Appendix A

Summary of Public Comments on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules* Regarding Direct Market Access and Canadian Securities Administrators Responses

Comments	***CSA Responses***
Definition of Dealer-Sponsored Access One commenter pointed out that the use of the terms "electronic connection" and "access its order routing system" in the definition of "dealer sponsored access" can be broadly interpreted to include almost any order that is electronically transmitted to a dealer and if taken literally, could include orders where there may be no trader intervention but is clearly not a case of direct access to a marketplace i.e. algorithmic trades, program trades and list based trades. This commenter believes that it is important to clarify that any direct market access (DMA) requirements would only be intended to cover sponsored trading access by non-participating organizations where there was no possible intervention by the sponsoring participating organization.	The Proposed Rule is designed to expand the scope of the 2007 Proposed Amendments to regulate electronic trading generally in addition to specifically addressing DEA. We believe many of the risks can be applied to both.
Question 24: Should DMA clients be subject to the same requirements as subscribers before being permitted access on a marketplace?	
Comments	***CSA Responses***
The majority of commenters do not believe that DMA clients should be subject to the same requirements as subscribers. Many feel that ultimate responsibility for DMA clients should remain with subscribers. Reasons cited for this position include that: (i) it is the subscribers who are best suited to contractually impose standards on their DMA clients and monitor and oversee the trading activity of their DMA clients; (ii) imposing additional requirements on the end client would result in unnecessary duplication of cost and effort and would create confusion over who is ultimately responsible for ensuring compliance with various rules; and (iii) the proposed requirement would reduce DMA activity on Canadian markets and motivate DMA clients to trade inter-listed securities in foreign marketplaces which in turn would harm Canadian markets.	The Proposed Rule represents a change in approach to the 2007 Proposed Amendments. The Proposed Rule would hold marketplace participants responsible for managing the risks associated with electronic trading, whether these orders are their own or those of a DEA client. We propose that a participant dealer providing DEA must establish appropriate standards, and assess whether each client meets these standards prior to granting DEA. The Proposed Rule would allow the participant dealer to reasonably allocate specific risk management and supervisory controls to a DEA client who is an investment dealer. This allocation would be set out in a written agreement, so there should be no confusion as to who is ultimately responsible.
Two commenters noted that the U.S. does not have similar regulations for DMA clients regarding access to marketplaces.	We do not believe the Proposed Rule is significantly more restrictive than other jurisdictions, such that trading would shift to foreign marketplaces. The U.S. Rule 15c3-5 establishes a framework similar to the Proposed Rule.
One commenter suggested that through each DMA client obtaining a unique trader ID, RS would be able to monitor DMA client account activity across participants and marketplaces and that this should address regulatory concerns regarding DMA trading. As well, this commenter also believes that the ability of the marketplace to revoke a DMA client's access trading privileges is sufficient to obtain compliance with RS investigations from DMA clients and that contracts between RS and DMA clients are not	The CSA are of the view that through the proposed participant dealer requirement to assign each DEA client a DEA client identifier and ensure that this identifier appears on each DEA order, the regulation services provider will be able to effectively monitor DEA activity.

