Annex “E”
Comment Summary and CSA Responses

Commenters:
Michael Mercier, British Columbia Investment Management Corporation
Mark DesLauriers, Osler, Hoskin & Harcourt LLP
Kevan Cowan, TMX Group Limited

Topic	Summary of Comments	Response to Comments
NI 23-103 in General	One commenter advocated making the wording and grammar of the amendments to NI 23-103 *Electronic Trading* (Instrument or NI 23-103) and the Investment Industry Regulatory Organization of Canada’s (IIROC) Proposed Provisions Respecting Third-Party Electronic Access to Marketplaces identical in order to avoid inconsistent interpretations. This commenter was also concerned about problems from this duplication. As an example, the commenter said that it is burdensome for dealers who wish to gain an exemption to comply with the separate processes in NI 23-103 and IIROC’s Universal Market Integrity Rules (UMIR).	**We have examined the differences in language between the IIROC proposal and NI 23-101 and have made the language as consistent as possible. Where the language is not identical, it is our view that the meaning is substantially the same.** **We note that under section 4.1 of NI 23-103, a participant dealer that complies with UMIR requirements similar to those established under Part 2.1 of the Instrument would not need to meet the requirements of Part 2.1 and would therefore only need to gain an exemption under UMIR. A separate exemption from NI 23-103 would not be necessary.**
Proposed Provisions		
4.1 Requirements Applicable to Participant Dealers Providing Direct Electronic Access: Application of this Part This Part does not apply to a participant dealer if the participant dealer complies with similar requirements established by (a) a regulation services provider; (b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or (c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101.	One commenter questioned the potential redundancy of the Instrument as a result of subsection 4.1(a). This commenter suggested that NI 23-103 may be inapplicable to participant dealers because all dealers affected by the Instrument are required to abide by the UMIR proposal of IIROC, a regulation services provider (as identified in subsection 4.1(a)). The commenter asked to whom the proposal applies since it does not apply to participant dealers.	**The definition of “participant dealer” has been revised to clarify that in Québec, “foreign approved participants” as defined in the Rules of the Montréal Exchange Inc. (Montréal Exchange), also fall under this term.** **We note that IIROC is not the regulation services provider to all marketplaces in Canada, for example, the Montréal Exchange. Therefore, the proposal would apply to members of a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI**

Topic	Summary of Comments	Response to Comments
		23-101 but has not established similar requirements.
4.2 Provision of Direct Electronic Access (1) A person or company must not provide direct electronic access unless it is a participant dealer. (2) A participant dealer must not provide direct electronic access to a registrant unless the registrant is (a) a portfolio manager; or (b) a restricted portfolio manager.	Two commenters found the use of "registrant" in subsection 4.2(2) confusing. They asked about the subsection's application to exemptive relief. One commenter suggested replacing the list of qualifying dealers in subsection 4.2(2) with a list of prohibited dealers to clarify which entities can receive DEA. The same commenter asked why the Instrument prohibits registered investment dealers, scholarship plan dealers, mutual fund dealers, exempt market dealers, restricted dealers and investment fund managers from obtaining DEA. This commenter stated that the risk these dealers pose is no greater than the risk posed by entities that will be able to obtain DEA under the Instrument, particularly since the prohibition on trading for the account of clients limits many DEA clients to trading as principle.	**We have revised the wording in subsection 4.2(2) to avoid any confusion from the use of the term "registrant" and to ensure that only the appropriate registered entities are captured by the provision. Subsection 4.2(2) now stipulates that clients acting and registered as dealers with a securities regulatory authority cannot receive DEA.** **The CSA do not want to facilitate regulatory arbitrage with respect to trading. In our view, as stated in subsection 4.2(2) of the CP, dealers acting and registered in categories other than "investment dealer" should not have this type of electronic access to marketplace through a participant dealer unless they themselves are investment dealer and subject to IIROC rules.** **We note that investment dealer-to-investment dealer arrangements are addressed in UMIR as "routing arrangements".**
4.6 DEA Client Identifier (1) Upon providing direct electronic access to a DEA client, a participant dealer must assign to the client a DEA client identifier in the form and manner required by (a) a regulation services provider; (b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or (c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101. (2) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client identifier to each marketplace to which the DEA client has direct electronic access through the participant	One commenter noted that subsection 4.6(2) reflects current industry practice for assigning client identifiers but that IIROC Notice 12-0315 described a different process, in which IIROC will assign client identifiers to DEA clients. The commenter asked whether the current practice for assigning client identifiers will change and expressed concerns about business and efficiency impacts if it does. This commenter recommended the process for obtaining client identifiers be efficient while allowing for due diligence.	**We have addressed the noted inconsistency by revising subsections 4.6(1),(2) and (3).** **Subsection 4.6(1) will now require that participant dealers ensure that each of their DEA clients is assigned a DEA client identifier. We do not expect the current practice for assigning DEA client identifiers to change in the near future. However, this revision will be able to accommodate changes to the DEA client identifier assignment process, while ensuring that a client will only trade using DEA once it has been assigned a unique DEA client identifier.**

