

Companion Policy 23-103CP
Electronic Trading and Direct Electronic Access to Marketplaces

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PART 1 GENERAL COMMENTS

1.1 Introduction

Purpose of National Instrument 23-103

The purpose of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103) is to address areas of concern and risks brought about by electronic trading. The increased speed and automation of trading on marketplaces and the continuing growth of direct electronic access (DEA) give rise to various risks, including credit risk and market integrity risk. Some of the risks arise from electronic trading more generally, while other risks are specific to DEA trading. To protect marketplace participants from harm and to ensure continuing market integrity, these risks need to be appropriately and effectively controlled and monitored.

In the view of the Canadian Securities Administrators (CSA or we), marketplace participants should bear primary responsibility for ensuring that these risks are appropriately and effectively controlled and monitored. This responsibility applies to orders that are entered electronically by the marketplace participant itself, as well as DEA orders from clients using the participant dealer's marketplace participant identifier and includes both financial and regulatory obligations. This view is premised on the fact that it is the marketplace participant that makes the decision to trade or, in the case of a participant dealer, to provide DEA access to its client. However, the marketplaces also have some responsibilities to manage risks to the market.

Purpose of Companion Policy

This Companion Policy sets out how the CSA interpret or apply the provisions of NI 23-103 and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 23-103. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in NI 23-103 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to Parts and sections are to NI 23-103, unless otherwise noted.

1.2 Definitions

Unless defined in NI 23-103, terms used in NI 23-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction, in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation* (NI 21-101), or National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103).

Automated order systems

Automated order systems encompass both hardware and software used to generate orders on a pre-determined basis and would include trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or are developed or used by clients.

Direct electronic access

Section 1 defines "direct electronic access" as 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. There are several methods by which a client's order may be transmitted electronically by the client to a marketplace, including:

- (i) directly to the marketplace through the client's own system;
- (ii) through the participant dealer's system; or
- (iii) through a third party vendor system.

NI 23-103 requires automatic risk management filters for all orders entered electronically, including DEA orders. DEA orders are orders that are not re-routed to a trading desk of the participant dealer for manual order management by a trader or for re-entry by the participant dealer.

This definition would not capture order-execution services as defined and provided under the rules of the Investment Industry Regulatory Organization of Canada (IIROC) or other electronic access arrangements whereby a client uses the website of a dealer to enter orders as these services and arrangements would permit the management of orders by a participant dealer.

DEA client identifier

NI 23-103 requires each DEA client to have a unique identifier in order to track orders originating from that DEA client. A participant dealer is responsible for assigning the DEA client identifier under subsection 10(1) and for ensuring that every order entered by a DEA client using DEA includes the appropriate DEA client identifier under subsection 10(3). Generally, the participant dealer would obtain the DEA client identifiers from a marketplace.

Marketplace participant identifier

A marketplace participant identifier is the unique identifier assigned to the marketplace participant for trading purposes. The assignment of this identifier is co-ordinated with a regulation services provider of the marketplace, where applicable. The marketplace participant is to use its marketplace participant identifier across all marketplaces that it accesses.

PART 2 REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

3. Risk management and supervisory controls, policies and procedures

National Instrument 31-103 requirements

For marketplace participants that are registered firms, section 11.1 of NI 31-103 requires the registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to: (a) provide reasonable assurance that the registered firm and each individual acting on its behalf complies with securities legislation; and (b) manage the risks associated with its business in accordance with prudent business practices. Section 3 of NI 23-103 builds on the obligations outlined in section 11.1 of NI 31-103. The CSA have included requirements in NI 23-103 that all marketplace participants that conduct trading on a marketplace have appropriate controls, policies and procedures in place and that they manage them in accordance with prudent business practices. These requirements provide greater specificity with respect to the expectations surrounding controls, policies and procedures relating to electronic trading. The requirements apply to all marketplace participants, not just those that are registered firms.

Documentation of risk management and supervisory controls, policies and procedures

Subsection 3(1) requires a marketplace participant to record its policies and procedures and maintain a copy of its risk management and supervisory controls in written form. This includes a narrative description of any electronic controls and their functions implemented by the marketplace participant.

We note that the risk management and supervisory controls, policies and procedures related to the trading of unlisted, government and corporate debt may not be the same as those related to the trading of equity securities due to the differences in the nature of trading of these types of securities.

