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**National Instrument 23-101
Trading Rules**

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**National Instrument 23-101
Trading Rules**

PART 1 DEFINITION AND INTERPRETATION

1.1 Definition – In this Instrument

"NI 21-101" means National Instrument 21-101 Marketplace Operation;

"automated functionality" means the ability to:

- (a) permit an incoming order that has been entered on the marketplace electronically to be marked as fill-or-kill;
- (b) immediately and automatically execute an order marked as fill-or-kill against the displayed volume;
- (c) immediately and automatically cancel any unexecuted portion of an order marked as fill-or-kill without routing the order elsewhere;
- (d) immediately and automatically transmit a response to the sender of an order marked as fill-or-kill indicating the action taken with respect to the order; and
- (e) immediately and automatically display information that updates the displayed order to reflect any change to its material terms;

"best execution" means the most advantageous execution terms reasonably available under the circumstances;

"calculated price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace if the price of that security

- (a) is not known at the time of order entry; and
- (b) is to be calculated based on, but will not necessarily be equal to, the price of that security at the time of execution;

"closing price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is

- (a) entered on a marketplace on a trading day; and
- (b) subject to the conditions that
 - (i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price;

"inter-market sweep order" means a limit order for the purchase or sale of an exchange-traded security, other than a derivative,

- (a) entered on or routed to a marketplace to be executed against a protected order; and
- (b) identified as an inter-market sweep order; and

at the same time that it is entered or routed, one or more additional limit orders are routed, as necessary, to a marketplace to execute against the displayed volume of any other protected order on that marketplace with a better price to the protected order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace that is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than a derivative,

- (a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected offer” means an offer for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected order” means a protected bid or protected offer; and

“trade-through” means the execution of a trade at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) the case of a sale, lower than any protected bid.

1.2 Interpretation – NI 21-101 –Terms defined or interpreted in NI 21-101 and used in this Instrument have the respective meanings ascribed to them in NI 21-101.

PART 2 APPLICATION OF THIS INSTRUMENT

2.1 Application of this Instrument – A person or company is exempt from subsection 3.1(1) and Parts 4 and 5 if the person or company complies with similar requirements established by

- (a) a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) directly;
- (b) a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) directly; or
- (c) a regulation services provider.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) A person or company shall not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in or acquisition of a security or any act, practice or course of conduct, if the person or company knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative of that security; or
- (b) perpetrates a fraud on any person or company.

(2) In Alberta, British Columbia, Ontario, Quebec and Saskatchewan, instead of subsection (1), the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply.

PART 4 BEST EXECUTION

4.1 Application of this Part – This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

4.2 Best Execution – A dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client.

4.3 Order and Trade Information – To satisfy the requirements in section 4.2, a dealer or adviser shall make reasonable efforts to use facilities providing information regarding orders and trades.

4.4 Reporting of Order Routing by Dealer – (1) A dealer shall publish, in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a quarterly report on its routing of orders when acting as agent during that quarter and shall include the following information if securities are traded on more than one marketplace:

(a) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace

(i) at the direction or instruction of the client, and

(ii) otherwise determined by the dealer; and

(b) a discussion of any material aspects of a dealer's relationship with a marketplace including a description of any arrangements.

(2) A dealer shall, within 15 days of receiving a request from a client, disclose to the client the identity of any marketplace where the client's orders were routed for execution in the six months before the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the executions, if any, that resulted from such orders.

(3) This section is effective on [insert date six months after Effective Date].

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – If a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 21-101 makes a decision to prohibit trading in a particular security for a regulatory purpose, no person or company shall execute a trade for the purchase or sale of that security during the period in which the prohibition is in place.

PART 6 TRADING HOURS

6.1 Trading Hours – ~~Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.~~

PART 6 TRADE-THROUGH PROTECTION

6.1 Trade-through Protection – (1) A marketplace shall establish, maintain and enforce written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs listed in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that constitutes a trade-through listed in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required by subsection (1) and shall take prompt action to remedy any deficiencies in such policies and procedures.

(3) At least 45 days before implementation, a marketplace shall provide to the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any material amendments to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) the transaction that constituted the trade-through was executed when there were reasonable grounds to believe that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment;

(b) the transaction that constituted the trade-through was the execution of an order identified as an inter-market sweep order;

(c) the transaction that constituted the trade-through was executed by a marketplace that simultaneously routed an inter-market sweep order to execute against the total displayed volume of any protected order that was traded through;

(d) the marketplace displaying the protected order that was traded through had displayed, immediately before the execution of the transaction that constituted the trade-through, a protected order with a price that was equal or inferior to the price of the trade-through transaction;

(e) the transaction that constituted the trade-through was the result of the execution of

(i) a non-standard order;

(ii) a calculated price order; or

(iii) a closing price order; and

(f) the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer.

