

National Instrument 23-103
Electronic Trading and Direct Electronic Access to Marketplaces

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**PART 1
DEFINITIONS AND INTERPRETATION**

1. Definitions

In this Instrument

“automated order system” means any system used by a marketplace participant or a client of a marketplace participant to automatically generate orders on a pre-determined basis;

“direct electronic access” means the access to a marketplace provided to a client of a participant dealer through which the client transmits orders, directly or indirectly, to the marketplace’s execution systems under a participant dealer’s marketplace participant identifier without re-entry or additional order management by the participant dealer;

“DEA client” means a client who is granted direct electronic access by a participant dealer;

“DEA client identifier” means a unique client identifier assigned to a DEA client by a participant dealer;

“marketplace participant identifier” means the unique identifier assigned to a marketplace participant to access a marketplace;

“marketplace and regulatory requirements” means

- (a) the rules, policies or other similar instruments or requirements set by a marketplace respecting the method of trading by marketplace participants, including order entry requirements, the use of algorithms, order types and features and any other requirements governing the execution of trades on the system;
- (b) any applicable requirements in Canadian securities legislation; and
- (c) any applicable requirements set by a recognized exchange, a recognized quotation and trade reporting system or a regulation services provider pursuant to section 7.1, 7.3 or 8.2 of NI 23-101 respectively;

“NI 23-101” means National Instrument 23-101 *Trading Rules*;

“NI 31-103” means National Instrument 31-103 *Registration Requirements and Exemptions*;

“participant dealer” means a marketplace participant that is an investment dealer.

2. Interpretation

A term defined or interpreted in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation*, or NI 31-103 and used in this Instrument has the respective meaning ascribed to it in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation* or NI 31-103.

PART 2 REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

3. Risk Management and Supervisory Controls, Policies and Procedures

- (1) A marketplace participant must:
 - (a) establish, maintain and ensure compliance with appropriate risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with direct electronic access;
 - (b) record the policies and procedures required by paragraph (a) and maintain a description of its risk management and supervisory controls in written form.

- (2) The risk management and supervisory controls, policies and procedures required in subsection (1) must be designed to ensure all orders are monitored and include
 - (a) automated pre-trade controls; and
 - (b) regular post-trade monitoring.
- (3) The risk management and supervisory controls, policies and procedures required in subsection (1) must
 - (a) systematically limit the financial exposure of the marketplace participant, including:
 - (i) preventing the entry of one or more orders that would result in exceeding appropriate pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its DEA client;
 - (ii) preventing the entry of one or more orders that exceed appropriate price or size parameters;
 - (b) ensure compliance with applicable marketplace and regulatory requirements, including:
 - (i) preventing the entry of orders that do not comply with all applicable marketplace and regulatory requirements that must be satisfied on a pre-order entry basis;
 - (ii) limiting the entry of orders to securities that a marketplace participant or, if applicable, its DEA client, is authorized to trade;
 - (iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant;
 - (iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, without limitation, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its DEA client, to a marketplace;
 - (c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its DEA client;
 - (d) enable the marketplace participant to immediately suspend or terminate any direct electronic access granted to a DEA client; and
 - (e) ensure that the entry of orders does not interfere with fair and orderly markets.
- (4) The risk management and supervisory controls, policies and procedures established pursuant to this section, including those provided by a third party, must be under the direct and exclusive control of the marketplace participant, subject to section 4 below.
- (5) A third party that provides risk management and supervisory controls, policies and procedures to a marketplace participant must be independent from each DEA client of that marketplace participant.
- (6) A marketplace participant must:
 - (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and
 - (b) document and promptly remedy any deficiencies.
- (7) Where a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace participant must:
 - (a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and

- (b) document any deficiencies and ensure that the deficiencies are promptly remedied.