It is expected that these documents will be retained as part of the marketplace participant's obligation to maintain its books and records in NI 31-103.

DEA clients that also maintain risk management controls

We are aware that a DEA client that is not a registered dealer may maintain its own risk management controls. However, part of the intent of NI 23-103's risk management and supervisory controls, policies and procedures is to require a participant dealer to manage its risks associated with electronic trading and to protect the participant dealer under whose marketplace participant identifier the order is being entered. Consequently, a participant dealer must maintain risk management and supervisory controls, policies and procedures regardless of whether its DEA clients also maintain their own controls. It is not appropriate for a participant dealer to rely on a DEA client's risk management controls, as the participant dealer would not be able to ensure the sufficiency of the DEA client's controls, nor would the controls be tailored to the particular needs of the participant dealer.

Minimum risk management and supervisory controls, policies and procedures

Subsection 3(2) sets out the minimum elements of the risk management and supervisory controls, policies and procedures that we expect to be addressed and documented by each marketplace participant. The marketplace participant should assess, document and implement any additional risk management and supervisory controls, policies and procedures that it determines are necessary to manage the marketplace participant's financial exposure and to ensure compliance with applicable marketplace and regulatory requirements.

Risk management and supervisory controls, policies and procedures with respect to DEA

A participant dealer that provides DEA to its clients must ensure it has the appropriate risk management and supervisory controls, policies and procedures necessary to manage the risks associated with offering DEA. A participant dealer must ensure that it can adequately manage its DEA business, for example by ensuring that it has the necessary staffing, technology and other required resources, and that it has the financial ability to withstand the increased risks of providing DEA. A participant dealer must understand its risks in providing DEA and address those risks when establishing its minimum standards for DEA. The participant dealer should also tailor the risk management and supervisory controls, policies and procedures to each specific DEA client as may be necessary and appropriate in the circumstances.

Pre-set credit or capital thresholds

The pre-set credit or capital thresholds referenced in paragraph 3(3)(a) may be set on a per order, trade or account basis, or using a combination of these factors as required in the circumstances.

For example, a participant dealer that sets a credit limit for each DEA client could impose that credit limit by setting sub-limits applied at each marketplace to which the participant dealer provides access which together equal the total credit limit. A participant dealer may also consider whether to establish credit or capital thresholds based on sector, security or other relevant factors. In order to address the financial exposure that might result from rapid order entry, a participant dealer should also consider measuring compliance with set credit or capital thresholds on the basis of orders entered rather than executions obtained.

We note that different thresholds may be set for the marketplace participant's order flow (including both proprietary and client order flow) and that of a DEA client, if appropriate.

Compliance with applicable marketplace and regulatory requirements

The CSA expect marketplace participants to prevent the entry of orders that do not comply with all applicable marketplace and regulatory requirements that must be satisfied on a pre-order basis where possible. Specifically, marketplace and regulatory requirements that must be satisfied on a pre-order basis are those requirements that can effectively be complied with only before an order is entered on a marketplace including: (i) conditions that must be satisfied under National Instrument 23-101 *Trading Rules* (NI 23-101) before an order can be marked a "directed-action order", (ii) marketplace requirements applicable to particular order types and (iii) compliance with trading halts. This requirement does not impose new substantive regulatory requirements on the marketplace participant but rather establishes a clear requirement that marketplace participants have appropriate mechanisms in place that are reasonably designed to effectively comply with their existing regulatory obligations on a pre-order basis in an automated, high-speed trading environment.

Order and trade information

Subparagraph 3(3)(b)(iv) requires the risk management and supervisory controls, policies and procedures to be reasonably designed to ensure that the compliance staff of the marketplace participant receives immediate order and trade information. This will require the marketplace participant to ensure that it has the capability to view trading information in real-time or to receive immediate order and trade information, such as through a drop copy, from the marketplace.

This requirement will assist the marketplace participant in fulfilling its obligations prescribed in subsection 3(1) with respect to establishing and implementing risk management and supervisory controls, policies and procedures reasonably designed to manage risks associated with access to marketplaces and providing DEA.

This provision however, does not prescribe that a marketplace participant must carry out compliance monitoring in real-time. It is up to the marketplace participant to determine the appropriate timing for compliance monitoring, but

we are of the view that it is important that the marketplace participant have the necessary tools in place to facilitate order and trade monitoring as part of the marketplace participant's risk management and supervisory controls, policies and procedures.