6.3 Inter-market Sweep Order Requirements – A marketplace or marketplace participant responsible for the routing of an inter-market sweep order must take all reasonable steps to ensure that the order is an inter-market sweep order.

6.4 Systems or Equipment Failure, Malfunction or Material Delay – (1) A marketplace shall immediately notify all regulation services providers, its marketplace participants and other marketplaces if there is a failure, malfunction or material delay of its systems or equipment.

(2) When executing a transaction that falls within paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it has reasonable grounds to believe it is experiencing a failure, malfunction or material delay of its systems or equipment;

(b) all regulation services providers; and

(c) its marketplace participants.

(3) When a marketplace participant has reasonable grounds to believe that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment; and

(b) all regulation services providers.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally lock or cross a particular marketplace or the market as a whole by

(a) entering on a marketplace a bid at a price that is the same as or higher than the best protected offer; or

(b) entering on a marketplace an offer at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – Each marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall route 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.

PART 7 MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM

7.1 Requirements for a Recognized Exchange

- (1) A recognized exchange shall set requirements governing the conduct of its members, including requirements that the members will conduct trading activities in compliance with this Instrument.
- (2) A recognized exchange shall monitor the conduct of its members and enforce the requirements set under subsection (1), either
 - (a) directly, or
 - (b) indirectly through a regulation services provider.

7.2 Agreement between a Recognized Exchange and a Regulation Services Provider – A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider that provides

- (a) that the regulation services provider will monitor the conduct of the members of a recognized exchange;
- (b) that the regulation services provider will enforce the requirements set under subsection 7.1(1);
- (c) ~~that the recognized exchange will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange; and~~
- (d) that the recognized exchange will comply with all orders or directions made by the regulation services provider.

7.3 Requirements for a Recognized Quotation and Trade Reporting System

- (1) A recognized quotation and trade reporting system shall set requirements governing the conduct of its users, including requirements that the users will conduct trading activities in compliance with this Instrument.
- (2) A recognized quotation and trade reporting system shall monitor the conduct of its users and enforce the requirements set under subsection (1) either
 - (a) directly; or
 - (b) indirectly through a regulation services provider.

7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider – A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider that provides

- (a) that the regulation services provider will monitor the conduct of the users of a recognized quotation and trade reporting system;
- (b) that the regulation services provider will enforce the requirements set under subsection 7.3(1);
- (c) ~~that the recognized quotation and trade reporting system will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized quotation and trade reporting system; and~~
- (d) that the recognized quotation and trade reporting system will comply with all orders or directions made by the regulation services provider.

7.5 Co-ordination of Monitoring and Enforcement – A regulation services provider, recognized exchange, or

recognized quotation and trade reporting system shall enter into a written agreement with all other regulation services providers, recognized exchanges, and recognized quotation and trade reporting systems to coordinate monitoring and enforcement of the requirements set ~~under this Part~~ under Parts 7 and 8.

PART 8 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS

8.1 Pre-condition to Trading on an ATS – An ATS shall not execute a subscriber's order to buy or sell securities unless the ATS has executed and is subject to the written agreements required by sections 8.3 and 8.4.

8.2 Requirements Set by a Regulation Services Provider for an ATS

(1) A regulation services provider shall set requirements governing an ATS and its subscribers, including requirements that the ATS and its subscribers will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an ATS and its subscribers and shall enforce the requirements set under subsection (1).

8.3 Agreement between an ATS and a Regulation Services Provider – An ATS and a regulation services provider shall enter into a written agreement that provides

- (a) that the ATS will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the regulation services provider will monitor the conduct of the ATS and its subscribers;
- (c) that the regulation services provider will enforce the requirements set under subsection 8.2(1);
- (d) ~~that the ATS will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of ATSs and marketplace participants; and~~
- (e) that the ATS will comply with all orders or directions made by the regulation services provider.

8.4 Agreement between an ATS and its Subscriber – An ATS and its subscriber shall enter into a written agreement that provides

- (a) that the subscriber will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the subscriber acknowledges that the regulation services provider will monitor the conduct of the subscriber and enforce the requirements set under subsection 8.2(1);
- (c) that the subscriber will comply with all orders or directions made by the regulation services provider in its capacity as a regulation services provider, including orders excluding the subscriber from trading on any marketplace.

8.5 [Repealed]

PART 9 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTERDEALER BOND BROKER

9.1 Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker

(1) A regulation services provider shall set requirements governing an inter-dealer bond broker, including requirements that the inter-dealer bond broker will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an inter-dealer bond broker and shall enforce the requirements set under subsection (1).

