS
11.1	Application of this Part
11.2	Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers
11.3	Transmission in Electronic Form
PART 12	EXEMPTION
12.1	Exemption
PART 13	EFFECTIVE DATE
13.1	Effective Date

NATIONAL INSTRUMENT 23-101 TRADING RULES

PART 1 DEFINITION AND INTERPRETATION

1.1 Definition - In this Instrument

“automated trading 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;

“best execution” means the most advantageous execution terms reasonably available under the circumstances;

“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 the marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price;

“directed-action order” means an 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 displayed 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 on or routed to a marketplace
 - (i) to execute against a best-priced displayed order, or
 - (ii) at the same time that another order is entered on or routed to a marketplace to execute against any protected order with a better price than the entered or routed order;

"NI 21-101" means National Instrument 21-101 Marketplace Operation;

"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;

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

- (a) that is displayed on a marketplace that provides automated trading functionality and
 - (i) the marketplace meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) if the marketplace is a recognized exchange, the bid is for a security listed by and traded on that recognized exchange; 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 trading functionality and
 - (i) the marketplace meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) if the marketplace is a recognized exchange, the offer is for a security listed by and traded on that recognized exchange; 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 order" means a protected bid or protected offer; 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.

1.2 Interpretation - NI 21-101 - Terms defined or interpreted in NI 21-101 and used in this Instrument have the respective meanings ascribed to them in NI 21-101.

PART 2 APPLICATION OF THIS INSTRUMENT

2.1 Application of this Instrument - A person or company is exempt from subsection 3.1(1) and Parts 4 and 5 if the person or company complies with similar requirements established by

- (a) a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) directly;
- (b) a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) directly; or
- (c) a regulation services provider.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) A person or company must not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in or acquisition of a security or any act, practice or course of conduct, if the person or company knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative of that security; or

(b) perpetrates a fraud on any person or company.

(2) In Alberta, British Columbia, Ontario, Québec and Saskatchewan, instead of subsection (1), the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* and the *Derivatives Act* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply.

PART 4 BEST EXECUTION

4.1 Application of this Part - This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

4.2 Best Execution - A dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client.

4.3 Order and Trade Information - To satisfy the requirements in section 4.2, a dealer or adviser must make reasonable efforts to use facilities providing information regarding orders and trades.

PART 5 REGULATORY HALTS

5.1 Regulatory Halts - If a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 21-101 makes a decision to prohibit trading in a particular security for a regulatory purpose, a person or company must not execute a trade for the purchase or sale of that security during the period in which the prohibition is in place.

PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection - (1) A marketplace must 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 must regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and must promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace must 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 - For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are

(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 must 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), the marketplace that is executing the transaction or routing the order for execution must immediately notify the following of the failure, malfunction or material delay:

- (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 displaying a protected order 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 must regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and must promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders - A marketplace participant or a marketplace that routes or reprices orders must not intentionally enter a displayed order on a marketplace that is subject to section 7.1 of NI 21-101, at a price that,

- (a) in the case of an order to purchase, is the same as or higher than the best protected offer; or
- (b) in the case of an order to sell, is the same as or lower than the best protected bid.

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

6.6.1 Trading Fees

(1) In this section

“exchange-traded fund” means a mutual fund,

- (a) the units of which are listed securities or quoted securities, and
- (b) that is in continuous distribution in accordance with applicable securities legislation; and

“inter-listed security” means an exchange-traded security that is listed on a recognized exchange and on an exchange that is a national securities exchange in the United States of America.

(2) A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a displayed order on the marketplace.

- (a) for an inter-listed security,

(i) that is greater than \$0.0030 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00; and

(ii) that is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00; or

(b) for a security that is not an inter-listed security,

(i) that is greater than \$0.0017 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00; and

(ii) that is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00.

6.7 Anti-Avoidance - A person or company must not 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 protected orders.

6.8 Application of this Part - In Québec, this Part, except for paragraph 6.3(1)(c), does not apply to standardized derivatives.

