

CSA Notice and Request for Comment

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

January 23, 2025

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed amendments to National Instrument 23-101 *Trading Rules* (**NI 23-101**) (**Proposed Amendments**) and accompanying changes to Companion Policy 23-101 *Trading Rules* (**23-101CP**) (**Proposed CP Changes**). The Proposed Amendments and Proposed CP Changes are being published for a 60-day comment period to solicit feedback and, if adopted, will amend section 6.6.1 of NI 23-101 to lower the active trading fee cap¹ applicable to trades in securities that are listed on both a Canadian recognized exchange and a U.S. registered national securities exchange (**U.S. Inter-listed Securities**) and make related changes to 23-101CP.

We are publishing the text of the Proposed Amendments and Proposed CP Changes in Annexes A, B, C and D to this notice, together with certain other relevant information at Annexes E, F and G. The text of the Proposed Amendments and Proposed CP Changes will also be available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca

www.asc.ca

www.bcsc.bc.ca

www.nssc.novascotia.ca

www.fcmb.ca

www.osc.gov.on.ca

www.fcaa.gov.sk.ca

www.mbsecurities.ca

In a related initiative, the Canadian Investment Regulatory Organization (**CIRO**) published for comment a proposal to amend subsection 6.1(1) of the Universal Market Integrity Rules (**UMIR**) to align Canadian trading increments for U.S. Inter-listed Securities with U.S. market trading increments (**Proposed UMIR Amendments**).²

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.

² [CIRO's Proposed Amendments Respecting Trading Increments](#)

Substance and Purpose

The Proposed Amendments would continue to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced trading³ fee caps adopted by the U.S. Securities and Exchange Commission (SEC) on September 18, 2024 and originally planned to be implemented on November 3, 2025. On December 12, 2024, the SEC announced an order granting a partial stay on the implementation of the rules pending judicial review of the proposals by the United States Court of Appeals for the District of Columbia Circuit.

If approved, it is intended that the Proposed Amendments, Proposed CP Changes and Proposed UMIR Amendments would come into force on the implementation date for the SEC rules or as soon as practicable thereafter. The Proposed Amendments and Proposed CP Changes will not come into effect before the SEC's stay is lifted and its rules are implemented.

Background

SEC Proposed Amendments

On December 14, 2022, the SEC published for comment four proposals to change certain fundamental elements of U.S. market structure (**SEC Proposed Amendments**).⁴ Among these were proposals to establish a variable (and in many cases smaller) minimum trading increment for securities (**SEC Tick Size Proposal**)⁵ and, in conjunction, reduce the trading fee caps charged in the U.S. (**SEC Trading Fee Proposal**).

CSA and CIRO staff reviewed the SEC Proposed Amendments and considered their impact on Canadian equity market structure. In October 2023, the CSA and CIRO sought feedback from stakeholders in joint [CSA/CIRO Staff Notice 23-331 Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets \(Staff Notice 23-331\)](#). The purpose of Staff Notice 23-331 was to solicit views and to seek comments on certain aspects of the SEC Proposed Amendments, with a focus on the potential impacts on Canadian capital markets and potential policy responses. Twelve comment letters were received. A summary of comments can be found [here](#).

Generally, commenters were of the view that the most pertinent SEC Proposed Amendments to the Canadian capital markets were the SEC Tick Size Proposal and the SEC Trading Fee Proposal.

Given the interconnectedness of U.S. and Canadian equity markets, most commenters were of the view that Canadian trading increments for U.S. Inter-listed Securities, contained in CIRO's

³ In the U.S., trading fees are known as access fees.

⁴ For background on the four SEC Proposals, refer to the following: [Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders](#); [Regulation Best Execution](#); [Disclosure of Order Execution Information](#); [Order Competition Rule](#)

⁵ SEC Rule 612 sets a minimum trading increment of one cent.

UMIR, should be harmonized with the SEC Tick Size Proposal as finalized. As such, in a related notice, CIRO published for comment the Proposed UMIR Amendments.