necessary. One commenter cited that they strongly opposed requiring DMA clients to enter into an agreement with the regulation services provider or subjecting DMA clients to other regulations beyond general market integrity rules on the following: just and equitable principles, prohibition of manipulative or deceptive trading methods and improper orders and trades. To follow a similar approach in the U.S., this commenter suggested that the onus of ensuring compliance with applicable market integrity rules and providing user training should be placed on the sponsor, which can be clarified contractually through user agreements between the sponsor and the user as appropriate. A couple of commenters mentioned that a DMA client may not be in a position to ensure that their orders are ultimately routed and marked correctly since these orders must first pass through the participating organization's systems and they cannot be responsible for any technical rule violations caused by systems issues at the sponsoring firm. A few commenters were supportive of DMA clients having the same requirements as all other participants.	The Proposed Rule would not require contracts between the regulation services provider and the DEA client. The participant dealer must provide each DEA client identifier and associated client name to the regulation services provider.
One commenter was of the view that only properly registered participants and approved ATS subscribers should have direct access to the marketplace in order to ensure efficient and orderly markets.	The Proposed Rule sets out that participant dealers may not provide DEA to a registrant other than a participant dealer or portfolio manager.
Training Some commenters mentioned that the training requirement for DMA clients should be relevant and that the current Canadian Securities Institute's Trader Training Course is not appropriate as it is often out of date and covers more material than is relevant for DMA clients. Two commenters suggested that the current TSX and TSX Venture DMA rules that require the dealer to provide training and updates is an appropriate way to ensure clients are trained. One commenter suggested that the regulators could set a higher standard and provide clearer expectations of the material to be covered by required training programs and provide assistance with issuing notices and regulatory updates designed for DMA clients. One commenter not in support of having DMA clients take a standardized trader training course contended that this requirement would serve as an impediment, especially if each jurisdiction imposed a specific trader training course requirement for access to local marketplaces in that jurisdiction. This commenter suggested that if a training course requirement is imposed there should be an exemption for foreign DMA clients. Another commenter indicated that training to attain such high a level of trading proficiency is not justified for the amount of trading that they presently engage in.	The Proposed Rule does not establish specific requirements or minimum levels of education required for DEA clients. It would place an obligation on the participant dealer to satisfy itself that a client has adequate knowledge of applicable marketplace and regulatory requirements and the standards established by the participant dealer.
Question 25: Should the requirements regarding dealer-sponsored participants apply when the products traded are fixed income securities? Derivatives? Why or why not?	
Comments	***CSA Responses***

The majority of commenters that responded to this question believe that the requirements regarding dealer-sponsored participants should not apply to over-the-counter products such as fixed income and derivative products. Some reasons cited for this view include: that there is no central order book with price transparency; the structure of non-exchange listed fixed income and derivative products is fundamentally different than equities; and the perceived regulatory burden could potentially discourage usage by dealer-sponsored participants at a time when transparency and the use of electronic means of trading in the OTC markets is still developing in Canada. One commenter also stated that this proposed requirement could stifle innovation in these marketplaces and put Canadian markets at a competitive disadvantage compared to the U.S. as there are no similar regulatory requirements in that marketplace. One commenter believes that all assets and all markets should be subject to the same requirements.	The Proposed Rule applies to all securities traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (NI 21-101). Consideration will be given in the future as to whether it should apply to electronic trading in other products.
Question 26: Would your view about the jurisdiction of a regulation services provider (such as RS for ATS subscribers or an exchange for DMA clients) depend on whether it was limited to certain circumstances? For example, if for violations relating to manipulation and fraud, would the securities commissions be the applicable regulatory authorities for enforcement purposes?	
Comments	***CSA Responses***
Many commenters do not feel that it is appropriate for RS to have jurisdiction over DMA clients. Some commenters cited concerns that treating U.S. broker-dealers who are DMA clients as Access Persons may cause these clients to stop trading on Canadian marketplaces which could reduce liquidity and result in wider spreads on Canadian marketplaces. One commenter submitted that introducing an expansive new regime in Canada that gives a Canadian regulator jurisdiction over U.S. clients of Canadian dealers would send a message that is contrary to the goal of free trade in securities and may impact the SEC's possible proposal on mutual recognition with Canada. One commenter stated that the contractual relationship between a DMA client and RS effectively creates a new requirement for clients to be registered with RS and that it should be recognized that in certain circumstances clients may not be permitted to sign a contract with an SRO. This commenter also noted that the process and administration relating to these contracts must be clearly defined as many times a DMA client will have multiple brokers and the employees may have access to some marketplaces with one dealer and potentially different access with another dealer. One commenter suggested that RS should have jurisdiction over DMA clients for the purposes of UMIR 2.2 and that RS should contact the sponsoring registered Participant for all other matters relating to DMA clients. Two commenters asserted that the provincial securities regulator is the appropriate body to regulate DMA clients and other non-Investment Dealer Association or non-exchange members.	The CSA do not propose to extend the jurisdiction of the regulation services provider to all DEA clients at this time.