PART 7 MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM

7.1 Requirements for a Recognized Exchange

(1) A recognized exchange must set requirements governing the conduct of its members, including requirements that the members will conduct trading activities in compliance with this Instrument.

(2) A recognized exchange must monitor the conduct of its members and enforce the requirements set under subsection (1), either

(a) directly, or

(b) indirectly through a regulation services provider.

(3) If a recognized exchange has entered into a written agreement under section 7.2, the recognized exchange must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized exchange and the conduct of the exchange's members, and that enable the regulation services provider to effectively monitor trading on the exchange and across marketplaces.

7.2 Agreement between a Recognized Exchange and a Regulation Services Provider - A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will:

(a) monitor the conduct of the members of the recognized exchange,

(b) monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3), and

(c) enforce the requirements set under subsection 7.1(1).

7.2.1 Obligations of a Recognized Exchange to a Regulation Services Provider – A recognized exchange that has entered into a written agreement with a regulation services provider must

(a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.1(1), and
 - (ii) the conduct of the recognized exchange, including the compliance of the recognized exchange with the requirements set under subsection 7.1(3); and
- (b) comply with all orders or directions made by the regulation services provider.

7.3 Requirements for a Recognized Quotation and Trade Reporting System

(1) A recognized quotation and trade reporting system must set requirements governing the conduct of its users, including requirements that the users will conduct trading activities in compliance with this Instrument.

(2) A recognized quotation and trade reporting system must monitor the conduct of its users and enforce the requirements set under subsection (1) either

- (a) directly; or
- (b) indirectly through a regulation services provider.

(3) If a recognized quotation and trade reporting system has entered into a written agreement under section 7.4, the recognized quotation and trade reporting system must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized quotation and trade reporting system and the conduct of the quotation and trade reporting system's users, and that enable the regulation services provider to effectively monitor trading on the recognized quotation and trade reporting system and across marketplaces.

7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider - A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will

- (a) monitor the conduct of the users of the recognized quotation and trade reporting system,
- (b) monitor the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3), and
- (c) enforce the requirements set under subsection 7.3(1).

7.4.1 Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider— A recognized quotation and trade reporting system that has entered into a written agreement with a regulation services provider must

- (a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:
 - (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.3(1), and
 - (ii) the conduct of the recognized quotation and trade reporting system, including the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3); and
- (b) comply with all orders or directions made by the regulation services provider.

7.5 Co-ordination of Monitoring and Enforcement – A regulation services provider, recognized exchange, or recognized quotation and trade reporting system must enter into a written agreement with all other regulation services providers, recognized exchanges, and recognized quotation and trade reporting systems to coordinate monitoring and enforcement of the requirements set under Parts 7 and 8.

PART 8 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS

8.1 Pre-condition to Trading on an ATS – An ATS must not execute a subscriber's order to buy or sell securities unless the ATS has executed and is subject to the written agreements required by sections 8.3 and 8.4.

8.2 Requirements Set by a Regulation Services Provider for an ATS

- (1) A regulation services provider must set requirements governing an ATS and its subscribers, including requirements that the ATS and its subscribers will conduct trading activities in compliance with this Instrument.
- (2) A regulation services provider must monitor the conduct of an ATS and its subscribers and must enforce the requirements set under subsection (1).

8.3 Agreement between an ATS and a Regulation Services Provider - An ATS and a regulation services provider must enter into a written agreement that provides

- (a) that the ATS will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the regulation services provider will monitor the conduct of the ATS and its subscribers;
- (c) that the regulation services provider will enforce the requirements set under subsection 8.2(1);
- (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
- (e) that the ATS will comply with all orders or directions made by the regulation services provider.

8.4 Agreement between an ATS and its Subscriber - An ATS and its subscriber must enter into a written agreement that provides

- (a) that the subscriber will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the subscriber acknowledges that the regulation services provider will monitor the conduct of the subscriber and enforce the requirements set under subsection 8.2(1);
- (c) that the subscriber will comply with all orders or directions made by the regulation services provider in its capacity as a regulation services provider, including orders excluding the subscriber from trading on any marketplace.