4. Allocation of Control over Risk Management and Supervisory Controls, Policies and Procedures

A participant dealer may reasonably allocate control over specific risk management and supervisory controls, policies and procedures required under subsection 3(1) to an investment dealer if:

- (a) the participant dealer has a reasonable basis for determining that such investment dealer, based on its relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively implement the controls, policies and procedures;
- (b) a description of the allocation of control over specific risk management and supervisory controls, policies and procedures is set out in a written agreement between the participant dealer and investment dealer;
- (c) the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's risk management and supervisory controls, policies and procedures prior to allocating control;
- (d) the participant dealer
 - (i) regularly assesses the adequacy and effectiveness of the risk management and supervisory controls, policies and procedures over which control has been allocated to the investment dealer;
 - (ii) documents any deficiencies and ensures that the deficiencies are promptly remedied; and
- (e) the participant dealer provides the investment dealer with the immediate order and trade information of the DEA client that the participant dealer receives pursuant to subparagraph 3(3)(b)(iv).

5. Use of Automated Order Systems

- (1) The use of automated order systems by a marketplace participant or any client, including a DEA client, must not interfere with fair and orderly markets.
- (2) As part of the risk management and supervisory controls, policies and procedures required under subsection 3(1), a marketplace participant must:
 - (a) have the necessary knowledge and understanding of any automated order system used by the marketplace participant or any client, including a DEA client, in order to identify and manage its risks associated with the use of the automated order system;
 - (b) ensure that each automated order system is regularly, and at least annually, tested in accordance with prudent business practices; and
 - (c) have controls in place to immediately and at any time disable the automated order system to prevent orders generated by the automated order system from reaching a marketplace.

PART 3 REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

6. Provision of Direct Electronic Access

- (1) Only a participant dealer may provide direct electronic access.
- (2) A participant dealer may not provide direct electronic access to a registrant, unless the registrant is:
 - (a) a participant dealer; or

- (b) a portfolio manager.

7. Standards for DEA Clients

- (1) Before granting direct electronic access to a client, a participant dealer must:
 - (a) establish, maintain and apply appropriate standards for direct electronic access; and
 - (b) assess and document whether each client meets the standards established by the participant dealer for direct electronic access.
- (2) The standards established by the participant dealer pursuant to subsection (1) must include that:
 - (a) the client has appropriate resources to meet any financial obligations that may result from the use of direct electronic access by that client;
 - (b) the client has appropriate arrangements in place to ensure that all personnel using direct electronic access on behalf of the client have knowledge of and proficiency in the use of the order entry system that the client will use;
 - (c) the client has knowledge of and has the ability to comply with all applicable marketplace and regulatory requirements; and
 - (d) the client has in place adequate arrangements to monitor the entry of orders through direct electronic access.
- (3) A participant dealer must confirm with the DEA client, at least annually, that the DEA client continues to meet the standards established by the participant dealer, including those set out in subsection (2).

8. Written Agreement

Prior to granting direct electronic access to a client, a participant dealer must enter into a written agreement with the client that provides that as a DEA client:

- (a) the DEA client's trading activity will comply with marketplace and regulatory requirements;
- (b) the DEA client's trading activity will comply with the product limits or credit or other financial limits specified by the participant dealer;
- (c) the DEA client will maintain all technology facilitating direct electronic access in an electronically and physically secure manner and will prohibit personnel, other than those authorized by the participant dealer, to use the direct electronic access granted;
- (d) the DEA client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace, regulation services provider, securities regulatory authority or law enforcement agency with respect to trading conducted pursuant to the direct electronic access granted, including, upon request by the participant dealer, providing access to such information to the marketplace, regulation services provider, securities regulatory authority or law enforcement agency that is necessary for the purposes of any such investigation or proceeding;
- (e) the DEA client acknowledges that the participant dealer may
 - (i) reject an order;
 - (ii) vary, correct or cancel an order entered on a marketplace; and
 - (iii) discontinue accepting orders from the DEA client;
- (f) the DEA client will immediately inform the participant dealer if it fails or reasonably expects not to meet the standards set by the participant dealer;

- (g) when trading for the accounts of its clients, pursuant to subsection 11(2), the DEA client will ensure that the orders of its clients will flow through the systems of the DEA client and will be subject to appropriate risk management and supervisory controls, policies and procedures;
- (h) the DEA client will not trade for the accounts of its clients, pursuant to subsection 11(2), unless
 - (i) such clients meet the standards established by the participant dealer pursuant to section 7; and
 - (ii) a written agreement is in place between the DEA client and its clients that sets out the terms of the access provided.

