

ANNEX B – AMENDMENTS PROPOSED TO NI 23-101

**AMENDMENTS TO NATIONAL INSTRUMENT 23-101
TRADING RULES**

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

2. Section 1 is amended by

(a) replacing “automated functionality” with “automated trading functionality” in the definition of automated functionality,

(b) replacing the definition of directed-action order with:

“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 to execute against a best-pried displayed order, or at the same time as one or more additional orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the entered or routed order referred to in paragraph (a);,

(c) deleting “and” after “quoted;” in the definition of non-standard order,

(d) replacing paragraph (a) in the definition of protected bid with:

(a) that is displayed on a marketplace that provides automated trading functionality and

(i) 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) does not meet or exceed the market share threshold referred to in subparagraph (i), if

(A) the marketplace is a recognized exchange, and

(B) the bid is for a security listed by and traded on that recognized exchange; and, *and*

(e) *replacing paragraph (a) in the definition of protected offer with:*

(a) that is displayed on a marketplace that provides automated trading functionality and

(i) 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) does not meet or exceed the market share threshold referred to in subparagraph (i), if

(A) the marketplace is a recognized exchange, and

(B) the offer is for a security listed by and traded on that recognized exchange; and.

3. *Part 4 is amended by adding the following section:*

4.4 Disclosure by Dealers of Best Execution Policies

(1) A dealer must provide in writing to its clients:

(a) a description of the dealer's obligation under section 4.2;

(b) a description of the factors the dealer considers for the purpose of complying with its obligation under section 4.2;

(c) a description of the dealer's order handling and routing practices intended to comply with its obligation under section 4.2 for orders for exchange-traded securities, other than options, including:

(i) the identity of any marketplace and each type of intermediary to which the dealer might route the orders for handling or execution;

(ii) the circumstances in which the dealer might route the orders to a marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);

(iii) the nature of any ownership by the dealer or affiliated entity of the dealer in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);

- (iv) if any of the orders may be routed to an intermediary referred to in the disclosure made under subparagraph (i), pursuant to a contractual relationship with any such intermediary,
 - (A) a statement that the order will be subject to the order handling and routing practices of the intermediary;
 - (B) a statement that the dealer has examined the order handling and routing practices of the intermediary and is satisfied that they will facilitate best execution; and
 - (C) a description of the order handling and routing practices of the intermediary or information that specifically identifies where that description can be found;
 - (v) a statement as to whether fees are paid or payments or other compensation received by the dealer for a client order routed, or a trade resulting from a client order routed, to any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i), and a description of the circumstances under which the costs associated with those fees paid or the amounts or compensation received will be passed on to the client.
- (2) A dealer must make the disclosure required under subsection (1) for each class or type of client if the factors and order handling and routing practices referred to in paragraphs 4.4(1)(b) and (c) differ materially for that class or type of client relative to any other class or type of client, or relative to all of the clients of the dealer in aggregate.
- (3) A dealer must specifically identify in the disclosure made pursuant to this section:
 - (a) the class or type of client to which the disclosure applies;
 - (b) the class or type of securities to which the disclosure applies; and
 - (c) the date of the most recent changes to the disclosure made in accordance with subsection (5).
- (4) A dealer must:
 - (a) make the disclosure required under this section publicly available on the dealer's website; and
 - (b) clearly identify to clients where on the website the disclosure is found; or

- (c) if the dealer does not have a website to allow it to comply with paragraphs (a) and (b), deliver the disclosure required under this section to the client
 - (i) upon account opening; or
 - (ii) if the client has an account already open with the dealer at the time this section comes into force, no later than the 90th day after this section comes into force.
 - (5) A dealer that provides disclosure under this section must:
 - (a) review the disclosure on a frequency that is reasonable in the circumstances, and
 - (b) based on the review under paragraph (a), promptly update the disclosure to reflect the dealer's current practices.
 - (6) If a dealer makes any change to the disclosure it is required to make under this section, the dealer must,
 - (a) for the website disclosure required under paragraph (4)(a), identify and maintain the change on the website for a period of 6 months after the change has been made; or
 - (b) for any disclosure required to be delivered to a client under paragraph (4)(c), deliver the change to the client no later than the 90th day after the completion of the review and update referred to in subsection (5)..
4. ***Subsection 6.3(2) is amended by replacing “a marketplace that routes an order to another marketplace shall immediately notify” with “the marketplace that is executing the transaction or routing the order for execution shall immediately notify”.***
 5. ***Subsection 6.3(3) is amended by adding “displaying a protected order” after “concludes that a marketplace”.***
 6. ***Subparagraph 6.4(1)(a)(ii) is amended by adding “;” after “traded through”.***
 7. ***Section 6.5 is replaced with:***
 - 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..

8. *The following section is added after section 6.6:*

6.6.1 Trading Fees

- (1) For the purposes of 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.
- (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 that marketplace, greater than
 - (a) \$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; or
 - (b) \$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..

9. *Section 6.7 is amended by replacing “better-priced orders on a marketplace” with “better-priced protected orders”.*

Coming into force

10. This Instrument comes into force on •.