

**Amendments to
National Instrument 23-101 *Trading Rules***

PART 1 AMENDMENT

1.1 Amendment

(1) This Instrument amends National Instrument 23-101 *Trading Rules*.

(2) Section 1.1 is amended by adding the following definitions:

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

“dealer-sponsored participant” means a person or company who has dealer-sponsored access to a marketplace and is an “Institutional Customer” as defined by IDA Policy No. 4 *Minimum Standards for Institutional Account Opening, Operation and Supervision*, as amended, and includes the representatives of the person or company;

“dealer-sponsored access” means access to the trading system of a marketplace granted by a dealer who is a member, user or subscriber to a client that is either direct or by means of an electronic connection through the order routing system of the dealer;

“excluded order” means an order

- (a) that is subject to a term or condition other than on price;
- (b) where the price cannot be determined at the time of order entry; or
- (c) where the price is determined by reference to prices achieved in one or more derivatives transactions;”.

(3) Section 4.2 is repealed and the following is substituted:

“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 Information – To satisfy the requirements in section 4.2, a dealer or adviser shall make reasonable efforts to use facilities providing information regarding orders.”.

(4) Section 5.1 is amended by adding “for a regulatory purpose” after “trading in a particular security”.

(5) Part 7 is amended by:

(a) repealing subsection 7.1(1) and substituting the following:

“7.1 Requirements for a Recognized Exchange - (1) A recognized exchange shall

(a) set requirements governing the conduct of its members and dealer-sponsored participants, including

(i) requirements that the members and dealer-sponsored participants will conduct trading activities in compliance with this Instrument; and

(ii) requirements governing the responsibilities of the members that provide access to dealer-sponsored participants to maintain a list of dealer-sponsored participants and to review and report to the recognized exchange or, if applicable, to the regulation services provider, on conduct of dealer-sponsored participants that is or appears to be inconsistent with the requirements set under this subsection;

(b) monitor the conduct of its members and dealer-sponsored participants and enforce the requirements set under paragraph (a); and

(c) maintain a list of all dealer-sponsored participants of the recognized exchange.”;

(b) adding in subsection 7.1(2) and section 7.2 “and dealer-sponsored participants” after each reference to “members”;

(c) repealing subsection 7.3(1) and substituting the following:

“7.3 Requirements for a Recognized Quotation and Trade Reporting System -

(1) A recognized quotation and trade reporting system shall

(a) set requirements governing the conduct of its users and dealer-sponsored participants, including

(i) requirements that the users and dealer-sponsored participants will conduct trading activities in compliance with this Instrument; and

(ii) requirements governing the responsibilities of the users that provide access to dealer-sponsored participants to maintain a list of

dealer-sponsored participants and to review and report to the recognized quotation and trade reporting system or, if applicable, the regulation services provider on conduct of dealer-sponsored participants that is or appears to be inconsistent with the requirements set under this subsection;

- (b) monitor the conduct of its users and dealer-sponsored participants and enforce the requirements set under paragraph (a); and
- (c) maintain a list of all dealer-sponsored participants of the recognized quotation and trade reporting system.”;
- (d) adding in section 7.4 “and dealer-sponsored participants” after each reference to “users”;
- (e) adding the following sections after section 7.5:

“7.6 Agreement between a Recognized Exchange, Recognized Quotation and Trade Reporting System or Regulation Services Provider and a Dealer-Sponsored Participant – (1) A recognized exchange, recognized quotation and trade reporting system or regulation services provider that monitors the conduct of a dealer-sponsored participant on behalf of a recognized exchange or recognized quotation and trade reporting system shall enter into a written agreement with the dealer-sponsored participant that provides

