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CSA Staff Notice 23-316
Order Protection Rule: Implementation of the Market Share Threshold and Amendments to Policy Statement to Regulation 23-101 respecting Trading Rules

June 20, 2016

INTRODUCTION

On April 7, 2016, the Canadian Securities Administrators (the CSA or we) published notice of amendments to *Regulation 23-101 respecting Trading Rules* (Regulation 23-101) and its related Policy Statement (Policy Statement 23-101) (together, the Amendments). The Amendments introduce, among other things, a market share threshold that is intended to provide flexibility to marketplace participants in determining if and when to access trading on certain marketplaces. They also clarify the meaning of "automated trading functionality" with respect to marketplaces that impose intentional order processing delays.

Subject to obtaining all Ministerial approvals, the Amendments will become effective on July 6, 2016, except for the Amendments related to the market share threshold, which will become effective on October 1, 2016.

The text of the Amendments is available on the websites of the CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

PURPOSE

The purpose of this notice is to provide the list of marketplaces that display orders that will not be protected (unprotected marketplaces) for the purposes of the order protection rule (OPR):

(i)   as of July 6, 2016 because they do not provide automated trading functionality as they have an intentional order processing delay, and

(ii)   as of October 1, 2016 as they do not meet the market share threshold (which has been set at 2.5% of total value and volume traded).

This notice also describes how market share for each marketplace was calculated.
DISCUSSION

(a)   Current OPR

Section 6.1 of Regulation 23-101 requires marketplaces to establish, maintain and ensure compliance with policies and procedures that are reasonably designed to prevent trade-throughs of better priced protected bids and offers. Section 6.4 of Regulation 23-101 imposes the same requirement on marketplace participants that assume responsibility for compliance with OPR by entering directed-action orders.

Section 1.1 of Regulation 23-101 defines protected bids and offers as bids and offers displayed on a marketplace offering automated trading functionality, and about which information is provided to an information processor.

Orders on "dark" marketplaces are not protected as they are not displayed. Therefore, orders on ICX, LiquidNet and MatchNow are unprotected for the purposes of OPR.[1]

In addition, orders displayed on TSX Alpha Exchange are currently unprotected as a condition of approval of rule changes that introduced an intentional order processing delay.

(b)   Application of OPR to marketplaces with intentional order processing delays

Effective July 6, 2016, section 1.1.2.1 of Policy Statement 23-101 will clarify the interpretation of automated trading functionality. The section outlines the circumstances in which a marketplace that introduces an intentional order processing delay would not be considered to be providing automated trading functionality. In those circumstances, the orders on that marketplace would not be protected.

Consequently, as of July 6, 2016, orders displayed on the Neo Book of Aequitas NEO Exchange Inc. (Aequitas) will be unprotected. This is because the Neo Book does not offer "automated trading functionality" as set out in Regulation 23-101 and Policy Statement 23-101.

It should be noted that Aequitas's Lit Book is a separate book from the Neo Book and does not have an order processing delay. As a result, orders entered on the Lit Book will continue to be protected unless it is impacted by the market share threshold, described below, coming into force October 1, 2016.

(c)   Application of OPR to marketplaces that do not meet the market share threshold

Effective October 1, 2016, the Amendments will revise the definition of "protected bid" and "protected offer" to include a requirement that the marketplace on which the bid or

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[1]   Orders on Aequitas Dark book and Nasdaq CXD will also be unprotected after these books are launched.

offer is displayed meets the market share threshold set by the regulator or, in Québec, the securities regulatory authority. In addition, orders displayed on a recognized exchange that does not meet the market share threshold will be protected, but only with respect to securities listed by and traded on that exchange (together with orders on marketplaces that meet the market share threshold, protected marketplaces).

For orders of an exchange's listed securities to be protected, we note that an exchange must display orders, offer "automated trading functionality" and comply with Part 7 of *Regulation 21-101 respecting Marketplace Operation*[2] (Regulation 21-101). Similarly, if an exchange offers multiple trading facilities for its listed securities, orders will only be protected on those facilities that display orders, offer "automated trading functionality" and comply with Part 7 of Regulation 21-101.