In conjunction with the reduction of the minimum trading increments, commenters also broadly supported harmonizing Canadian equity trading fee caps established under NI 23-101 with the SEC Trading Fee Proposal. This is the subject of the Proposed Amendments and Proposed CP Changes.

As part of this notice, we are also publishing in Annex E a detailed summary of comments on Staff Notice 23-331 with respect to SEC Tick Size and Trading Fee Proposals. With respect to other SEC Proposed Amendments – regulation best execution, disclosure of order execution information and an order competition rule – most of the commenters were of the view that these proposals were either not relevant to the Canadian markets or further analysis was required prior to proposing any rule changes. Please refer to the summary of these comments [here](#).

Final SEC Rules

On September 18, 2024, SEC adopted its final rules with respect to the SEC Tick Size Proposal and the SEC Trading Fee Proposal. With respect to the SEC Trading Fee Proposal, for securities priced USD 1.00 or more, the U.S. access fee cap will be lowered to USD 0.001 per share. For U.S. securities priced less than USD 1.00, the U.S. access fee cap will be 0.1% of the quotation price.

The SEC also adopted its final rules with respect to the SEC Tick Size Proposal. As part of CIRO's Proposed UMIR Amendments, the trading increments for specific securities will be adjusted semi-annually to align with increments applicable to U.S. marketplaces.

Summary of the Proposed Amendments and Proposed CP Changes

Subsection 6.6.1(2) of NI 23-101 will be amended to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC. As such, for U.S. Inter-listed Securities priced at CAD 1.00 or more, the trading fee cap will be CAD 0.001 per share. Accompanying changes will be made to section 6.4.1 of 23-101CP.

Background information on the Canadian trading fee cap regime is provided in Annex F.

Non-U.S. Inter-listed Securities

The Proposed Amendments will not apply to non-U.S. Inter-listed Securities – securities that are listed in Canada and could also be listed on any foreign exchange other than a U.S. registered national securities exchange. There is currently an intentional differentiation between the fee

caps for U.S. Inter-listed Securities and non-U.S. Inter-listed Securities. When fee caps were first proposed in 2016, many stakeholders expressed concerns with respect to the U.S.- aligned fee caps being too high and not reflective of the lower average prices of Canadian securities. To address these concerns, a lower fee cap of CAD 0.0017 was proposed and approved for non-U.S. Inter-listed Securities priced at or above CAD 1.00.⁶

In response to Staff Notice 23-331, some commenters suggested considering extending the reduced fee caps to non-U.S. Inter-listed Securities. However, most of these commenters also cautioned against doing so without extensive analysis and consultations. As such, given the importance of maintaining Canadian and U.S. markets harmonized with respect to U.S. Inter-listed Securities, it was decided to focus on such securities for these Proposed Amendments and Proposed CP Changes.

The CSA intend to review the fee caps for non-U.S. Inter-listed Securities but are not proposing any changes at this time pending further analysis.

Related amendments

The Proposed Amendments will include the following related amendments:

- 1) The defined term “inter-listed security” in NI 23-101 will be clarified by adding a reference to U.S. This is being done to align the name of the defined term to its corresponding definition, which only includes those securities inter-listed on a U.S. registered national securities exchange. Also, the term will be made consistent with the analogous definition in the Proposed UMIR Amendments.
- 2) Section 6.6.2 of NI 23-101 will be repealed. Currently, this section is ensuring that once a security ceases to be a U.S. Inter-listed Security, the exchanges have enough time to lower the trading fees provided such fees are higher than a prescribed trading fee cap for non-U.S. Inter-listed Securities. Once the Proposed Amendments are in effect, this section will not be needed as the trading fee cap applicable to U.S. Inter-listed Securities will now be lower than the trading fee cap applicable to non-U.S. Inter-listed Securities.

Alternatives to the Proposed Amendments and Proposed CP Changes

We considered maintaining the current trading fee cap, which is not a viable option as a per-share trading fee that is too high can distort calculations of whether a price on one marketplace is “better” than on another marketplace.

