

ANNEX A

Background and description of the Proposed Amendments

On May 15, 2014, the CSA published for comment proposed amendments to NI 23-101 that would, amongst other changes, introduce trading fee caps for exchange-traded securities (the 2014 Notice).² The fee caps were proposed to address concerns raised by marketplace participants related to the implications of the Order Protection Rule (OPR) on their active trading fee costs, given that OPR necessitates that marketplace participants trade with the best-priced displayed orders, regardless of the level of trading fees charged by marketplaces displaying those orders.

In a separate notice published today, the CSA has finalized the amendments proposed in the 2014 Notice. As a result, for equity securities and exchange-traded funds priced at or above \$1.00, an active trading fee cap of \$0.0030 per share or unit traded will come into force on July 6, 2016. For further details, please refer to the CSA Notice of Approval published concurrently with this notice.

In the 2014 Notice we indicated that the \$0.0030 per share fee cap for securities priced at or above \$1.00 was set at the same level as the cap set in the U.S. under Rule 610(c) of Regulation National Market System (NMS). We proposed this cap because it is an established benchmark that was created by the U.S. Securities and Exchange Commission in the context of similar order protection requirements.

However, in the 2014 Notice we acknowledged that the U.S. trading fee cap for securities priced at or above \$1.00 was considered by some to be too high. These concerns were also reflected in the comments received to the 2014 Notice where a number of commenters indicated that the cap was not reflective of the lower average price of Canadian securities relative to the average price of U.S. securities.

We recognize the views of some stakeholders that the fee cap should be lower. However, our market is highly integrated with the U.S. and there is significant trading activity in Inter-listed Securities. As a result, we are concerned about the potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by those marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.

However, the concerns noted above do not apply for Non-Inter-listed Securities and in determining a method by which we could address some of the concerns raised in relation to trading fee costs, we considered the comments received to the 2014 Notice,

² Published on May 15, 2014, at: (2014) 37 OSCB 4873.

specifically that the trading fee should reflect the value of the stocks traded. We calculated the volume-weighted average price for Inter-listed Securities³ and found that the \$0.0030 cap for Inter-listed Securities represents 1.2 basis points. We then calculated the volume-weighted average price for Non-Inter-listed Securities and applied the same basis point equivalent. The results are illustrated in the table below.

| | Volume-Weighted Average Price | Trading Fee Cap | Basis Point Equivalent |
|-----------------------------|--|----------------------------|-----------------------------------|
| Inter-listed Securities | \$25.26 | \$0.0030 per share or unit | 1.2 bps |
| Non-Inter-listed Securities | \$14.30 | \$0.0017 per share or unit | 1.2 bps |

The Proposed Amendments would cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00. If the Proposed Amendments are approved, the \$0.0030 per share or unit cap would continue to apply to Inter-listed Securities priced at or above \$1.00.

³ The volume-weighted average price is calculated from June 29, 2014 to June 28, 2015.