8.5 [Repealed]

PART 9 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTER-DEALER BOND BROKER

9.1 Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker

- (1) A regulation services provider must set requirements governing an inter-dealer bond broker, including requirements that the inter-dealer bond broker will conduct trading activities in compliance with this Instrument.
- (2) A regulation services provider must monitor the conduct of an inter-dealer bond broker and must enforce the requirements set under subsection (1).

9.2 Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider - An inter-dealer bond broker and a regulation services provider must enter into a written agreement that provides

- (a) that the inter-dealer bond broker will conduct its trading activities in compliance with the requirements set under subsection 9.1(1);
- (b) that the regulation services provider will monitor the conduct of the inter-dealer bond broker;
- (c) that the regulation services provider will enforce the requirements set under subsection 9.1(1); and
- (d) that the inter-dealer bond broker will comply with all orders or directions made by the regulation services provider.

9.3 Exemption for an Inter-Dealer Bond Broker

- (1) Sections 9.1 and 9.2 do not apply to an inter-dealer bond broker, if the inter-dealer bond broker complies with the requirements of IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended.
- (2) [Repealed]

PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE

10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace

- (1) A regulation services provider must set requirements governing a dealer executing trades of unlisted debt securities outside of a marketplace, including requirements that the dealer will conduct trading activities in compliance with this Instrument.
- (2) A regulation services provider must monitor the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace and must enforce the requirements set under subsection (1).

10.2 Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider - A dealer executing trades of unlisted debt securities outside of a marketplace must enter into a written agreement with a regulation services provider that provides

- (a) that the dealer will conduct its trading activities in compliance with the requirements set under subsection 10.1(1);
- (b) that the regulation services provider will monitor the conduct of the dealer;
- (c) that the regulation services provider will enforce the requirements set under subsection 10.1(1); and
- (d) that the dealer will comply with all orders or directions made by the regulation services provider.

10.3 [Repealed]

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Application of this Part

- (1) This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.
- (2) A dealer or inter-dealer bond broker is exempt from the requirements in section 11.2 if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.

11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers

(1) **Recording Requirements for Receipt or Origination of an Order** - Immediately following the receipt or origination of an order for equity, fixed income and other securities identified by a regulation services provider, a dealer and inter-dealer bond broker must record in electronic form specific information relating to that order including,

- (a) the order identifier;
- (b) the dealer or inter-dealer bond broker identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order, if applicable;
- (e) the number of securities to which the order applies;
- (f) the strike date and strike price, if applicable;
- (g) whether the order is a buy or sell order;
- (h) whether the order is a short sale order, if applicable;
- (i) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade;
- (j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;
- (k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;
- (l) the client account number or client identifier;
- (m) the date and time that the order expires;
- (n) whether the order is an intentional cross;
- (o) whether the order is a jitney and if so, the underlying broker identifier;
- (p) any client instructions or consents respecting the handling or trading of the order, if applicable;
- (q) the currency of the order;
- (r) an insider marker;
- (s) any other markers required by a regulation services provider;
- (t) each unique client identifier assigned to a client accessing the marketplace using direct electronic access;
and
- (u) whether the order is a directed-action order.

(2) **Recording Requirements for Transmission of an Order** - Immediately following the transmission of an order for securities to a dealer, inter-dealer bond broker or a marketplace, a dealer or inter-dealer bond broker transmitting the order must add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the dealer or inter-dealer bond broker identifier assigned to the dealer or inter-dealer bond broker transmitting the order and the identifier assigned to the dealer, inter-dealer bond broker or marketplace to which the order is transmitted; and
- (b) the date and time the order is transmitted.

(3) **Recording Requirements for Variation, Correction or Cancellation of an Order** - Immediately following the variation, correction or cancellation of an order for securities, a dealer or inter-dealer bond broker must add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the date and time the variation, correction or cancellation was originated or received;
- (b) whether the order was varied, corrected or cancelled on the instructions of the client, the dealer or the inter-dealer bond broker;
- (c) in the case of variation or correction, any of the information required by subsection (1) which has been changed; and
- (d) the date and time the variation, correction or cancellation of the order is entered.