Marketplace participant to retain direct and exclusive control of risk management and supervisory controls, policies and procedures

Subsection 3(4) specifies that the risk management and supervisory controls, policies and procedures must be under the direct and exclusive control of the marketplace participant.

A marketplace participant can use technology of third parties as long as the marketplace participant is able to directly and exclusively manage the supervisory and risk management controls, including the setting and adjusting of filter limits. A third party providing such services must be independent of any DEA client of the marketplace participant. An entity affiliated with the marketplace participant but independent from a DEA client may be considered to be an independent third party.

In all circumstances, under paragraph 3(7)(a), the marketplace participant must assess and document whether the risk management and supervisory controls, policies and procedures of the third party are effective and otherwise consistent with the provisions of NI 23-103 before engaging such services. Reliance on representations of a third party provider is insufficient to meet this assessment requirement. The CSA expect registered firms to be responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*.

Section 4 of NI 23-103 provides a limited exception to the requirement that a marketplace participant must have direct and exclusive control over its risk management and supervisory controls, policies and procedures in that a participant dealer may reasonably allocate, subject to certain conditions, control over specific risk management and supervisory controls, policies and procedures to an investment dealer.

Regular assessment of risk management controls and supervisory policies and procedures

Subsection 3(6) requires a marketplace participant to regularly assess and document the adequacy and effectiveness of the controls, policies and procedures it is required to establish under subsection 3(1). The same assessment requirement also applies where a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures. A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies and procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

A marketplace participant is expected to retain the documentation of each such assessment as part of its obligation to maintain books and records in NI 31-103.

4. Allocation of control over risk management and supervisory controls, policies and procedures

Section 4 of NI 23-103 is intended to address introducing (originating) and carrying (executing) arrangements or jitney arrangements that involve multiple dealers. In such arrangements, there may be certain controls that are better directed by the originating dealer, as it is the originating dealer that has knowledge of its client and is responsible for suitability and other "know your client" obligations. However, the executing dealer must also have appropriate controls in place to manage the risks it incurs by executing orders for other dealers.

Therefore, section 4 of NI 23-103 provides that a participant dealer may reasonably allocate, by written contract and after a thorough assessment, control over specific risk management and supervisory controls, policies and procedures to another registered investment dealer. We are of the view that where the originating investment dealer with the direct relationship with the ultimate client has better access than the participant dealer to information relating to the ultimate client, the originating investment dealer may more effectively assess the ultimate client's financial resources and investment objectives.

We also expect that the participant dealer will maintain a written contract with the investment dealer that sets out a description of the allocation of controls as part of its books and records obligations set out in NI 31-103.

Paragraph 4(d) requires a participant dealer to regularly assess the adequacy and effectiveness of the investment dealer's risk management and supervisory controls, policies and procedures over which control has been allocated. We expect that this will include an assessment of the performance of the investment dealer under the written

agreement prescribed in paragraph 4(b) of NI 23-103. A “regular” assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies or procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

Paragraph 4(e) requires the participant dealer to immediately provide the compliance staff of the originating investment dealer with immediate order and trade information. This is to allow for the originating investment dealer to monitor trading more effectively and efficiently.

Any allocation of control does not relieve the participant dealer from its obligations under section 3 of NI 23-103, including the overall responsibility to establish, document, maintain and ensure compliance with appropriate risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to manage the financial, regulatory and other risks associated with marketplace access or providing DEA.

5. Use of automated order systems

Subsection 5(1) of NI 23-103 stipulates that the use of automated order systems must not interfere with fair and orderly markets. This includes both the fair and orderly trading on a marketplace or the market as a whole and the proper functioning of a marketplace. For example, the sending of a continuous stream of orders that negatively impacts the price of a security or that overloads the systems of a marketplace may be considered as interfering with fair and orderly markets.

Paragraph 5(2)(a) of NI 23-103 requires a marketplace participant to have the necessary knowledge and understanding of any automated order systems used by either the marketplace participant or the marketplace participant’s clients, including DEA clients. We understand that detailed information of automated order systems may be treated as proprietary information by some clients or third party service providers; however, the CSA expect that the marketplace participant will be able to obtain sufficient information to have knowledge of and understand any automated order systems used by a client or itself in order to properly identify and manage its own risks.