One commenter, while hesitant to impose a regulation services agreement to be signed by each DMA customer, stated such agreements should be limited to a brief statement of general principles and not be open to negotiation as to its content in order to avoid applying different standards of regulation to different market participants. A few commenters believe that all participants should be subject to the same regulations by the same regulators to ensure consistency. One commenter contended that the current regulatory jurisdiction is too fragmented and called for RS to be the primary regulatory authority for all levels of market trading infractions and over any party with access to marketplaces.	
Question 27: Could the proposed amendments lead dealer-sponsored participants to choose alternative ways to access the market such as using more traditional access (for example, by telephone), using foreign markets (for inter-listed securities) or creating multiple levels of DMA (for example, a DMA client providing access to other persons)?	
Comments	***CSA Responses***
A large majority of commenters that responded to this question believe that the proposed amendments could lead DMA clients to circumvent dealers and find alternative ways to access Canadian markets. A few commenters noted that foreign dealers in particular may choose not to trade in Canada if they are required to be subject to another local regulatory regime. One commenter noted while the proposed amendments do not contemplate disclosure of information relating to trading strategies or working of orders, that requirements of this nature would have the effect of directing order flow away from Canadian markets. One commenter submitted that foreign clients must use a registered participant in Canada.	The Proposed Rule would place the responsibility for DEA client orders on the participant dealer. The CSA do not believe that the Proposed Rule would lead DEA clients to find alternative methods to access the Canadian market. Additionally, we note that the Proposed Rule would not establish DEA requirements which are significantly different from those in other jurisdictions, and do not believe foreign dealers will choose not to trade in Canada as a result. The Proposed Rule sets out requirements for the use of automated order systems, such that any marketplace participant must ensure it has the necessary knowledge and understanding of any automated order system employed in order to identify and manage risks associated with the use of the system. The CSA recognize that some of the information regarding client automated order systems would be considered proprietary, however we would expect in these cases that a participant dealer would obtain sufficient knowledge to manage its own risks.
Question 28: Should there be an exemption for foreign clients who are dealer-sponsored participants from the requirements to enter into an agreement with the exchange or regulations services provider? If so, why and under what circumstances?	
Comments	***CSA Responses***

The majority of commenters that responded to this question are not supportive of an exemption for foreign clients who are dealer-sponsored participants from the requirements to enter into an agreement with the exchange or regulations services provider. Many commenters re-iterated their position that a direct agreement between DMA clients and RS is not warranted and that this would pose a significant barrier for foreign dealers and clients to access our markets. One commenter contended that foreign DMA clients will stop trading in Canada if they are required to execute an agreement with a foreign regulator. One commenter suggested that foreign and domestic DMA clients should not be subject to other regulations beyond the following trading rules: just and equitable principles, prohibition of manipulative or deceptive trading methods and improper orders and trades. This commenter stated that the DMA sponsor or ATS should be responsible for all other regulatory and compliance requirements. A number of commenters believe that all market participants should be treated equally and there should not be any advantage to any participant.	The Proposed Rule would not require foreign clients to enter into an agreement with the exchange or regulation services provider.
Question 29: Please provide the advantages and disadvantages of a new category of member of an exchange that would have direct access to exchanges without the involvement of a dealer (assuming clearing and settlement could continue to be through a participant of the clearing agency).	
Comments	***CSA Responses***
The overwhelming majority of commenters that responded to this question are not supportive of a new category of a member of an exchange. A few commenters are concerned that a member of an exchange that is not subject to the gatekeeper oversight that dealers currently provide could compromise overall market integrity unless subject to the same level of oversight by RS as a traditional dealer. One commenter is supportive of exchanges determining member eligibility criteria in their sole discretion and creating classes within their membership in the event that they want to provide different types of services to different types of members as long as a requisite level of access and functionality is provided to all members.	The Proposed Rule does not propose a new category of registration.

Please note: public comments to Questions 1 to 14 and 19 to 23 and the corresponding CSA responses were published on October 17, 2008 in the Ontario Securities Commission Bulletin at (2008) 31 OSCB 10045. Comments to Questions 15 to 18

	Commenters
1.	Canadian Security Traders Association Inc.
2.	Investment Industry Association of Canada
3.	Raymond James Ltd.
4.	RBC Asset Management Inc.
5.	RBC Dominion Securities Inc.
6.	TD Asset Management
7.	TMX Group
8.	Perimeter Markets Inc.
9.	Scotia Capital
10.	Highstreet Asset Management
11.	CPP Investment Board
12.	Merrill Lynch
13.	TD Newcrest
14.	Bloomberg Tradebook Canada

and the corresponding CSA responses were published on June 20, 2008 in the Ontario Securities Commission Bulletin at (2008) 31 OSCB 6306.