

ANNEX E

Summary of Comments and CSA Responses to 2014 Notice

Topic	Summary of Comments	CSA Response
Market Share Threshold	<p>Most commenters expressed views on the threshold proposal, and the responses were mixed.</p>	
Threshold Level	<p>A number of commenters supported the threshold as proposed, at 5%. These commenters indicated that, as proposed, the threshold strikes a reasonable balance and allows dealers flexibility in making marketplace connectivity decisions, while maintaining most of the benefits of OPR.</p> <p>However, some of those who were generally supportive of the market share threshold expressed concern with the proposed threshold level. Specific concerns were related to the ability of unprotected markets to meet and/or maintain a 5% threshold, and potential negative impacts on competition. Some suggested revising the threshold to a lower level.</p> <p>A number of commenters were not supportive of either the introduction of a market share threshold or the proposed level. They raised concerns related to the complexity that would be introduced by the threshold approach as well as the potential impact on competition. In addition, one commenter suggested that the threshold, as proposed, may exacerbate the problems that the CSA are looking to solve.</p>	<p>We acknowledge that the comments received in relation to the market share threshold were mixed, both with respect to the introduction of a threshold and the proposed level. However, we continue to be of the view that the threshold approach is the most appropriate method of balancing the benefits of OPR with some of the inefficiencies and costs associated with its implementation.</p> <p>In the 2014 Notice we proposed a 5% market share threshold. Based on the comments received and further discussions, we are adjusting the threshold from 5% to 2.5%. We are of the view that a lower threshold addresses some of the concerns raised regarding the potential impact on competition.</p> <p>With respect to the complexity introduced into the system by the threshold, we note that evolving marketplace trading models related to order processing</p>

<p>Effect of Threshold on Competition</p>	<p>With respect to the impact of the proposed threshold approach, comments were mixed. However, as noted above many commenters expressed concern that the proposed 5% threshold could have a negative impact on competition and could represent a barrier to entry for new competitors.</p>	<p>delays have already driven regulatory decisions that introduced many of the same complexities highlighted by commenters.</p> <p>As noted above, we are reducing the threshold from 5% to 2.5%. We believe the threshold is important to balance some of the inefficiencies and costs of OPR, but acknowledge the concerns that in the context of the current market environment in Canada, 5% may be a barrier to competition.</p>
<p>Criteria for Calculating the Threshold</p>	<p>With respect to the metrics used in relation to the threshold, comments were mixed. Comments were generally supportive of the trading activity to be included in the calculation, but there was less consensus on the equal weighting of volume and value.</p>	<p>We continue to believe that equally weighting volume and value traded is appropriate in order to provide a more balanced outcome and account for marketplaces that trade primarily low-value securities.</p>
<p>Market share Threshold - Treatment of Listing Exchanges</p>	<p>Some commenters supported the proposed approach with respect to the treatment of listing exchanges that do not otherwise meet the market share threshold. Others however, expressed concern about the potential incentive for exchanges to list securities for the purposes of gaining order protection.</p>	<p>We continue to be of the view that it is important to provide protection to a recognized exchange that does not meet the market share threshold, but only with respect to its own listings. As indicated in the 2014 Notice, we do not believe that it is appropriate that a listing exchange be disadvantaged with respect to its own listings, to the advantage of a marketplace that might trade very little</p>

		<p>volume in those listed securities, but that otherwise meets the threshold. Further, we are supportive of continued protection for exchanges that contribute to the capital raising process.</p> <p>We acknowledge the concerns raised by commenters related to an exchange seeking cross-listings simply for purposes of gaining OPR protection. We intend to monitor trends in this regard going forward.</p>
Time Frame for Market Share Calculation	<p>Comments were mixed, with some supportive of the annual calculation proposed in the 2014 Notice and the three month implementation window. Others however, were concerned that the annual calculation was too long, and that marketplaces meeting the threshold during the annual period would be required to wait too long for protected status. Some suggested either a more frequent review period or a decrease in the threshold level.</p>	<p>As noted above, we have reduced the threshold from 5% to 2.5%, and believe this will address some of the concerns raised. However, we remain supportive of an annual measurement in order to decrease the costs on industry that might arise from more frequent calculations and potential changes to the list of protected marketplaces.</p>
Locked and Crossed Orders	<p>Comments received were split between those supportive of limiting the provisions to protected orders only, and those who disagreed with the proposed approach. Concerns were expressed by some in relation to complexities and the potential for investor confusion. Some believed that a dealer should be prohibited from locking or crossing orders on marketplaces to which they have access.</p>	<p>We continue to believe that instances of locked and crossed orders will be short in duration and are a necessary trade-off to achieve the intended outcomes of the market share threshold (providing for choice to manage inefficiencies and costs). We considered the alternative suggested by some commenters, but are concerned about the</p>