Paragraph 5(2)(b) requires that each automated order system is appropriately tested. A participating dealer does not necessarily have to conduct tests on each automated order system used by its clients but must satisfy itself that these automated order systems have been appropriately tested. It is expected that this testing is done in accordance with prudent business practices which would include testing of the automated order system before its initial use and after any significant change is made.

PART 3 REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

6. Provision of DEA

Registration Requirement

Only marketplace participants that meet the definition of “participant dealer” are permitted to provide DEA to clients. A participant dealer is defined as a marketplace participant that is an investment dealer. This is due to the fact that the provision of DEA to a client would trigger the registration requirements under applicable Canadian securities legislation.

Persons or Companies not eligible for DEA

Section 6 does not allow DEA to be provided to a registrant other than a participant dealer or a portfolio manager. Certain registered dealers, such as exempt market dealers, are not eligible for DEA, because the CSA do not want to facilitate regulatory arbitrage with respect to trading. In our view, if a registered dealer wishes to have direct access to marketplaces, then the registered dealer should be an IIROC member and therefore be directly subject to IIROC rules including the Universal Market Integrity Rules (UMIR) if accessing equity marketplaces.

With respect to registrants, subsection 6(2) limits the use of DEA to participant dealers, rather than to investment dealers in general, in order to ensure that this DEA client is subject to UMIR. We are of the view that UMIR obligations on the DEA client in this instance assist in minimizing the regulatory risks associated with DEA.

Order-execution services

DEA does not include order-execution services provided pursuant to IIROC rules. Order-execution services refers to the execution of orders from clients for trades that the marketplace participant has not recommended and for which suitability requirements do not apply. The provision of order-execution services is governed by the rules of IIROC and is not considered to be the same as DEA. Order-execution services are available to retail clients and as such, the CSA expect such orders to be subject to more requirements than DEA orders (for example, supervision).

It is our view that, in general, retail investors should not be using DEA and should be routing orders using order-execution services as defined and provided under IIROC rules. However, there are some circumstances in which individuals are sophisticated and have access to the necessary technology to use DEA (for example, former registered traders or floor brokers). In these circumstances, we would expect that the participant dealer offering DEA would set standards high enough to ensure that the participant dealer is not exposed to undue risk. It may be appropriate for these standards to be higher than those set for institutional investors. All requirements relating to risk management and supervisory controls, policies and procedures would apply when granting DEA to an individual.

7. Standards for DEA clients

Minimum standards

A participant dealer's due diligence with respect to its clients is a key method of managing risks associated with granting DEA. As a result, section 7 requires the participant dealer to establish, maintain and apply appropriate standards for DEA and to assess whether each prospective DEA client meets these standards prior to granting DEA to a client. A participant dealer's establishment, maintenance and application of appropriate standards for DEA would include evaluating its risks in providing DEA to a specific client. The participant dealer must establish, maintain and apply these standards with respect to all DEA clients. Subsection 7(2) sets out the minimum standards that the CSA believe are necessary to ensure that a DEA client has the appropriate financial resources and requisite knowledge of both the order entry system and applicable marketplace and regulatory requirements.

Each participant dealer has a different risk profile and as a result, we have provided flexibility in determining the specific levels of the minimum standards. However, these standards are the minimum required in the CSA's view for the participant dealer to properly manage its risks. The participant dealer should assess and determine what additional standards are appropriate given the particular circumstances of the participant dealer and each prospective DEA client. For example, certain standards a participant dealer may apply to an institutional client may need to be modified when determining whether an individual is suitable for receiving DEA.

Some additional factors a participant dealer could consider when setting such standards include, prior sanctions for improper trading activity, evidence of a proven track record of responsible trading, supervisory oversight, and the proposed trading strategy and associated volumes of trading of the DEA client.

Monitoring the entry of orders

The requirement in paragraph 7(2)(d) to monitor the entry of orders though DEA is expected to help ensure orders comply with marketplace and regulatory requirements, meet minimum standards set for managing risk and do not interfere with fair and orderly markets.