9. Training of DEA Clients

- (1) Prior to granting direct electronic access to a client, and as necessary after direct electronic access is granted, a participant dealer must satisfy itself that the client has adequate knowledge of applicable marketplace and regulatory requirements and the standards established pursuant to section 7.
- (2) If a participant dealer concludes that a client does not have adequate knowledge with respect to applicable marketplace and regulatory requirements, or standards established pursuant to section 7, the participant dealer must ensure the necessary training is provided to the client prior to granting direct electronic access to the client.
- (3) A participant dealer must ensure that the DEA client receives any relevant changes and updates to applicable marketplace and regulatory requirements or standards established pursuant to section 7.

10. DEA Client Identifier

- (1) Upon granting direct electronic access to a client, a participant dealer must assign to the client a DEA client identifier.
- (2) A participant dealer that assigns a DEA client identifier pursuant to subsection (1) must immediately provide the DEA client identifier and the associated client name to:
 - (a) all regulation services providers monitoring trading;
 - (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access; and
 - (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access.
- (3) A participant dealer must ensure that each order entered by a DEA client using direct electronic access provided by that participant dealer includes the appropriate DEA client identifier.
- (4) If a client ceases to be a DEA client, the participant dealer must promptly inform:
 - (a) all regulation services providers monitoring trading;
 - (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to section 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access; and

- (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access.

11. Trading by DEA Clients

- (1) Except as provided in subsection (2), a participant dealer must only provide direct electronic access to a client that is trading for its own account.
- (2) When using direct electronic access, the following DEA clients may trade for their own account or for the accounts of their clients:
 - (a) a participant dealer;
 - (b) a portfolio manager; and
 - (c) an entity that is authorized in a category analogous to the entities referred to in paragraphs (a) and (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.
- (3) Where a DEA client is using direct electronic access to trade for the accounts of its clients, pursuant to subsection (2), the clients' orders must flow through the systems of the DEA client before being entered on a marketplace directly or indirectly through a participant dealer.
- (4) A participant dealer must ensure that where a DEA client is trading for the accounts of its clients, the DEA client has established and maintains appropriate risk management and supervisory controls, policies and procedures.
- (5) A DEA client must not provide access to or pass on its direct electronic access to another person or company.

PART 4 REQUIREMENTS APPLICABLE TO MARKETPLACES

12. Availability of Order and Trade Information

A marketplace must provide a marketplace participant with reasonable access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required in section 3.

13. DEA Client Identifiers

A marketplace must not permit a marketplace participant to provide direct electronic access unless the marketplace's systems support the use of DEA client identifiers.

14. Marketplace Controls Relating to Electronic Trading

- (1) A marketplace must have the ability and authority to terminate all or a portion of the access provided to a marketplace participant or a DEA client.
- (2) A marketplace must:
 - (a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have pursuant to subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner;
 - (b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented pursuant to paragraph (a); and

- (c) document and promptly remedy any deficiencies identified in the controls, policies and procedures implemented pursuant to paragraph (a).

15. Marketplace Thresholds

- (1) A marketplace must prevent the execution of orders for exchange-traded securities exceeding price and volume thresholds set by:
 - (a) its regulation services provider;
 - (b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set pursuant to subsection 7.1(1) of NI 23-101; or
 - (c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set pursuant to subsection 7.3(1) of NI 23-101.
- (2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for that exchange-traded security or a security underlying that exchange-traded security.

16. Clearly Erroneous Trades

- (1) A marketplace must have the capability to cancel, vary or correct a trade.
- (2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless:
 - (a) instructed to do so by its regulation services provider;
 - (b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and notification is provided to its regulation services provider; or
 - (c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment in executing the trade, and permission to cancel, vary or correct has been obtained from its regulation services provider.
- (3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.

PART 5 EXEMPTION

17. 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 6 EFFECTIVE DATE

18. Effective Date

This Instrument comes into force on ●.