Given that the Canadian equity market is highly integrated with U.S. equity market, and there is significant trading activity in equity securities listed in both Canada and the U.S., concerns arise about potential negative consequences for the Canadian equity market from establishing a trading fee cap for U.S. Inter-listed Securities that is significantly different than comparable

⁶ See notice of approval - https://www.osc.ca/sites/default/files/pdfs/irps/csa_20170126_23-101_noa-amendments.pdf

regulatory requirements in the U.S. Our view is reinforced by the responses to Staff Notice 23-331.

The Proposed Amendments will enable Canadian trading fee caps to remain harmonized with U.S. access fee caps for U.S. Inter-listed Securities at CAD 1.00 or more. As such, the Proposed Amendments are necessary to maintain the competitiveness of our capital markets, so that lower trading fees in the U.S. do not create an incentive for Canadian dealers to direct order flow in U.S. Inter-listed Securities to U.S. marketplaces.

Consultation Questions

Question 1:

- a) Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:
 - i) at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate, or
 - ii) at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?⁷
- b) Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?
- c) Do you support any alternatives not listed above?

Please provide rationale in support of or against any alternatives above.

Question 2: Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.

Question 3: Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?

Question 4: As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.

Anticipated Costs and Benefits of the Proposed Amendments and Proposed CP Changes

OSC staff conducted a costs and benefits analysis of the Proposed Amendments and Proposed CP Changes as detailed in Annex G. This analysis included consultations with Canadian

⁷ The CAD/USD exchange rate is approximately 1.44 at the time of publication

marketplace operators seeking input on the expected costs each marketplace would incur to implement the Proposed Amendments.

In summary, it is anticipated that marketplaces will incur minor costs to comply with the Proposed Amendments, ranging between \$5,700 and \$10,700 per entity. It is also anticipated that a reduction in the trading fee cap could lead to a \$101 million decrease in total fees collected by marketplaces and, depending on the net capture earned by marketplaces, reduced marketplace revenue. However, the net capture earned by marketplaces should not change significantly, as the lower passive rebates paid (\$101 million) should offset the decrease in fees collected. Although we are unable to quantify the impact of many of the benefits of the Proposed Amendments, we anticipate that these benefits might reasonably be expected to be proportionate to the estimated costs to the extent that the Proposed Amendments preserve the relative competitive position of U.S. and Canadian marketplaces.

Unpublished Materials

In developing the Proposed Amendments and Proposed CP Changes, we have not relied on any significant unpublished study, report or other written materials.

Local Matters

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

Annexes

- Annex A – Proposed Amendments to National Instrument 23-101 *Trading Rules*
- Annex B – Proposed Changes to Companion Policy 23-101 *Trading Rules*
- Annex C – Blackline Showing Proposed Amendments to National Instrument 23-101 *Trading Rules*
- Annex D - Blackline Showing Proposed Changes to Companion Policy 23-101 *Trading Rules*
- Annex E – Summary of responses to Staff Notice 23-331 relating to SEC Tick Size and Trading Fee Proposals
- Annex F – Background on regulation of trading fee caps in Canada

Authority of the Proposed Amendments and Proposed CP Changes

The securities legislation in each of the CSA jurisdictions provides the securities regulatory authority with rule-making or regulatory authority in respect of the subject matter of the Proposed Amendments.

In Ontario, the Proposed Amendments and Proposed CP Changes are being made under the following provisions of the *Securities Act* (Ontario):

- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.

How to Provide Comments

We welcome your comments on the Proposed Amendments and Proposed CP Changes and invite comments on the specific questions written under title “Consultation Questions”. Please provide your comments in writing by March 24, 2025. Please send your comments by email, attached in Microsoft Word format.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Please address your submission to the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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Fax: 416-593-2318
Email: <mailto:comment@osc.gov.on.ca>

M^e Philippe Lebel
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Autorité des marchés financiers
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