Annual confirmation

Subsection 7(3) requires a participant dealer to confirm, at least annually, that each DEA client continues to meet the minimum standards established by the participant dealer. It is up to the participant dealer to choose the method of confirmation. Obtaining a written annual certification by the DEA client is one way to meet this requirement. If the participant dealer does not require a written annual certification, the participant dealer should record that it has performed the annual confirmation in order to be able to demonstrate compliance with this requirement.

8. Written agreement

Section 8 sets out the provisions that must be included in a written agreement between a participant dealer and its DEA client. However, the participant dealer may include additional provisions in the agreement.

Subsection 8(d) specifies that when a participant dealer requests information from its DEA client in connection with an investigation or proceeding by any marketplace, regulation services provider, securities regulatory authority or law

enforcement agency with respect to trading conducted pursuant to the DEA granted, the information is only required to be provided directly to the marketplace, regulation services provider, securities regulatory authority or law enforcement agency conducting the investigation or proceeding to protect the confidentiality of the information.

9. Training of DEA clients

Pursuant to subsection 9(1), prior to providing DEA to a client, and as necessary after DEA is granted, a participant dealer must satisfy itself that the client has adequate knowledge with respect to applicable marketplace and regulatory requirements. What constitutes “adequate” will depend on the particular knowledge of each specific client. The participant dealer must assess the knowledge of the client and determine what training is required in the particular circumstances. The training must at a minimum enable the client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. It may be appropriate for the participant dealer to require the client to have the same training required of marketplace participants.

10. DEA client identifier

Assignment of DEA client identifier

The purpose of requiring a unique identifier for each DEA client is to identify orders of clients entered onto a marketplace by way of DEA. NI 23-103 places the responsibility of assigning the DEA client identifier on the participant dealer, however, following industry practice, the participant dealer will collaborate with the marketplace with respect to generating the necessary identifiers.

Inclusion of DEA client identifier on each order entered onto a marketplace

Subsection 10(3) requires that the marketplace participant ensure that every DEA order entered onto a marketplace contain the appropriate DEA client identifier. It is not intended that the DEA client identifier be public information. Rather, it can be included in a private field that may only be viewed by: (1) the participant dealer under whose marketplace participant identifier the order was entered, (2) a regulation services provider, (3) a recognized exchange or recognized quotation and trade reporting system if it 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 (4) an exchange or quotation and trade reporting system that is recognized for the purposes of NI 23-103 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.

11. Trading by DEA clients

Client orders passing through the systems of the DEA client

The CSA are of the view that DEA clients should not provide their DEA access to their clients. Subsection 11(3) requires that where a DEA client is using direct electronic access and trading for the accounts of its clients, the client orders must flow through the systems of the DEA client before being entered on a marketplace, directly or indirectly through a participant dealer.

This is meant to allow those arrangements that the CSA are comfortable with, such as a DEA client acting as a “hub” and aggregating the orders of its affiliates before sending the orders to the participant dealer. Requiring orders to flow through the systems of the DEA client allows the DEA client to impose any controls it deems necessary or is required to impose pursuant to any requirements to manage its risks. Although the participant dealer is also required to have controls, including automatic pre-trade filters, to manage its risks, it is the DEA client that has the knowledge of the ultimate client and therefore the DEA client is likely in a better position to determine those controls that are specific to each particular client. It is the responsibility of the participant dealer to ensure that the DEA client has adequate controls in place to monitor the orders entering its systems.

PART 4 REQUIREMENTS APPLICABLE TO MARKETPLACES

12. Availability of order and trade information

Reasonable access

Section 12 is designed to ensure that the marketplace participant has access to the information necessary to meet its obligations under NI 23-103 and that the marketplace does not have any rules, policies, procedures, fees or practices that would unreasonably create barriers to accessing this information.

This obligation is distinct from the requirement for marketplaces to disseminate order and trade information through an information processor under Part 7 of NI 21-101. The information to be provided pursuant to section 12 of NI 23-103 would need to include the private information included on each order and trade in addition to the public information disseminated through an information processor.

Immediate order and trade information

For the purposes of providing reasonable access to order and trade information on an immediate basis, the provision of drop copies would be considered acceptable.

14. Marketplace controls relating to electronic trading

Paragraph 14(2)(a) requires a marketplace to regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to the risk management and supervisory controls, policies and procedures the marketplace participants are required to have pursuant to subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner. As well, a marketplace must regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures put in place pursuant to paragraph 14(2)(a). A marketplace is expected to document any conclusions reached as a result of its assessment, any deficiencies noted and actions taken.