		increased complexity and costs of compliance monitoring by regulators that would result from such an approach.
Best Execution Obligations and Disclosure	Most commenters were supportive of both the proposed best execution guidance in 23-10CP as well as the proposed best execution disclosure requirements.	We acknowledge the comments received. As discussed, we have postponed finalization of the best execution proposals in order to align the timing with similar proposals by IIROC.
Trading Fee Caps	<p>Most commenters were supportive of the proposed trading fee caps but indicated that the cap proposed for securities priced at or above \$1.00 is too high. A number of commenters indicated that this cap should be lower to better reflect the lower average price of Canadian securities relative to the United States.</p> <p>Some commenters were not supportive of introducing trading fee caps on the basis that trading fees are already subject to competitive forces and are approved by regulators.</p>	<p>As was proposed in the 2014 Notice, we will introduce a \$0.0030 per share cap on active trading fees for securities priced at and above \$1.00, and \$0.0004 per share for securities priced below \$1.00.</p> <p>We acknowledge the concerns expressed by commenters regarding the cap proposed for securities priced at \$1.00 and above. However, our market is highly integrated with the U.S. and we are concerned about the potential negative consequences for the Canadian market if we implement a trading fee cap for U.S. inter-listed securities that is different than the cap in the U.S.</p> <p>However, we are proposing a lower active trading fee cap for securities priced at \$1.00 and above that are listed on a Canadian exchange, but not listed on</p>

		a U.S. exchange (Non-Inter-Listed Securities). This new cap is being published in a separate CSA notice and request for comment.
Prohibition on Payment of Rebates – Pilot Study	<p>A number of commenters were supportive of regulatory action with respect to the payment of rebates. Some however, suggested that the CSA consider whether rebates are appropriate for certain securities such as those that are less liquid.</p> <p>Many commenters were supportive of the proposed pilot study but cautioned that the study must be carefully designed and appropriate metrics utilized.</p> <p>Others were not supportive of either the pilot study or any action on rebates in general. Certain commenters expressed the view that rebates are an important incentive for liquidity, and that prohibiting rebates will not solve for the issues identified in the 2014 Notice.</p> <p>Some commenters were not supportive of the proposed pilot study and were concerned about the potential outcomes and impacts on the attractiveness of the Canadian market. One commenter questioned whether issuers would be permitted to decline to participate in the study, given the potential impact on liquidity.</p>	<p>As noted, we are not proceeding with any action on rebates at this time. Although we are still supportive of a pilot study, we do not believe that meaningful results can be obtained from a study that does not include Inter-Listed Securities. We will continue to liaise with our regulatory counterparts in the U.S and will consider a joint pilot study in the future if an opportunity arises.</p>
Data Fees Methodology	<p>Some commenters were supportive of the proposed methodology, indicating that it is a critical component in addressing some of the issues related to the level of real-time market data fees charged by certain marketplaces.</p> <p>Others were not supportive of the use of</p>	<p>We acknowledge all the comments received regarding the methodology and its application. We continue to be of the view that the data fee methodology is the most appropriate tool to manage</p>

