ANNEX F

BACKGROUND ON REGULATION OF TRADING FEE CAPS IN CANADA

Section 6.6.1 of NI 23-101 sets out the active trading fee caps for securities (which include units of exchange traded funds (**ETFs**)). In 2016, they were originally set at CAD 0.0030 per share for securities traded in a continuous auction and priced CAD 1.00 or more, and CAD 0.0004 per share for securities priced below CAD 1.00.[8] The fee caps were imposed because of concerns that marketplaces would take advantage of the order protection rule[9] (**OPR**) to charge high fees for execution of orders that are required to be routed to the marketplace to comply with OPR regardless of the fees charged by the marketplace displaying the better-priced order.[10] The caps were imposed on all visible marketplaces, including ones that were not protected (and therefore not required to be accessed as a result of the OPR) because of a view that caps should be applied equally from a fairness perspective and because of concerns that fees charged and rebates provided by unprotected markets could be set at a level that may encourage inappropriate trading activities and thereby negatively affect market integrity. In addition, although OPR does not apply to unprotected marketplaces, dealers may need to access those marketplaces to comply with best execution obligations.

The CAD 0.0030 fee cap mirrored the fee cap then in place for U.S. marketplaces under the SEC Rule 612. The cap represented an established baseline that was created in the U.S. in the context of similar order protection requirements.

Securities below CAD 1.00

For the cap on active trading fees for securities priced below CAD 1.00, the CSA considered applying the U.S. cap for similarly priced securities, which was 0.3% of the trade price. However, when comparing marketplace fee levels for securities priced under $1.00, trading fees were for the most part already below what would be charged if the U.S. cap was applied. Additionally, imposing a cap applied as a percentage of value traded diverged from conventional billing practices, which are to charge at a per share or unit rate. As a result, the cap for securities priced below CAD 1.00 was set at the highest rate then being charged, which was CAD 0.0004 per share or unit traded. The rationale for not implementing a similar cap as the U.S. for trades in securities priced under CAD 1.00 remains relevant.

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[8] See notice of approval - https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-approval-amendments-national-instrument-23-101-trading-rules-and-companion-policy-23.

[9] Part 6, NI 23-101.

[10] CSA Notice and Request for Comment: Proposed Amendments to NI 23-101 Regarding Order Protection Rule Review, https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-and-request-comment-proposed-amendments-ni-23-101-regarding-order-protection-rule (May 15, 2014)

Non-U.S. Inter-listed Securities

To address concerns that the CAD 0.0030 fee cap appeared high for non-U.S. Inter-listed Securities[11] (whose trading prices are generally lower than Inter-listed Securities), in 2017 fees for non-U.S. Inter-listed Securities were capped at CAD 0.0017 per share for securities priced CAD 1.00 or more. This was done to ensure that the trading fee reflected the value of the security traded. The CAD 0.0030 cap for U.S. Inter-listed Securities represented 1.2 basis points of the volume-weighted average price for those securities. The CAD 0.0017 cap represents the basis point equivalent of the volume-weighted average price for non-U.S. Inter-listed Securities.

Maker-taker and taker-maker fee models

The fee caps only apply to maker-taker fee models[12] and do not apply to inverted (taker-maker) markets, as these do not create the same risk of excessive fees to take advantage of OPR creating captive consumers. The fees the marketplaces charge for posting or providing liquidity will not directly affect a dealer who needs to trade with an order on that marketplace to comply with OPR or best execution; the dealer will either receive a rebate or not be charged a fee.[13] As liquidity providers are not required to post orders on any inverted market, we believe that competitive forces will limit the fees that can be charged by these marketplaces.

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[11]Securities, including ETF units, that are not also listed on a national securities exchange registered under section 6 of the 1934 Act.
[12] The "maker-taker" marketplace fee model charges a fee for the execution of an order that removes liquidity from an order book and pays a rebate to the provider of liquidity for the same transaction.
[13]The size of the fee would indirectly affect the size of any rebate.