It is important that a marketplace take steps to ensure it does not engage in activity that interferes with fair and orderly markets. Part 12 of NI 21-101 requires marketplaces to establish systems-related risk management controls. It is therefore expected that a marketplace will be aware of the risk management and supervisory controls, policies and procedures of its marketplace participants and assess if it needs to implement additional controls, policies and procedures to eliminate any risk management gaps and ensure the integrity of trading on its market.

Regular assessments

A “regular” assessment would constitute, at a minimum, an assessment conducted annually and whenever a substantive change is made to a marketplace’s operations, rules, controls, policies or procedures that relate to methods of electronic trading. A marketplace should determine whether more frequent assessments are required depending on the particular circumstances of the marketplace. A marketplace should document and preserve a copy of each such assessment as part of its books and records obligation in NI 21-101.

Implementing controls, policies and procedures in a timely manner

A “timely manner” will depend on the particular circumstances, including the degree of potential risk of financial harm to marketplace participants and their clients or harm to the integrity of the marketplace and to the market as a whole. The marketplace must use best efforts to ensure the timely implementation of any necessary risk management and supervisory controls, policies and procedures.

15. Marketplace thresholds

Section 15 requires that each marketplace prevent the execution of orders of exchange-traded securities exceeding price and volume thresholds set by its regulation services provider, or by the marketplace if it is a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set pursuant to NI 23-101.

The setting of the price threshold is to be coordinated among all regulation services providers, recognized exchanges, recognized quotation and trade reporting systems, exchanges and quotation and trade reporting systems recognized for the purposes of NI 23-103 that set the threshold under subsection 15(1).

These price and volume thresholds are expected to prevent the execution of orders that could interfere with a fair and orderly market by reducing erroneous orders and price volatility.

There are a variety of methods that may be used to prevent the execution of these orders. However, standardized thresholds are important tools in maintaining a fair and orderly market.

The coordination requirement also applies when setting a price threshold for securities that have underlying interests in an exchange-traded security.

We expect that the same price threshold for a specific exchange-traded security will be applied across all marketplaces. However, there may be differences in the actual price thresholds set for an exchange-traded security and a security that has underlying interests in that exchange-traded security.

16. Clearly erroneous trades

Application of section 16

Section 16 requires a marketplace to have the capability to cancel, vary or correct a trade. This requirement would apply in the instance where the marketplace decides to cancel, vary or correct a trade or is instructed to do so by a regulation services provider.

Where section 16 requires that a marketplace receive instructions from its regulation services provider before cancelling, varying or correcting a trade, we note that this would not apply to the case where a recognized exchange or recognized quotation and trade reporting system 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.

Cancellation, variation or correction where necessary to correct a system or technological malfunction or error made by the marketplace systems or equipment

Under paragraph 16(2)(c) a marketplace may cancel, vary or correct a trade where necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment in executing the trade. If a marketplace has retained a regulation services provider, permission to cancel, vary or correct is to be obtained from the regulation services provider prior to cancellation, variation or correction.

Examples of errors caused by a system or technological malfunction include where the system executes a trade on terms that are inconsistent with the explicit conditions placed on the order by the marketplace participant, or allocates fills for orders at the same price level in a manner or sequence that is inconsistent with the stated manner or sequence in which such fills are to occur on the marketplace. Another example includes where the trade price was to have been calculated by a marketplace's systems or equipment based on some stated reference price, but was calculated incorrectly.

Policies and procedures

For policies and procedures established by the marketplace in accordance with the requirements of subsection 16(3) to be "reasonable", they should be clear and understandable to all marketplace participants.

They should also provide for consistent application. For example, if a marketplace decides that it will consider requests for cancellation, variation or correction of trades in accordance with paragraph 16(2)(b), it should consider all requests received regardless of the identity of the counterparty. If a marketplace chooses to establish parameters within which it might only be willing to consider such requests, it should apply these parameters consistently to each request, and should not exercise its discretion to refuse a cancellation or amendment when the request falls within the stated parameters and the consent of the affected parties has been provided.

When establishing any policies and procedures in accordance with subsection 16(3), a marketplace should also consider what additional policies and procedures might be appropriate to address any conflicts of interest that might arise.