	<p>the data fee methodology because, in their view, it did not address all the concerns expressed by the users of data. Specifically, one commenter expressed the view that the use of the methodology fails to address the issue of access to a consolidated data feed for all users at a reasonable price. Another commenter indicated that current fees should not be considered as the base for calculating the domestic benchmark as they are too high.</p> <p>A number of commenters expressed mixed views regarding the methodology and its use. One of these commenters, while supportive of the use of the methodology, pointed out that we should be focusing more on whether the aggregate amount of data fees is fair and reasonable, and less on the redistribution of this amount between marketplaces. Another commenter suggested that the practice of charging for data multiple times for a single user should be eliminated. Another commenter indicated that smaller marketplaces should not be allowed to charge for data.</p> <p>Some commenters also provided their views regarding certain pre- and post-trade metrics. Specifically, concerns were raised with respect to a particular pre-trade metric that would inflate the ranking of a marketplace that displays illiquid securities.</p>	<p>some of the existing fee levels. We will continue to monitor the application of the methodology with respect to current and proposed fees and if necessary, will adjust it over time.</p> <p>Additionally, in response to the comments received, we have eliminated one pre-trade metric and the ranking model that used this metric.</p> <p>We also acknowledge the comments received in relation to the use of the domestic reference benchmark. It is our intention to engage external assistance in determining the appropriate benchmark. In the meantime, while we will use the domestic benchmark, we will not apply the methodology or the benchmark to support any fee increases by marketplaces until such time as the appropriate benchmark has been established.</p>
Membership and connectivity fees	<p>A number of commenters expressed views on the regulation of membership and connectivity fees. The responses were mixed.</p> <p>The majority of commenters that responded to this question believe that marketplace membership and connectivity fees should be regulated as</p>	<p>We will not make regulatory changes in relation to membership and connectivity issues at this time but will continue to monitor such fees to determine if future action is warranted</p>

	<p>market participants are required by regulation to connect to protected marketplaces. Several of these commenters explained that this is particularly important to ensure that marketplaces do not institute unwarranted increases of these fees, for example, to mitigate lost revenues due to forthcoming restrictions on other marketplace fees.</p> <p>Other commenters believe that additional regulation is unnecessary in this space because fees are reviewed by regulators currently and because market participants have the ability to connect indirectly to protected marketplaces. Several of these commenters believe that membership and connectivity fees should be monitored by regulators.</p>	
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Summary of Comments and CSA Responses to 2015 Notice

Topic	Summary of Comments	CSA Response
General Comments	<p>Many commenters provided their views specifically on the revised Alpha model and approval process that resulted in the implementation of an order processing delay.</p> <p>Many commenters expressed a preference for repealing OPR and moving to a best execution model.</p>	<p>The Alpha model was subject to a separate comment period, and the Ontario Securities Commission received and considered all feedback associated with this proposal during the review and approval process.</p> <p>Further, as it relates to a 'hybrid' OPR environment where some marketplaces display protected orders while others do not, we received feedback on the same complexities as part of the 2014 proposed OPR amendments (in the context of a market share threshold). The Ontario Securities Commission considered all of these comments in the context of the Alpha proposal and the CSA has considered them in the context of the Proposed Amendments.</p> <p>We continue to believe that the objectives of OPR are important, and we support maintaining the rule as part of the regulatory framework, in order to promote confidence and provide an incentive to contribute to the price discovery process. Best execution and OPR are complementary rules; one is an obligation to the market as a whole, and the</p>

	<p>Some commenters expressed the belief that regulators should provide enhanced best execution guidance in relation to a 'hybrid' OPR environment – specifically, how an unprotected marketplace should be considered from the perspective of best execution.</p>	<p>other a duty owed to individual clients. We have discussed the approach of moving solely to a best execution model at length, and are not yet satisfied that this approach would result in the best outcome for the entire market.</p> <p>Historically, the approach to best execution has been principles-based, rather than a 'checklist' of factors. A 'hybrid' OPR environment will require additional considerations by dealers when determining whether to access 'unprotected' marketplaces from the perspective of best execution. We also note that we have finalized elements of the 2014 OPR proposals that provide additional guidance for best execution. The CSA along with IIROC, will consider whether further guidance is necessary.</p>
<p>Question 1: Should OPR apply to marketplaces that impose an order processing delay? If so, should it apply to some or all? What factors should be considered?</p>	<p>A number of commenters believed that OPR should not apply to displayed orders on marketplaces that impose an order processing delay, and that any marketplace that imposes a delay should be considered on similar terms. One commenter noted that protecting quotes on 'speedbump' markets would be contrary to the principles OPR was designed to uphold.</p> <p>One commenter was of the view that OPR should continue to apply to marketplaces that impose order processing delays.</p>	<p>Our view continues to be that where a marketplace does not provide for the ability for an immediate execution against displayed volume, that marketplace does not offer "automated trading functionality" as currently defined in NI 23-101. Therefore under the rules, such marketplaces are not displaying "protected orders".</p>

