

CSA Notice

Amendments to National Instrument 23-101 *Trading Rules* and Companion Policy 23-101CP to National Instrument 23- 101 *Trading Rules*

January 26, 2017

I. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) have approved amendments to National Instrument 23-101 *Trading Rules* (**NI 23-101**) and its related Companion Policy (**23-101 CP**) (together, the **Amendments**).

We are publishing clean and blacklined versions of the text of the Amendments in Annexes A and B to this notice, together with certain other relevant information at Annexes C through E. The text of the Amendments will also be available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on April 10, 2017.

II. Substance and Purpose

The substance and purpose of the Amendments is to amend NI 23-101 to lower the active trading fee cap¹ applicable to trading in certain securities. In setting out the maximum fee that can be applied to the execution of an order entered to execute against displayed volume, the Amendments distinguish between securities that are listed on both a Canadian and a U.S. exchange (**Inter-listed Securities**) and securities that are listed on a Canadian exchange, but not listed on a U.S. exchange (**Non-Inter-listed Securities**).

The Amendments amend section 6.6.1 of NI 23-101 to cap active trading fees for Non-Inter-listed Securities at \$0.0017 per security traded for an equity security or per unit

¹ An active trading fee refers to the fee applied for executing an order that was entered to execute against a displayed order on a particular marketplace.

traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to \$1.00.

III. Background

As of July 6, 2016, an active trading fee cap of \$0.0030 per share or unit traded has been imposed on equity securities and exchange-traded funds priced at or above \$1.00.² This cap is an established benchmark created by the U.S. Securities and Exchange Commission in the context of order protection requirements similar to those in NI 23-101.

However, when we proposed the \$0.0030 per share or unit fee cap in 2014, we acknowledged that the U.S. trading fee cap was considered by some to be too high. These concerns were also reflected in the comments received on the proposed fee cap, 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 recognized 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 in the U.S. As a result, we remained 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 Canadian 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, among other things, the comments 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.

² The trading fee cap for equity securities and exchange-traded funds priced below \$1.00 is \$0.0004 per security or unit traded. The Amendments do not change this cap.

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

	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

IV. The Amendments

The Amendments 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. The \$0.0030 per share or unit cap will continue to apply to Inter-listed Securities priced at or above \$1.00. The current cap of \$0.0004 per share or unit priced at less than \$1.00 remains in place for both Inter-listed Securities and Non-Inter-listed Securities.

We received comments concerning a marketplace's ability to identify when a security's status as Inter-listed or Non-Inter-listed changes, and particularly where an Inter-listed Security becomes a Non-Inter-listed Security (e.g., the issuer has delisted the security from all U.S. exchanges on which it was listed), and becomes subject to the lower trading fee cap. In response to these comments, we have made non-material amendments to NI 23-101 and 23-101CP. New subsections 6.6.1(3) and 6.6.1(4) require a recognized exchange to publish a quarterly list of Inter-listed Securities, and new section 6.6.2 requires marketplaces to make any required reductions to their active trading fees no later than 35 days following publication of the list. We are of the view that this requirement will have limited impact because some exchanges currently publish this information, and all exchanges can require listed issuers to provide them with this information. It will not be onerous for listed issuers to inform their listing exchange of their status as Inter-listed or not.

The exchanges' lists are to be as of the last day of each calendar quarter and published no later than 7 days after the quarter end. A transitional provision provides that the first lists are to be as of April 10, 2017, and published no later than April 17, 2017. Marketplaces must make any required fee adjustments no later than May 15, 2017.

We note that if a Non-Inter-listed Security becomes an Inter-listed Security, the Amendments will not require a marketplace to adjust its trading fee as the maximum fee for a Non-Inter-Listed Security is below the maximum fee for an Inter-listed Security.

V. Summary of Written Comments Received by the CSA

Proposed amendments were published for comment on April 7, 2016. We received submissions from six commenters. We have considered the comments received and thank all of the commenters for their input. A list of those who submitted comments and a summary of the comments and our responses are attached at Annexes C and D to this notice. Copies of the comment letters are available at www.osc.gov.on.ca.

VI. Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex E of this notice.

VII. Annexes

- A. Amendments to NI 23-101 and 23-101CP;
- B. Amendments to NI 23-101 and 23-101CP, blacklined to the version published for comment on April 7, 2016;
- C. List of commenters;
- D. Summary of Comments and CSA Responses; and
- E. Local Matters.

VIII. Questions

Please refer your questions to any of the following:

Tracey Stern Manager, Market Regulation Ontario Securities Commission tstern@osc.gov.on.ca	Timothy Baikie Senior Legal Counsel, Market Regulation Ontario Securities Commission tbaikie@osc.gov.on.ca
Alina Bazavan Senior Analyst, Market Regulation Ontario Securities Commission abazavan@osc.gov.on.ca	Paul Redman Chief Economist and Head of Research, Strategy & Operations Ontario Securities Commission predman@osc.gov.on.ca
Kathleen Blevins Senior Legal Counsel Alberta Securities Commission kathleen.blevins@asc.ca	Sasha Cekerevac Regulatory Analyst, Market Regulation Alberta Securities Commission sasha.cekerevac@asc.ca
Serge Boisvert Senior Policy Advisor Direction des bourses et des OAR Autorité des marchés financiers serge.boisvert@lautorite.qc.ca	Roland Geiling Derivatives Product Analyst Direction des bourses et des OAR Autorité des marchés financiers roland.geiling@lautorite.qc.ca
Bruce Sinclair Securities Market Specialist British Columbia Securities Commission bsinclair@bcsc.bc.ca	