9.2 Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider – An inter-dealer bond broker and a regulation services provider shall enter into a written agreement that provides

- (a) that the inter-dealer bond broker will conduct its trading activities in compliance with the requirements set under subsection 9.1(1);
- (b) that the regulation services provider will monitor the conduct of the inter-dealer bond broker;
- (c) that the regulation services provider will enforce the requirements set under subsection 9.1(1); and
- (d) that the inter-dealer bond broker will comply with all orders or directions made by the regulation services provider.

9.3 Exemption for an Inter-Dealer Bond Broker

- (1) Sections 9.1 and 9.2 do not apply to an inter-dealer bond broker, if the inter-dealer bond broker complies with the requirements of ~~IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets~~ IROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended.
- (2) [Repealed]

PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE

10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace

- (1) A regulation services provider shall set requirements governing a dealer executing trades of unlisted debt securities outside of a marketplace, including requirements that the dealer will conduct trading activities in compliance with this Instrument.
- (2) A regulation services provider shall monitor the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace and shall enforce the requirements set under subsection (1).

10.2 Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider – A dealer executing trades of unlisted debt securities outside of a marketplace shall enter into an agreement with a regulation services provider that provides

- (a) that the dealer will conduct its trading activities in compliance with the requirements set under subsection 10.1(1);
- (b) that the regulation services provider will monitor the conduct of the dealer;
- (c) that the regulation services provider will enforce the requirements set under subsection 10.1(1); and
- (d) that the dealer will comply with all orders or directions made by the regulation services provider.

10.3 [Repealed]

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Application of this Part

- (1) This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.
- (2) A dealer or inter-dealer bond broker is exempt from this Part if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.

11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers

- (1) **Recording Requirements for Receipt or Origination of an Order** – Immediately following the receipt or origination of an order for equity, fixed income and other securities identified by a regulation services provider, a

dealer and inter-dealer bond broker shall record specific information relating to that order including,

- (a) the order identifier;
- (b) the dealer or inter-dealer bond broker identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order, if applicable;
- (e) the number of securities to which the order applies;
- (f) the strike date and strike price, if applicable;
- (g) whether the order is a buy or sell order;
- (h) whether the order is a short sale order, if applicable;
- (i) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade;
- (j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;
- (k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;
- (l) the client account number or client identifier;
- (m) the date and time that the order expires;
- (n) whether the order is an intentional cross;
- (o) whether the order is a jitney and if so, the underlying broker identifier;
- (p) any client instructions or consents respecting the handling or trading of the order, if applicable;
- (q) the currency of the order;
- (r) an insider marker; and
- (s) any other markers required by a regulation services provider.

(2) **Recording Requirements for Transmission of an Order** – Immediately following the transmission of an order for securities to a dealer, inter-dealer bond broker or a marketplace, a dealer or inter-dealer bond broker transmitting the order shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the dealer or inter-dealer bond broker identifier assigned to the dealer or inter-dealer bond broker transmitting the order and the identifier assigned to the dealer, inter-dealer bond broker or marketplace to which the order is transmitted; and
- (b) the date and time the order is transmitted.

(3) **Recording Requirements for Variation, Correction or Cancellation of an Order** – Immediately following the variation, correction or cancellation of an order for securities, a dealer or inter-dealer bond broker shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the date and time the variation, correction or cancellation was originated or received;
- (b) whether the order was varied, corrected or cancelled on the instructions of the client, the dealer or the inter-dealer bond broker;
- (c) in the case of variation or correction, any of the information required by subsection (1) which has been changed; and
- (d) the date and time the variation, correction or cancellation of the order is entered.

(4) **Recording Requirements for Execution of an Order** – Immediately following the execution of an order for securities, the dealer or inter-dealer bond broker shall add to the record maintained in accordance with this section specific information relating to that order including,

- (a) the identifier of the marketplace where the order was executed or the identifier of the dealer or inter-dealer bond broker executing the order if the order was not executed on a marketplace;
- (b) the date and time of the execution of the order;
- (c) whether the order was fully or partially executed;
- (d) the number of securities bought or sold;
- (e) whether the transaction was a cross;
- (f) whether the dealer has executed the order as principal;
- (g) the commission charged and all other transaction fees; and
- (h) the price at which the order was executed, including mark-up or mark-down.

~~(5)~~ [Repealed]

~~(6)~~ [Repealed]

~~(75)~~ **Record Preservation Requirements** – A dealer and an inter-dealer bond broker shall keep all records for a period of not less than seven years from the creation of the record referred to in this section, and for the first two years in a readily accessible location.

~~(6)~~ [Repealed]

11.3 Transmission in Electronic Form – A dealer and inter-dealer bond broker shall transmit

- (a) to a regulation services provider the information required by the regulation services provider, within ten business days, in electronic form; and
- (b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

PART 12 EXEMPTION

12.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 13 EFFECTIVE DATE

13.1 Effective Date – This Instrument comes into force on December 1, 2001.