- (a) that the dealer-sponsored participant will conduct its trading activities in compliance with the requirements set under subsection 7.1(1) or 7.3(1), as applicable;
- (b) that the dealer-sponsored participant acknowledges that the recognized exchange, recognized quotation and trade reporting system or regulation services provider will monitor the conduct of the dealer-sponsored participant and enforce the requirements set under subsection 7.1(1) or 7.3(1), as applicable;
- (c) that the dealer-sponsored participant will comply with all orders or directions made by the recognized exchange, recognized quotation and trade reporting system or regulation services provider, including orders excluding the dealer-sponsored participant from trading on any marketplace; and
- (d) that a representative of the dealer-sponsored participant entering orders on the recognized exchange or recognized quotation and trade reporting system has successfully completed:

- (i) the Trader Training Course examination of the Canadian Securities Institute; or
- (ii) such other examinations relating to courses or training as is acceptable to the securities regulatory authority and the recognized exchange, recognized quotation and trade reporting system, regulation services provider or self-regulatory entity.

(2) Paragraph (1)(d) does not apply until [insert date - one year from the effective date of the amendment].

7.7 Requirements for Members and Users with respect to Dealer-Sponsored Participants – Members of a recognized exchange or users of a quotation and trade reporting system that provide access to dealer-sponsored participants shall:

- (a) maintain a list of dealer-sponsored participants to whom they have provided access; and
- (b) review and report to the recognized exchange, recognized quotation and trade reporting system or, where applicable, the regulation services provider, conduct of dealer-sponsored participants that is or appears to be inconsistent with the requirements set in subsection 7.1(1) or 7.3(1), as applicable.

7.8 Training Requirements – A recognized exchange or recognized quotation and trade reporting system shall ensure that a dealer-sponsored participant granted access by a member or user is trained in the requirements set by the recognized exchange, recognized quotation and trade reporting system or regulation services provider.

7.9 Pre-condition to trading on a Recognized Exchange or Recognized Quotation and Trade Reporting System - (1) A recognized exchange or recognized quotation and trade reporting system shall not execute an order by a member or user for a dealer-sponsored participant unless the dealer-sponsored participant has executed the written agreement required by section 7.6.

(2) Subsection (1) does not apply until [insert date – six months from the effective date of the amendment].

7.10 Restriction on Dealer-Sponsored Access – A dealer-sponsored participant to a recognized exchange or a recognized quotation and trade reporting system shall not provide dealer-sponsored access to that exchange or quotation and trade reporting system.”.

- (6) Part 8 is amended by:
 - (a) repealing the title and substituting “Monitoring and Enforcement Requirements for an ATS, its Subscribers and Dealer-Sponsored Participants”; and
 - (b) repealing sections 8.1 to 8.4 and substituting the following:

“8.1 Requirements Set by a Regulation Services Provider for an ATS - (1) A regulation services provider shall set requirements governing an ATS, its subscribers and dealer-sponsored participants, including,

- (a) requirements that the ATS, its subscribers and dealer-sponsored participants will conduct trading activities in compliance with this Instrument, and
- (b) requirements regarding the ATS’ responsibilities to maintain a list of dealer-sponsored participants and to review and report to the regulation services provider on conduct of its subscribers and its dealer-sponsored participants that is or appears to be inconsistent with the requirements set in this subsection.

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

(3) Subsection (2) applies to an ATS that ceases to carry on business as an ATS and its representatives, its subscribers, its dealer-sponsored participants and its former subscribers and its former dealer-sponsored participants with respect to conduct that occurred while that ATS, its representatives, its subscribers or its dealer-sponsored participants were subject to the requirements set by a regulation services provider.

8.2 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 activities in compliance with the requirements set under subsection 8.1(1);
- (b) that the regulation services provider will monitor the conduct of the ATS, its subscribers and its dealer-sponsored participants;
- (c) that the regulation services provider will enforce the requirements set under subsection 8.1(1);

- (d) that the ATS will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and
- (e) that the ATS will comply with all orders or directions made by the regulation services provider.

8.3 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 trading activities in compliance with the requirements set under subsection 8.1(1);
- (b) that the subscriber acknowledges that the regulation services provider will monitor the conduct of the subscriber and any dealer-sponsored participant to whom the subscriber has granted dealer-sponsored access and enforce the requirements set under subsection 8.1(1); and
- (c) that the subscriber will comply with all orders or directions made by the regulation services provider, including orders excluding the subscriber or dealer-sponsored participant from trading on any marketplace.

