

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

**PART 1      AMENDMENTS**

1.1      Amendments

(1)      This amends Companion Policy 23-101CP.

(2)      Part 2 is amended by:

(a)      striking out the title of Part 2 and substituting “APPLICATION AND DEFINITIONS”; and

(b)      adding the following after section 2.1:

**“2.2 Definition of Automated Functionality** – Section 1.1 of the Instrument includes a definition of “automated functionality” which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of fill-or-kill orders.

**2.3 Definition of Calculated Price Order** – The definition of “calculated price order” refers to any order where the price is not known at the time of order entry and is based on, but not necessarily equal to, the price of an exchange-traded security at the time of execution. This includes the following orders:

(a)      a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b)      an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c)      a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

- (d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and
- (e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider.

**2.4 Definition of Inter-Market Sweep Order** – An inter-market sweep order must be marked to inform the receiving marketplace that it can be immediately executed without reference to better-priced orders displayed by other marketplaces. It may be marked “ISO” by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one inter-market sweep order in order to execute against the best protected bid or best protected offer and any inferior-priced orders. In addition, marketplace participants may send a single inter-market sweep order to execute against the best protected bid or best protected offer.

**2.5 Definition of Non-Standard Order** – The definition of “non-standard order” refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

**2.6 Definition of Protected Order** – (1) A protected order is defined to be a “protected bid or protected offer”. A “protected bid” or “protected offer” is an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term “displayed on a marketplace” refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are “reserve” or hidden volumes are not considered to be “displayed on a marketplace”. The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as “orders” that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be “protected orders” under the definition in the Instrument and do not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a “special terms

order” on a marketplace, if it can be executed against existing orders despite the special term, then the trade-through obligation applies.”.

- (3) Part 4 is amended by adding the following as section 4.2:

**4.2 Reporting Requirements Applicable to Dealers** – (1) Section 4.4 of the Instrument requires disclosure of the order routing practices of dealers that route orders for clients. As dealers owe a duty of best execution to their clients, dealers should review their order routing practices periodically to assure they are meeting this responsibility. It is expected that the information required by section 4.4 of the Instrument will bring transparency to this process and provide clients with the opportunity to monitor a dealer’s order routing activity. On request by a client, a dealer is required to disclose where an individual client’s orders were routed.”.

- (4) Part 6 is repealed and replaced with the following:

**“PART 6 – TRADE-THROUGH PROTECTION**

**6.1 Trade-through Protection** – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace’s trade execution algorithms (by not allowing a trade-through to occur), or by establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities.

(3) In certain circumstances, a marketplace participant should create policies and procedures and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an inter-market sweep order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively. If a marketplace participant regularly uses inter-market sweep orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so

that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

(4) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace.

(5) Trade-through protection applies whenever two or more marketplaces with displayed protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

**6.2 List of Trade-throughs** – Section 6.2 of the Instrument sets forth a list of “permitted” trade-throughs that are primarily designed to achieve workable trade-through protection and to facilitate certain trading strategies and order types that are useful to investors.

- (a) (i) Paragraph 6.2(a) of the Instrument would apply where there are reasonable grounds to believe that a marketplace is experiencing a failure or malfunction of its systems or equipment as well as any material delay (systems issues). If a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).
- (ii) The marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants and regulation services providers when the failure, malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant that has reasonable grounds to believe that the marketplace is having systems issues may nevertheless rely on paragraph 6.2(a). This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its belief. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not

actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a).

- (b) Paragraphs 6.2(b) and 6.2(c) of the Instrument contemplate that a marketplace would immediately execute any order identified as an inter-market sweep order. A marketplace that receives an inter-market sweep order would not need to delay its execution to ensure the execution of better-priced orders at other marketplaces. A marketplace participant may send an inter-market sweep order to a marketplace for execution.
- (c) Paragraph 6.2(d) of the Instrument allows for a transaction if the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. The inclusion of “flickering orders” in paragraph 6.2(d) provides some relief due to rapidly moving markets.
- (d) The basis for the inclusion of calculated price orders, non-standard orders and closing price orders in paragraph 6.2(e) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated price orders and closing price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.
- (e) Paragraph 6.2(f) of the Instrument includes a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With trade-through protection only applying to displayed orders or parts of orders, hidden or reserve orders will remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of this paragraph would be a violation of section 6.5 of the Instrument.

**6.3 Locked and Crossed Markets** – Section 6.5 of the Instrument provides that a marketplace participant cannot intentionally lock or cross a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order to lock or cross a marketplace or the market as a whole (for example, to take advantage of rebates offered by a particular marketplace instead of executing against already existing orders). It is not intended to prohibit the use of marketable limit orders. Paragraph 6.2(f) allows for the resolution of crossed markets that occur unintentionally.

**6.4 Anti-Avoidance Provision** – Section 6.7 of the Instrument prohibits a person or company from routing an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.”.

(5) Part 7 is amended by:

(a) striking out “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” and substituting “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets” in section 7.3; and

(b) adding the following as section 7.5:

**“7.5 Coordination of Monitoring and Enforcement** – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination may include having regulation services providers monitor trading on all marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting the terms of its own rules or policies and procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, and audit trail requirements. If a recognized exchange or recognized quotation and trade reporting system has retained a regulation services provider, the agreement to coordinate required in section 7.5 of the Instrument should be reflected in the agreement referred to in section 7.2 or section 7.4 respectively. If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities.

(2) Currently, only IIROC is the regulation services provider for both exchange-traded and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.”.