

**CSA Notice and Request for Comment  
Proposed Amendments to National Instrument 23-101 *Trading Rules***

May 15, 2014

**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) and the related Companion Policy 23-101CP (23-101CP), together with a proposed data fee review methodology (the Proposed Amendments).

The text of the Proposed Amendments is outlined in Annexes A, B and C of this notice and is also available on websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.gov.ns.ca/nssc](http://www.gov.ns.ca/nssc)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
[www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)

We have worked closely with staff of the Investment Industry Regulatory Organization of Canada (IIROC) in developing the Proposed Amendments, and we thank them for their participation and for sharing their knowledge and expertise. IIROC will be publishing amendments to the Universal Market Integrity Rules (UMIR) to reflect and support the Proposed Amendments.

**Background**

The key part of the Proposed Amendments deals with the order protection rules (OPR), also commonly referred to as the trade-through<sup>1</sup> requirements (OPR amendments). OPR necessitates that all better-priced orders be executed before inferior-priced orders regardless of the marketplace on which the order is displayed.

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<sup>1</sup> A “trade-through” occurs when an order is executed at a price that is inferior to either a best-priced displayed bid or best-priced displayed offer

## **Substance and purpose**

The purpose of the Proposed Amendments is to address certain costs and inefficiencies resulting from or associated with the current OPR framework through amendments in the following main areas:

- The application of OPR;
- Best execution policies and disclosure; and
- Trading fees.

## **Summary of the Proposed Amendments**

Under the OPR amendments, orders would be protected where displayed on a marketplace that has met certain criteria. This would have the effect of leaving displayed orders on some marketplaces unprotected by OPR. In this notice, we are also proposing or considering caps or limits on certain trading fees and data fees, as well as outlining and seeking feedback about action being proposed regarding the payment of rebates by marketplaces to their members or subscribers under the maker-taker pricing model.

More specifically, the amendments being proposed to NI 23-101:

- Amend the definition of “protected bid” and “protected offer” to include orders that are displayed on marketplaces that meet or exceed a market share threshold, or on recognized exchanges that did not meet the threshold but that are orders in the securities listed by and traded on the recognized exchange;
- Introduce section 4.4 of NI 23-101 which would mandate specific dealer disclosure relating to best execution policies;
- Amend section 6.5 of NI 23-101 to reflect the proposed changes to the definitions of “protected bid” and “protected offer” and provide clarity around the extent of the prohibition on locking or crossing the market; and
- Introduce section 6.6.1 to NI 23-101 which would introduce a cap on trading fees.

Further, Annex A highlights other aspects of our proposal that do not necessitate changes to NI 23-101 in order to implement. These are intended to deal with certain costs and / or inefficiencies either directly or indirectly related to the OPR framework, or to address other issues and concerns outlined in this notice. They include:

- A plan to proceed with a pilot study to examine the impact of disallowing the practice of the payment of rebates by marketplaces;
- A proposal to implement a transparent methodology to assess the relative value of real-time market data when reviewing and approving market data fees charged to professional subscribers based on this methodology;
- A proposal to require marketplaces to submit their market data fees charged to professional subscribers for re-approval on an annual basis, and to justify these fees in the context of the results of applying the above-noted methodology; and
- Consideration of further action to regulate non-professional market data fees.

## **Local Matters**

Certain jurisdictions are publishing other information required by local securities legislation. This information would be contained in Annex D, if applicable.

## **Annexes**

- A. Background and description of the Proposed Amendments;
- B. Proposed amendments to National Instrument 23-101 *Trading Rules*; and
- C. National Instrument 23-101 *Trading Rules* and Companion Policy 23-101CP, blacklined to show the proposed changes to the current NI 23-101 and 23-101CP.

## **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 regulation-making authority in respect of the subject matter of the amendments.

In Saskatchewan, the proposed amendments to NI 23-101 are being made under the following provisions of *The Securities Act, 1988* (the Act):

- Paragraph 154(1)(f) of the Act authorizes the Authority to make regulations prescribing requirements in respecting the disclosure or furnishing of information to the public or the Authority by registrants.
- Paragraph 154(1)(i) of the Act authorizes the Authority to make regulations regulating the listing and trading of securities including prescribing requirements for keeping records and reporting trades and quotations;
- Paragraph 154(1)(k) of the Act authorizes the Authority to make regulations prescribing requirements with respect to recognized entities and designated entities.
- Paragraph 15(1)(ee.1) of the Act authorizes the Authority to make regulations with respect to any matter necessary to regulate self-regulatory organizations, exchanges, derivatives trading facilities, quotation and trade reporting systems, clearing agencies and trade repositories.
- Paragraph 154(1)(l) of the Act authorizes the Authority to make regulations regulating trading or advising in securities or exchange contracts to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 154(1)(ii) of the Act authorizes the Authority to make regulations respecting the media, format, preparation, form, content, execution, certification, dissemination, and other use, filing and review of all documents required pursuant to or governed by the Act and the regulations and all documents determined by the regulations to be ancillary to the documents.

## **Deadline for Comments**

Please submit your comments to the Proposed Amendments, in writing, on or before September 19, 2014. 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 (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 below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

M<sup>c</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, 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](mailto: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 the 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 e-mail and address, may appear on certain CSA websites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) and on the Autorité des marchés financiers website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

## Questions

Please refer your questions to any of the following:

Tracey Stern Manager, Market Regulation Ontario Securities Commission 416-593-8167	Kent Bailey Trading Specialist, Market Regulation Ontario Securities Commission 416-595-8908
Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission 416-593-8082	Paul Redman Principal Economist, Strategy & Operations Ontario Securities Commission 416-593-2396
Serge Boisvert Senior Policy Advisor Direction des bourses et des OAR Autorité des marchés financiers 514-395-0337 ext. 4358	Roland Geiling Derivatives Product Analyst Direction des bourses et des OAR Autorité des marchés financiers 514-395-0337 ext. 4323
Michael Brady Senior Legal Counsel British Columbia Securities Commission 604-899-6561	Meg Tassie Senior Advisor British Columbia Securities Commission 604-899-6819
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