Topic	Summary of Comments	Response to Comments
dealer. (3) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client's name and its associated DEA client identifier to: (a) all regulation services providers monitoring trading on a marketplace to which the DEA client has access through the participant dealer; (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer. (4) A participant dealer must ensure that an order entered by a DEA client using direct electronic access provided by the participant dealer includes the appropriate DEA client identifier. (5) If a client ceases to be a DEA client, the participant dealer must promptly inform: (a) all regulation services providers monitoring trading on a marketplace to which the DEA client had access through the participant dealer; (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer.		
4.7 Trading by DEA Clients (1) A participant dealer must not provide direct electronic access to a DEA client that is trading for the account of another person or company. (2) Despite subsection (1), when using direct electronic access, the following DEA clients may trade for the accounts of their clients: (a) a portfolio manager; (b) a restricted portfolio manager;	A commenter thought that prohibiting trading for the account of clients is problematic because it would prevent a market participant from exercising discretionary or directed DEA trading for many client accounts. The commenter suggested this limitation will cause market disruption and negatively impact trading volumes. Further, the commenter suggested	**We remain of the view that it is important to limit the risk of DEA trading by preventing DEA clients from trading via DEA for another person or company except under specified circumstances. We have revised the wording of subsections 4.7(1) and 4.7(2) to:**

Topic	Summary of Comments	Response to Comments
(c) a person or company that is registered in a category analogous to the entities referred to in paragraphs (a) or (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding. (3) If a DEA client is using direct electronic access to trade for the account of a client, as permitted by subsection (2), the DEA client must ensure that its client's orders flow through the systems of the DEA client before being entered on a marketplace. (4) A participant dealer must ensure that when a DEA client is trading for the account of its client using direct electronic access, the DEA client has established and maintains reasonable risk management and supervisory controls, policies and procedures. (5) A DEA client must not provide access to or pass on its direct electronic access to another person or company other than the individuals authorized under paragraph 4.4(a)(vii).	that trading by a market participant on behalf of its clients should be treated no differently than the market participant trading on its own behalf because the risks are comparable. The same commenter agreed that prohibiting the sub-delegation of DEA to clients (subsection 4.7(5)) is appropriate. One commenter suggested that the reference to "participant dealers" in section 4.7(1) and the reference to "clients" in section 4.7(2) is inconsistent and makes section 4.7(2) technically unusable. This commenter suggested that making subsection 4.7(1) consistent with subsection 4.7(2), which refers to DEA clients, by narrowing the restriction in subsection 4.7(1) so that it prohibits DEA clients from trading for the account of *clients*, rather than for *another person or company*. The commenter noted that given the broad meaning of "person", the change would avoid unnecessary restrictions. This commenter also suggested expanding subsection 4.7(2) to include entities that, except for an exemption from NI 31-103, would otherwise be a portfolio manager. If the CSA intended entities to apply for exemptions, the commenter asked the CSA to clarify which entity (the client or the market participant), would be able to apply for an exemption from subsection 4.7(1).	• **clarify that a DEA client that is registered or exempted from registration as an adviser under securities legislation may trade for the account of another person or company using DEA;** • **remove the limitation of unregistered entities carrying on business in a foreign jurisdiction that are permitted to trade for another person or company via DEA in that foreign jurisdiction from doing so in Canada, if it is regulated in the foreign jurisdiction by a signatory to the IOSCO Multilateral MOU;** • **remove the inconsistent references to "participant dealers" in subsection 4.7(1) and "clients" in subsection 4.7(2); and** • **consistently refer to "a person or company" instead of "clients".** **Subsection 4.7(1) imposes an obligation on participant dealers. If an exemption from this requirement is needed, it is the participant dealer that must file the requested exemption from this requirement.**
Companion Policy 23-103CP in General	One commenter expressed concern that the policy guidelines spoke only to the concept of sub-delegation to a client, and not to trading for the account of another person.	**We have revised the wording in the CP accordingly to clarify that the concept of sub-delegation applies to trading for the account of another person or company.**
1.1 Introduction ***(1) Purpose of National Instrument 23-103***	One commenter was supportive of allowing marketplaces discretion in choosing whether to provide DEA access and whether to impose stricter standards than required by the Instrument.	**We note the comment.**