8.4 Agreement between a Regulation Services Provider and an ATS Subscriber or Dealer-Sponsored Participant – (1) A regulation services provider and a subscriber to an ATS or a dealer-sponsored participant to an ATS shall enter into a written agreement that provides

- (a) that the subscriber or dealer-sponsored participant will conduct trading activities in compliance with the requirements set under subsection 8.1(1);
- (b) that the subscriber or dealer-sponsored participant acknowledges that the regulation services provider will monitor the conduct of the subscriber or dealer-sponsored participant and enforce the requirements set under subsection 8.1(1);
- (c) that the subscriber or dealer-sponsored participant will comply with all orders or directions made by the regulation services provider, including orders excluding the subscriber or dealer-sponsored participant from trading on any marketplace; and
- (d) that any representative of the subscriber or dealer-sponsored participant entering orders has successfully completed:
 - (i) the Trader Training Course examination of the Canadian Securities Institute; or

- (ii) such other examinations relating to courses or training as is acceptable to the securities regulatory authority and the regulation services provider or self-regulatory entity.

(2) Paragraph (1)(d) does not apply until [insert date – one year from the effective date of the amendment].

8.5 Training Requirements – An ATS shall ensure that its subscribers and its dealer-sponsored participants are trained in the requirements set by the regulation services provider.

8.6 Requirements for Subscribers with respect to Dealer-Sponsored Participants – Subscribers to an ATS that provide access to dealer-sponsored participants shall:

- (a) maintain a list of dealer-sponsored participants to whom they have provided access; and
- (b) review and report to the regulation services provider conduct of dealer-sponsored participants that is or appears to be inconsistent with the requirements set in subsection 8.1(1).

8.7 Pre-condition to trading on an ATS – (1) An ATS shall not execute an order for a subscriber unless,

- (a) the ATS has executed the written agreements required by sections 8.2 and 8.3; and
- (b) its subscribers or dealer-sponsored participants have entered into the written agreement required by section 8.4.

(2) Paragraph (1)(b) does not apply until [insert date – six months from the effective date of the amendment].

8.8 Restriction on Dealer-Sponsored Access – A dealer-sponsored participant to an ATS shall not provide dealer-sponsored access to that ATS.”.

- (7) Section 9.1 is amended by adding “and that the inter-dealer bond broker has the responsibility to review and report to the regulation services provider on conduct of its customers that is or appears to be inconsistent with these requirements” after “with this Instrument”.
- (8) Part 11 is amended by:
 - (a) repealing subsections 11.2(5) and (6);

(b) adding the following after section 11.2:

“11.2.1 Transmission in Electronic Form – (1) 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.

(2) The record kept by the dealer and inter-dealer bond broker under subsections 11.2(1) through 11.2(4) and the transmission of that information to a securities regulatory authority or to a regulation services provider under subsection (1) shall be in the electronic form specified in a rule by the securities regulatory authority, a regulation services provider or a self-regulatory entity by January 1, 2010.”.

(9) The following Part is added after Part 11:

“Part 11.1 -- Reporting Requirements Applicable to Dealers

11.1.1 Reporting of order routing by dealer – (1) Each dealer shall make publicly available each calendar quarter a report on its routing of orders when acting as agent during that quarter and shall include the following information reported as a monthly average, where applicable, where securities are traded on multiple marketplaces

- (a) the percentage of total client orders and the percentages that were market orders, limit orders and other order types;
- (b) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace; and
- (c) a discussion of any material aspects of a dealer’s relationship with a marketplace including a description of any arrangements.

(2) Each dealer shall, on request, disclose to its client the identity of the marketplaces where the client’s orders were routed for execution in the six months prior to the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the transactions, if any, that resulted from such orders.

(3) Subsection (1) does not apply

- (a) to orders entered by a dealer-sponsored participant, or
- (b) where the client has directed that the dealer route the order to a specific marketplace.”.