	<p>Some commenters expressed the view that all order processing delays should not be treated equally.</p> <p>Some commenters expressed the view that greater consideration and clarity is required regarding what the CSA would consider to be an “intentional order processing delay”.</p> <p>A number of commenters indicated that a ‘hybrid’ OPR model was too complex.</p>	<p>We have revised the original proposed language in 23-101CP to provide additional clarity.</p> <p>We recognize that additional complexity will result from an environment where some visible marketplaces are displaying protected orders, while others are not. However, complexity has been a trend experienced in many global markets, as participants seek solutions to various challenges and issues, and marketplaces utilize technology to innovate and provide solutions. We are supportive of innovation and believe that these complexities will continue to be managed. We will however, continue to ensure that the principles behind the rule framework are maintained, that rules are applied in a consistent manner, and that negative impacts are addressed appropriately.</p>
<p>Question 2: What are the outcomes and impacts of an environment</p>	<p>A number of commenters expressed concern regarding the National Best Bid and Offer (NBBO). Specifically, questions were raised about the formulation of the NBBO in terms of what data will be considered, whether</p>	<p>Amendments to IIROC’s Universal Market Integrity Rules (UMIR) were approved on September 18, 2015. These amendments revised the definitions of</p>

<p>where not all displayed orders are protected under OPR?</p>	<p>separate feeds will exist, and which NBBO will be used to determine the required price improvement for trades with dark orders.</p> <p>Some participants expressed concern about the potential for complexity and confusion due to increased locked and crossed orders, while another commenter believed that occasional locked and crossed markets will not result in major impacts.</p>	<p>“best bid price” and “best ask price” to limit their determination to orders displayed on a “protected marketplace” (as defined in NI 23-101).</p> <p>Additionally, the Information Processor now offers two different feeds: one which represents the NBBO only from marketplaces that display protected orders, and one representing information from all Canadian marketplaces that display orders (both ‘protected’ and ‘unprotected’). Participants can consume those marketplace feeds that are necessary for their requirements.</p> <p>Given the rapid nature of quoting and trading activity, we believe that instances where orders are locked or crossed will generally be short in duration. To provide for a ‘hybrid’ OPR environment we have finalized amendments to the locked and crossed provisions proposed in the 2014 Notice, that would limit the prohibition on intentional locking and crossing to protected orders only. Further, we note that the requirements will continue to restrict any further orders from being entered that would intentionally lock or cross with a protected order.</p>
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<p>Question 3: What are the expected changes or outcomes for retail dealers and retail clients?</p>	<p>Commenters presented mixed views in relation to the impact on retail clients. Some believed that retail investors will have little ability to judge the quality of fills they will receive and that the Amendments will create a complex environment that will not be understood. Some were concerned that retail investors may experience a reduction in the ability to capture liquidity. Others felt that the existence of ‘unprotected’ marketplaces will have little impact on retail clients and that dealers will have greater flexibility in accessing various</p>	<p>We will continue to monitor the impacts of the Amendments in terms of outcomes to all market participants, including retail clients. Retail dealers will continue to have a best execution obligation to their clients, and should evaluate their best execution policies and procedures on an ongoing basis to ensure that any decisions to not access ‘unprotected’</p>

	marketplaces in the context of best execution.	marketplaces continue to be supportable. For retail clients seeking a better understanding of how their dealer manages their orders, the requirements for enhanced disclosure should assist in this process.
Question 4: Are there implications that have not been addressed that should be considered?	<p>Commenters highlighted similar implications and issues noted in response to previous questions. These include concerns about the determination of the NBBO, impact on the ability to gauge accessible liquidity, impacts on best execution, and impact on market integrity.</p> <p>One commenter expressed the view that a marketplace could display both protected and unprotected orders and suggested that there are other “systematic delays” that should be treated similarly.</p>	<p>Please see responses above. We reiterate that we will continue to monitor the impacts of order processing delays on all market participants and if negative outcomes result, we will take appropriate action.</p> <p>We are of the view that where a marketplace imposes an order processing delay, that marketplace does not provide “automated trading functionality”. To meet the requirements of the definition, we believe that a marketplace must provide the ability for an immediate execution for all orders. As a result, we do not support the suggestion that where a delay is imposed, a marketplace could display both protected and unprotected orders.</p> <p>We have amended the original proposed language in 23-101CP to provide greater clarity around the consideration and treatment of intentional order processing delays.</p>