(4) **Recording Requirements for Execution of an Order** – Immediately following the execution of an order for securities, the dealer or inter-dealer bond broker must add to the record maintained in accordance with this section specific information relating to that order including,

- (a) the identifier of the marketplace where the order was executed or the identifier of the dealer or inter-dealer bond broker executing the order if the order was not executed on a marketplace;
- (b) the date and time of the execution of the order;
- (c) whether the order was fully or partially executed;
- (d) the number of securities bought or sold;
- (e) whether the transaction was a cross;
- (f) whether the dealer has executed the order as principal;
- (g) the commission charged and all other transaction fees; and
- (h) the price at which the order was executed, including mark-up or mark-down.

(5) **[Repealed]**

(6) **[Repealed]**

(7) **Record Preservation Requirements** - A dealer and an inter-dealer bond broker must keep all records in electronic form for a period of not less than seven years from the creation of the record referred to in this section, and for the first two years in a readily accessible location.

11.3 Transmission in Electronic Form - A dealer and inter-dealer bond broker must transmit

- (a) to a regulation services provider the information required by the regulation services provider, within ten business days, in electronic form; and
- (b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

PART 12 EXEMPTION

12.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 13 EFFECTIVE DATE

Effective Date - This Instrument comes into force on December 1, 2001.

ANNEX D

Local Matters

Regulatory Impact Analysis

What is the problem or concern?

As indicated in the 2014 Notice, we believe that OPR affords marketplaces a degree of market power, as marketplace participants are constrained in choosing whether or not to consume and pay for certain marketplace services, in particular trading and market data. The finalization of amendments to NI 23-101 published concurrently with this notice will serve to address these concerns to some extent, through the introduction of a market share threshold, the finalization of a methodology for the regulatory oversight of market data fees and the implementation of a cap on active trading fees.

However, the trading fee cap that was proposed in the 2014 Notice and has now been finalized was intended to be an introductory or short-term step in a continued process to address concerns with active trading fees. At the time, we acknowledged that the cap of \$0.0030 per share or unit of an exchange-traded fund (ETF) was higher than the fees already being charged by many Canadian marketplaces. We stated our intention to take further action on trading fees in the form of a pilot study prohibiting the payment of rebates by marketplaces. We continue to believe that a pilot examining the impact of a prohibition on the payment of rebates would be an informative study; however, given concerns about the potential loss or migration of liquidity that might occur for securities that are inter-listed in the U.S., we have deferred further consideration for now.

We acknowledge that the impact from the fee cap of \$0.0030 will be somewhat limited, and reiterate that it was intended only as an introductory measure. Given that our intention to continue to address concerns related to trading fees through the introduction of a pilot study has been deferred, we are concerned that the issues raised regarding the high level of trading fees in Canada may not be addressed.

Who are the impacted stakeholders?

The fees associated with the trading of equities and ETFs impact the following stakeholders:

- Retail and institutional investors that trade Canadian equities and ETFs;
- Market Participants (Investment Dealers);
- Issuers; and
- Marketplaces.

How are stakeholders impacted?

Retail Investors	Retail investors do not typically pay the trading fees charged by marketplaces directly. However, the costs incurred by dealers executing retail order flow may be passed back to the retail investor either in the form of additional transaction costs or account / administrative fees, or indirectly through reduced investment in new products and services that may benefit the retail investor.
Institutional Investors	Similar to retail investors, many institutional investors do not pay the trading fees charged by marketplaces directly. However, where the executing dealer for an institutional investor absorbs the trading fees charged by marketplaces, investors may be paying additional costs that are passed along through increased commissions or other fees, or indirectly through reduced investment in products and services.
Marketplace Participants (Investment Dealers)	<p>Marketplace participants must avoid trading through a better-priced protected order, regardless of the cost of trading on the marketplace displaying that order. Although the market share threshold for OPR protection will help to address the captive consumer issue, participants are still limited in their ability to control trading fees charged by those marketplaces displaying protected orders.</p> <p>While marketplaces charge fees on a per share traded basis, many marketplace participants charge their clients on a per trade basis. The differing basis for fees means that clients do not always pay the full cost of executing a liquidity demanding transaction (i.e. one that incurs an active</p>

