

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*;

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:

| | |
|--|--|
| Tracey Stern Manager, Market Regulation Ontario Securities Commission tstern@osc.gov.on.ca | Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission abazavan@osc.gov.on.ca |
| Timothy Baikie Senior Legal Counsel, Market Regulation Ontario Securities Commission tbaikie@osc.gov.on.ca | Louis-Philippe Pellegrini Legal Counsel, Market Regulation Ontario Securities Commission lpellegrini@osc.gov.on.ca |
| Paul Redman Principal Economist, Strategy & Operations Ontario Securities Commission predman@osc.gov.on.ca | Serge Boisvert Senior Policy Advisor Direction des bourses et des OAR Autorité des marchés financiers serge.boisvert@lautorite.qc.ca |
| 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 |
| Sasha Cekerevac Regulatory Analyst, Market Regulation Alberta Securities Commission sasha.cekerevac@asc.ca | Bruce Sinclair Securities Market Specialist British Columbia Securities Commission bsinclair@bcsc.bc.ca |

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

² Published on the Financial and Consumer Services Commission website at http://www.nbsc-cvmnb.ca/nbsc/uploaded_topic_files/23-101-CSAN-2014-05-15-E.pdf

relation to trading fee costs, we considered the comments received to the 2014 Notice, 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 .

