

ANNEX A

AMENDING INSTRUMENT FOR NI 23-103

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-103 ELECTRONIC TRADING

- 1. National Instrument 23-103 Electronic Trading is amended by this Instrument.**
- 2. The title is amended by adding the following at the end of the title “AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES”.**
- 3. Part 1 is amended by**

(a) adding the following definitions in section 1:

“direct electronic access” means 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,

- (a) through the person or company’s systems for automatic onward transmission to a marketplace; or
- (b) directly to the marketplace without being electronically transmitted through the person or company’s systems;

“DEA client” means a client that is granted direct electronic access by a participant dealer;

“DEA client identifier” means a unique client identifier assigned to a DEA client by a participant dealer;

“marketplace participant identifier” means the unique identifier assigned to a marketplace participant to access a marketplace; and

(b) replacing “NI 23-101” with “National Instrument 23-101 Trading Rules” in the definition of “marketplace and regulatory requirements”.

- 4. Paragraph 3(2)(a) is amended by replacing the comma with a semi-colon.**
- 5. Subparagraph 3(3)(a)(i) is amended by replacing the final comma in the subparagraph with a semi-colon.**
- 6. The following part is added:**

PART 2.1

REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

Application of this Part

- 4.1** 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.

Provision of Direct Electronic Access

- 4.2** (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.

Standards for DEA Clients

- 4.3** (1) A participant dealer must not provide direct electronic access to a client unless it
- (a) has established, maintains and applies reasonable standards for direct electronic access; and
 - (b) assesses and documents whether each client meets the standards established by the participant dealer for direct electronic access.
- (2) The standards established by the participant dealer under subsection (1) must include the following:
- (a) a client must not have direct electronic access unless the client has sufficient resources to meet any financial obligations that may result from the use of direct electronic access by that client,
 - (b) a client must not have direct electronic access unless the client has reasonable arrangements in place to ensure that all individuals using direct electronic access on behalf of the client have reasonable knowledge of and proficiency in the use of the order entry system that facilitates the direct electronic access,
 - (c) a client must not have direct electronic access unless the client has reasonable knowledge of and the ability to comply with all applicable marketplace and regulatory requirements, and
 - (d) a client must not have direct electronic access unless the client has reasonable arrangements in place to monitor the entry of orders through direct electronic access.
- (3) A participant dealer must confirm, at least annually with the DEA client, that the DEA client continues to meet the standards established by the participant dealer, including for greater certainty, those set out in this section.

Written Agreement

- 4.4** A participant dealer must not provide direct electronic access to a client unless the client has entered into a written agreement with the participant dealer that provides that,
- (a) in its capacity as a DEA client,
 - (i) the client's trading activity will comply with marketplace and regulatory requirements;
 - (ii) the client's trading activity will comply with the product limits and credit or other financial limits specified by the participant dealer;
 - (iii) the client will take all reasonable steps to prevent unauthorized access to the technology that facilitates direct electronic access and will not permit any person or company other than those authorized by the participant dealer, to use the direct electronic access provided by the participant dealer;

- (iv) the client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace or regulation services provider with respect to trading conducted pursuant to the direct electronic access provided, including, upon request by the participant dealer, providing access to the information to the marketplace or regulation services provider that is necessary for the purposes of the investigation or proceeding;
- (v) the client will immediately inform the participant dealer if it fails or expects not to meet the standards set by the participant dealer;
- (vi) when trading for the accounts of its clients, under subsection 4.7(2), the client will take all reasonable steps to ensure that the orders of its clients will flow through the systems of the client and will be subject to reasonable risk management and supervisory controls, policies and procedures;
- (vii) the client will inform the participant dealer in writing of all individuals acting on the client's behalf that it has authorized to use its DEA client identifier and will immediately, in writing, inform the participant dealer if
 - (A) an additional individual has been granted authority to use the DEA client identifier; or
 - (B) the authority of an individual to use the DEA client identifier has been removed or the individual has been terminated; and

(b) the participant dealer has the authority to, without prior notice

- (i) reject any order;
- (ii) vary, correct or cancel any order entered on a marketplace; and
- (iii) discontinue accepting orders from the DEA client.

Training of DEA Clients

- 4.5** (1) A participant dealer must not allow a client to have, or continue to have, direct electronic access unless the participant dealer is satisfied that the client has reasonable knowledge of applicable marketplace and regulatory requirements and the standards established by the participant dealer under section 4.3.
- (2) A participant dealer must ensure that a DEA client receives any relevant amendments to applicable marketplace and regulatory requirements or changes or updates to the standards established by the participant dealer under section 4.3.

DEA Client Identifier

- 4.6** (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 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.

Trading by DEA Clients

- 4.7**
- (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;
 - (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).

7. Part 4 is amended by adding the following section:

Client Identifiers

9.1. A marketplace must not permit a marketplace participant to provide direct electronic access to a person or company unless the marketplace's systems support the use of DEA client identifiers.

8. *This Instrument comes into force on* *.