	<p>trading fee). This cost pressure is particularly acute for firms that predominantly execute active orders on behalf of clients.</p> <p>There has been a recent downward trend in trading fees on certain marketplaces. Others have moved to a market model that pays rebates for active order flow (the “inverted maker-taker model”). While this has allowed some firms to better control the costs of executing active orders on behalf of clients, many marketplaces continue to employ the traditional maker-taker model where higher active fees are necessary to pay for the higher rebate paid to liquidity providers.</p>
<p>Issuers</p>	<p>Companies and ETF providers with securities listed on a Canadian exchange may be impacted to the extent that rebates and fees encourage or discourage liquidity in the secondary markets for their securities. For example, less liquidity in the secondary market for a company’s shares could increase the cost of capital for that company.</p>
<p>Marketplaces</p>	<p>In order to attract order flow, marketplaces often compete on the basis of the fee model offered and the particular level of these fees. Certain fee models are dependent on the ability to attract resting liquidity through the payment of a rebate offset by a fee associated to removing passive orders. Where the active fee must be reduced, a marketplace may be constrained in the amount of liquidity they are able to attract with a reduced rebate.</p>

What alternative solutions were considered?

As noted above, when the \$0.0030 per share or unit trading fee cap was proposed in 2014, it was intended to be an interim measure. The longer-term goal was to examine the impact of prohibiting the payment of rebates by marketplaces through the implementation of a pilot study. Where rebates are paid for passive liquidity and offset by active fees, the prohibition of the rebate would result in a decrease in the corresponding fee, and the pilot study would assess the impact on the Canadian market.

Given that the pilot study has been deferred, we considered the following options:

- Maintain the status quo;
- Impose a lower trading fee cap for all Canadian listed securities; and
- Impose a lower trading fee cap for Non-Inter-listed Securities.

Maintain the status quo

We considered taking no further action on trading fees at this time on the basis that measures already finalized (specifically the \$0.0030 per share or unit trading fee cap and the market share threshold for OPR protection) could serve to address the issues highlighted in the 2014 Notice.

Although the implementation of a market share threshold for OPR should provide some relief with respect to the captive consumer issue, it will not address the trading fees charged by marketplaces that meet or exceed the threshold. Further, and as noted above, the \$0.0030 cap per share or unit will have somewhat limited impact. As such, we are of the view that further steps should be taken to address the identified concerns regarding trading fees in Canada.

Lower the trading fee cap for all Canadian listed securities

An additional alternative is to impose a lower trading fee cap for all securities listed on a Canadian exchange. This would be reflective of the fact that the average share price for even Inter-listed Securities is lower than the U.S. average share price.

Imposing a lower fee cap on all Canadian listed securities would mean that Inter-listed Securities would have a lower trading fee cap (and therefore lower rebate) in Canada than in the U.S. As noted above, we are concerned that creating such a disparity between Canadian and U.S. marketplaces could lead to unintended consequences, including the migration of significant amounts of market liquidity. As a result, we decided to not pursue this option.

Lower the trading fee cap for Non-Inter-listed Securities

To further our commitment to additional action on trading fees and to achieve our intended goals, it is our view that while recognizing issues and risks associated with Inter-listed Securities, we should consider measures to address identified concerns where possible. In our opinion, the appropriate course of action is to implement a lower trading fee cap on those stocks that are not also listed on a U.S. exchange.

Policy Proposal

As discussed in this notice, CSA staff are proposing to reduce the cap on active trading fees for Non-Inter-listed Securities from \$0.0030 to \$0.0017 per security traded or per unit traded for an ETF, if the execution price of the security or unit traded is greater than or equal to \$1.00. If approved, the proposal would not change the application of the \$0.0030 per share or unit cap applied to Inter-listed Securities priced at or above \$1.00.

At this time we are not proposing any further changes to the trading fee cap for securities prices below \$1. In our view, the finalized \$0.0004 cap from the 2014 Notice sufficiently addresses any concerns for those securities.

