

ANNEX E

COST-BENEFIT ANALYSIS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-103 *ELECTRONIC TRADING*

I. Overview

Electronic trading on Canadian marketplaces is not new, however the Canadian market has evolved substantially in recent years. Technological advancements have increased the complexity of the market and the methods by which market participants access multiple marketplaces. Electronic access to marketplaces has been broadly extended with marketplace participants providing direct electronic access (DEA). DEA refers to the access provided by a person or company to a client that permits the client to electronically transmit an order relating to a security to a marketplace, using the person or company's marketplace participant identifier either through the person or company's systems for automatic onward transmission to a marketplace or directly to the marketplace without being electronically transmitted through the person or company's systems.

Such rapid and complex technological change has resulted in many new risks to the Canadian market. In our view, the regulatory framework for providing DEA must reflect these changes and address these risks. The proposed amendments to National Instrument 23-103 *Electronic Trading* (Proposed Amendments) are designed to align regulatory requirements with the current DEA environment to ensure effective regulation and mitigation of these risks.

II. Costs and Benefits

Benefits

The Proposed Amendments should benefit all market participants including investors, as well as the market as a whole. The Proposed Amendments should promote fairness by establishing a standard set of rules applicable to all market participants providing DEA, regardless of the marketplace accessed. Additionally, given that no consistent rule framework is currently applied specifically to DEA trading, establishing the Proposed Amendments would improve both the integrity and confidence in the market by levelling the playing field and standardizing the obligations related to DEA so that there are minimum requirements in place applicable to all, no matter where orders are entered.

Costs

(i) Technology and maintenance costs

We recognize that for some participants, the Proposed Amendments would likely introduce costs associated with the development and implementation of policies and procedures related to the provision of DEA. These costs will vary depending on the nature of the business of the participant dealer as well as the business models and strategies of any DEA clients. The costs may involve initial outlays as well as ongoing expenses.

Although we acknowledge these costs, we believe that they are proportionate to the benefits provided to the market as a whole as discussed above. The protection of the integrity of the market, the reduction in both participant dealer and systemic risks, and the increase in the confidence of individual investors make these costs justifiable.

(ii) Compliance Costs

Under the Proposed Amendments, participant dealers would be required to ensure ongoing compliance with the responsibilities imposed. Although some new costs are likely, we expect that many of the compliance requirements would already be in place. As an example, we note that currently all registrants are required under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) to manage the risks to their business¹, and we would expect that they would have established policies and procedures related to direct electronic access. Any additional costs of compliance would vary depending on the nature of the business or services provided by the individual participant dealer.

DEA clients would need to bear minimal costs associated with entering into the proposed written agreement with the participant dealer before being provided DEA.

With respect to DEA, we acknowledge there may be increased costs associated with establishing, maintaining and applying appropriate standards before providing DEA to a client. We believe these costs are justifiable given the protections afforded to the market as a whole through the implementation of the Proposed Amendments. Participant dealers who choose to provide DEA to clients should be appropriately vetting potential clients and ensuring standards are met on a continuing basis not only to mitigate financial risk to themselves, but also the risks to the market associated with the activities of their clients.

(iii) Costs to Marketplaces

The Proposed Amendments would require all marketplaces to not permit a marketplace participant to provide DEA unless the marketplace's systems support the use of DEA client identifiers. Certain marketplaces currently support the use of DEA client identifiers and we do not expect marketplaces to bear a significant cost in complying with this requirement.

¹ NI 31-103 paragraph 11.1(b) states that "A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices."

Conclusion

We acknowledge the increase in costs for some participant dealers associated with the Proposed Amendments. However, in our opinion, the benefits associated with the Proposed Amendments are proportionate to these costs. In establishing the Proposed Amendments, appropriate controls will be implemented to manage the financial, regulatory and other risks with providing DEA to ensure the integrity of the participant dealer, the marketplaces and the financial system.