

Multilateral CSA Staff Notice 23-313

Blanket Orders Exempting Marketplace Participants from Certain Provisions of National Instrument 23-103 *Electronic Trading* and Related OSC Staff Position

Background

National Instrument 23-103 *Electronic Trading* (NI 23-103) introduces a framework that addresses risks associated with electronic trading. It comes into effect on March 1, 2013.

Since the publication¹ of the final version of NI 23-103, the Canadian Securities Administrators (the CSA or we) have received comments and inquiries about the implementation of certain provisions of NI 23-103. To better understand the level of preparedness of marketplace participants in implementing NI 23-103, the CSA and the Investment Industry Regulatory Organization of Canada (IIROC) conducted a survey of members of the Investment Industry Association of Canada (IIAC) on the implementation of NI 23-103.

Certain IIAC members responded that they had concerns about their ability to adequately complete testing of the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013. Paragraph 3(3)(a) requires that a marketplace participant's risk management and supervisory controls, policies and procedures must be reasonably designed to systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing:

- (i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant, and
- (ii) the entry of one or more orders that exceed pre-determined price or size parameters.

While we are of the view that the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 are important to address the risks of electronic trading, we are also of the view that these automated controls may pose other risks to our markets if they are introduced before they have been adequately tested. Therefore, certain CSA members have issued parallel blanket orders (orders) or related staff positions regarding the testing and implementation of these automated pre-trade risk controls.

Interim relief for marketplace participants from implementing automated pre-trade risk controls

¹ (2012) 35 OSCB 6037

CSA members in Quebec, British Columbia and Alberta have issued parallel orders, effective March 1, 2013, that provide temporary relief to marketplace participants. The relief from paragraph 3(3)(a) of NI 23-103 applies if a marketplace participant is testing the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013. The orders grant relief until May 31, 2013.

The orders are available on the following websites:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca

We note that staff in the other CSA jurisdictions, other than Ontario, are considering recommending to their decision makers that they also issue blanket orders that would provide relief from paragraph 3(3)(a) of NI 23-103.

OSC Staff Position

The Ontario Securities Commission (OSC) will not be issuing a blanket order given that orders of general application are not authorized under Ontario securities law.

OSC staff expect marketplace participants to use best efforts to comply with the requirement for automated pre-trade risk controls under paragraph 3(3)(a) of NI 23-103 by March 1, 2013; however, OSC staff are of the view that it is not in the public interest to recommend or pursue an enforcement action against a marketplace participant for failure to fully implement an automated pre-trade risk control where the marketplace participant:

(a) is testing the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by March 1, 2013; and

(b) has completed its testing and fully implemented the automated pre-trade risk controls required under paragraph 3(3)(a) of NI 23-103 by May 31, 2013.

All other requirements under NI 23-103 must be fully implemented by March 1, 2013.

We note that IIROC has followed a comparable approach to the Universal Market Integrity Rule requirements related to the testing and implementation of automated pre-trade risk controls.

In order to address other inquiries about NI 23-103, CSA members expect to publish shortly a Frequently Asked Questions document for NI 23-103 as a CSA Staff Notice.

Questions

If you have questions regarding this notice or the blanket orders please direct them to any of the following:

Sonali GuptaBhaya
Ontario Securities Commission
sguptabhaya@osc.gov.on.ca
416-593-2331

Tracey Stern
Ontario Securities Commission
tstern@osc.gov.on.ca
416-593-8167

Paul Romain
Ontario Securities Commission
promain@osc.gov.on.ca
416-204-8991

Meg Tassie
British Columbia Securities Commission
mtassie@bcsc.ca
604-899-6819

Élaine Lanouette
Autorité des marchés financiers
elaine.lanouette@lautorite.qc.ca
514- 395-0337 ext. 4321

Serge Boisvert
Autorité des marchés financiers
serge.boisvert@lautorite.qc.ca
514-395-0337 ext. 4358

Shane Altbaum
Alberta Securities Commission
shane.altbaum@asc.ca
403-355-3889

December 7, 2012