The market share threshold has been set at 2.5%, calculated as described below.

The implementation of the Amendments will result in a number of marketplaces being unprotected (or protected only for their own listed securities) because they do not meet the threshold.

Calculation of the market share threshold

The market share threshold has been set at 2.5%. Each marketplace's market share has been calculated based on the marketplace's average share of the adjusted[3] volume and value traded (equally weighted)[4] over a one-year period[5] and is applied at the market or facility level where a marketplace operates more than one visible market or facility.[6]

Excluded from the market share threshold calculation are:

- Trades involving dark passive orders,

- The non-interfered portion of intentional crosses,[7]

- Trades from call markets and call facilities (including existing opening and closing call facilities),

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[2] Part 7 of Regulation 21-101 requires marketplaces that display orders in exchange-traded securities to provide pre- and post-trade information to an information processor as required by the information processor.

[3] Volume and value traded are adjusted to exclude certain trades.

[4] When determining each marketplace's market share, the volume and value traded on unprotected marketplaces is included in the calculation.

[5] Volume and value are calculated on a total market basis, rather than calculated separately on the basis of listing marketplace.

[6] Certain marketplaces have distinct order books, to which the market share threshold is applied separately.

[7] On some marketplaces, the execution of an intentional cross by a dealer can be broken up or "interfered" with by an existing order from the same dealer, which has already been entered on the marketplace at the same price as the intentional cross. Because the interfering order would have been protected under OPR, it would be included in the market share calculation.

- Odd-lot trades,

- Auto-executed trades in fulfillment of market maker obligations or participation rights, and

- Trades involving special terms orders.

The market share threshold that will be effective on October 1, 2016 was calculated based on trading data from June 1, 2015 to May 31, 2016.

In early 2017, the market share of each marketplace will be recalculated based on trading data from the first to last trading day of 2016. In January 2017, we will publish an updated list of protected and unprotected marketplaces that will be in effect from April 1, 2017 to March 31, 2018. Market share will be recalculated annually after that based on the prior year's trading data.

(d)   List of protected and unprotected marketplaces

Below we have listed the protected and unprotected marketplaces.

The orders displayed on the following marketplaces are protected because either the marketplace meets the market share threshold and/or the orders are for securities that are listed by and traded on that marketplace:

Marketplace	Market Share	Status	Reason Protected
Nasdaq CXC	11.94%	Protected	Meets market share threshold
Nasdaq CX2	5.63%	Protected	Meets market share threshold
OMEGA	4.70%	Protected	Meets market share threshold
TSX	55.44%	Protected	Meets market share threshold
TSX VENTURE	9.64%	Protected	Meets market share threshold
AEQUITAS Lit Book	1.13%	Protected for Aequitas-listed securities only	Exchange protected for its listed securities
CSE	2.18%	Protected for CSE-listed securities only	Exchange protected for its listed securities

The list below identifies the unprotected marketplaces. Orders displayed on marketplaces that do not offer "automated trading functionality" will not be protected as of July 6, 2016.

Orders displayed on marketplaces that do not meet the threshold will be unprotected as of October 1, 2016.

Orders displayed on the following marketplaces will be unprotected:

Marketplace	Market Share	Status	Reason Unprotected
AEQUITAS Neo Book	0.78%	Unprotected	Does not provide automated trading functionality
ALPHA	7.18%	Unprotected	Does not provide automated trading functionality
AEQUITAS Lit Book	1.13%	Unprotected for securities other than Aequitas-listed securities	Does not meet market share threshold
CSE	2.18%	Unprotected for securities other than CSE-listed securities	Does not meet market share threshold
LYNX	0.40%	Unprotected	Does not meet market share threshold
ICX		Unprotected	Does not display orders
LIQUIDNET		Unprotected	Does not display orders
MATCHNOW		Unprotected	Does not display orders

QUESTIONS

Please refer your questions to any of the following:

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