Anticipated Impact of Proposals

Retail Investors

The proposed changes will have a limited direct impact on retail investors as they do not typically pay the fees associated with the execution of their active order flow. However, if the proposed changes result in cost savings for executing dealers, retail investors may benefit through reduced trading or administrative costs, or potentially through investment in new products and services. This assumes that any cost savings to dealers are passed on to clients in some form.

A reduction in active trading fees on Non-Inter-Listed Securities will lower the passive rebates they finance. To offset this loss of rebate revenue, market makers could widen bid-ask spreads. As a result, costs of trading for retail investors may be impacted.

Institutional Investors

Institutional investors may also see some reduction in trading costs if the proposals serve to reduce dealer costs associated with the execution of their orders. However, as with retail investors, any benefits to institutional investors are dependent on any dealer cost savings being passed on to clients.

A reduction in active trading fees on Non-Inter-listed Securities will lower the passive rebates they finance. To offset this loss of rebate revenue, market makers could widen bid-ask spreads. As a result, costs of trading for institutional investors may be impacted.

Marketplace Participants

Marketplace participants will see a reduction in trading fee costs due to the lowering of the \$0.0030 trading fee cap for Non-Inter-listed Securities. The extent of the cost savings will be dependent on the trading activity of each marketplace participant in these securities, and how they choose to route orders to each marketplace. In particular, firms that tend to route more active flow will see more cost savings than others.

As the proposed new cap will only apply to trading in Non-Inter-listed Securities, cost savings will only apply to trading in those securities. We estimate that approximately 60% of traded volume for stocks priced above \$1 occurs in securities which are not inter-listed.

The proposed trading fee cap will also have an impact on those participants that engage in market making activity. Liquidity providers, including market participants and high-frequency traders, make money from buying and selling securities, and their margin is the net-of-fee (and rebate) bid-offer spread. A reduction in trading fees lowers passive rebates and, as a corollary, net-of-fee spreads and market maker income, all else remaining unchanged. In other words, lower rebates resulting from lower active trading fees change the economics of market making by reducing the potential return on capital.

In response to lower rebates, market makers may require wider bid-ask spreads. In addition, the market makers might decrease market depth – the size of the quotes posted at the best prices. Alternatively, some market makers may no longer find it economically viable to offer liquidity for some securities at the lower rebate levels and may withdraw from the market.

Issuers

We anticipate that imposing a lower trading fee cap on Non-Inter-listed Securities would lead to lower liquidity provider rebates being provided for those securities. The impact of this on issuers will be immaterial as long as the reduced rebates do not impact the available liquidity for the issuer's securities. Lower rebates may lead to lower levels of secondary market liquidity for some securities and this could result in lower market activity and higher costs of capital for those issuers. This risk could be more acute for issuers (e.g. some ETFs) that are reliant on liquidity provision from a small number of marketplace participants.

Marketplaces

The most significant impact would be for those marketplaces currently charging trading fees in excess of the proposed cap for Non-Inter-listed Securities. At the time of publication of this notice, 10 Canadian marketplaces or facilities of Canadian marketplaces are subject to the pre-trade information transparency requirements in

section 7.1 of National Instrument 21-101 *Marketplace Operation*, and would therefore be subject to the proposed cap. Of these 10 marketplaces, six have elements of their fee model that charge active trading fees higher than the \$0.0017 per share or unit proposed.

However, marketplaces that are forced to lower their active fees would likely also lower the liquidity provider rebate they offer so as to maintain the net revenue they receive from each share traded. If trading activity remains at current levels, the impact of the proposal on marketplace revenue will be limited. At this time, we are not able to estimate any potential impact on the number of shares traded and therefore the revenue of affected marketplaces.

The maker-taker (and taker-maker) pricing model permits a marketplace to differentiate its fees and rebates from its competitors. The proposed lower fee caps may limit the ability of a marketplace to differentiate its net-of-fee pricing from other marketplaces subject to the cap.

As such, marketplaces trading securities under this non-inter-listed fee cap may face greater competitive pressure as the services they offer become more similar, particularly marketplaces that were only competing on price. This increased competition among the marketplaces could make the trading of some of these securities uneconomical on certain marketplaces.