

AMENDMENTS TO COMPANION POLICY 23-101 TRADING RULES

Securities Act
(R.S.Q., c.V-1.1, s. 274)

1. The title of *Companion Policy 23-101 Trading Rules* is replaced, in the English text, with the following:

“POLICY STATEMENT TO REGULATION 23-101 RESPECTING TRADING RULES”.

2. The Companion Policy is amended by adding, after Part 1, the following part:

“PART 1.1 DEFINITIONS

1.1.1 Definition of best execution

(1) In the Regulation, best execution is defined as the “most advantageous execution terms reasonably available under the circumstances”. In seeking best execution, a dealer or adviser may consider a number of elements, including:

- a. price;
- b. speed of execution;
- c. certainty of execution; and
- d. the overall cost of the transaction.

These four broad elements encompass more specific considerations, such as order size, reliability of quotes, liquidity, market impact (i.e. the price movement that occurs when executing an order) and opportunity cost (i.e. the missed opportunity to obtain a better price when an order is not completed at the most advantageous time). The overall cost of the transaction is meant to include, where appropriate, all costs associated with accessing an order and/or executing a trade that are passed on to a client, including fees arising from trading on a particular marketplace, jitney fees (i.e. any fees charged by one dealer to another for providing trading access) and settlement costs. The commission fees charged by a dealer would also be a cost of the transaction.

(2) The elements to be considered in determining “the most advantageous execution terms reasonably available” (i.e. best execution) and the weight given to each will vary depending on the instructions and needs of the client, the particular security, the prevailing market conditions and whether the dealer or adviser is responsible for best execution under the circumstances. Please see a detailed discussion below in Part 4.”.

3. Section 3.1 of the Companion Policy is amended by replacing, in the French text of subparagraph (f) of paragraph (3), the words “une personne ou une société” with “une personne”.

4. Part 4 of the Companion Policy is replaced with the following:

“PART 4 BEST EXECUTION

4.1 Best Execution

(1) The best execution obligation in Part 4 of the Regulation does not apply to an ATS that is registered as a dealer provided that it is carrying on business as a marketplace and is not handling any client orders other than accepting them to allow them

to execute on the system. However, the best execution obligation does otherwise apply to an ATS acting as an agent for a client.

(2) Section 4.2 of the Regulation requires a dealer or adviser to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. The obligation applies to all securities.

(3) Although what constitutes “best execution” varies depending on the particular circumstances, to meet the “reasonable efforts” test, a dealer or adviser should be able to demonstrate that it has, and has abided by, its policies and procedures that (i) require it to follow the client’s instructions and the objectives set, and (ii) outline a process designed to achieve best execution. The policies and procedures should describe how the dealer or adviser evaluates whether best execution was obtained and should be regularly and rigorously reviewed. The policies outlining the obligations of the dealer or adviser will be dependent on the role it is playing in an execution. For example, in making reasonable efforts to achieve best execution, the dealer should consider the client’s instructions and a number of factors, including the client’s investment objectives and the dealer’s knowledge of markets and trading patterns. An adviser should consider a number of factors, including assessing a particular client’s requirements or portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on a regular basis. In addition, if an adviser is directly accessing a marketplace, the factors to be considered by dealers may also be applicable.

(4) Where securities listed on a Canadian exchange or quoted on a Canadian quotation and trade reporting system are inter-listed either within Canada or on a foreign exchange or quotation and trade reporting system, in making reasonable efforts to achieve best execution, the dealer should assess whether it is appropriate to consider all marketplaces upon which the security is listed or quoted and where the security is traded, both within and outside of Canada.

(5) In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all appropriate marketplaces (not just marketplaces where the dealer is a participant). This does not mean that a dealer must have access to real-time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

(6) For foreign exchange-traded securities, if they are traded on an ATS in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the ATS as well as the foreign markets upon which the securities trade.

(7) Section 4.2 of the Regulation applies to registered advisers as well as registered dealers that carry out advisory functions but are exempt from registration as advisers.

(8) Section 4.3 of the Regulation requires that a dealer or adviser make reasonable efforts to use facilities providing information regarding orders and trades. These reasonable efforts refer to the use of the information displayed by the information processor or, if there is no information processor, an information vendor.”.

5. Section 5.1 of the Companion Policy is amended:

(1) by adding, before the first sentence, the following sentences:

“Section 5.1 of the Regulation applies when a regulatory halt has been imposed by a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of the Regulation and Regulation 21-101 respecting Marketplace Operation. A regulatory halt, as referred to in section 5.1 of the Regulation, is one that is imposed to maintain a fair and orderly market, including halts related to a timely disclosure policy, or because there has been a violation of regulatory requirements.”;

(2) by replacing, in the French text and wherever it appears, the word “Bourse” with the word “bourse”.

6. The Companion Policy is amended by replacing sections 8.2 and 8.3 with the following:

“8.2 Transmission of Information to a Regulation Services Provider

Section 11.3 of the Regulation requires that a dealer and an inter-dealer bond broker provide to the regulation services provider information required by the regulation services provider, within ten business days, in electronic form. This requirement is triggered only when the regulation services provider sets requirements to transmit information.

“8.3 Electronic Form

Subsection 11.3 of the Regulation requires any information required to be transmitted to the regulation services provider and securities regulatory authority in electronic form. Dealers and inter-dealer bond brokers are required to provide information in a form that is accessible to the securities regulatory authorities and the regulation services provider (for example, in SELECTR format).”.

7. The Companion Policy is amended by replacing, wherever they appear, the words “person or company” and “persons or companies” with, respectively, the words “person” and “persons”.

8. The Companion Policy is amended by replacing, in the French text and wherever they appear, the words “Bourse” and “Bourses” with, respectively, the words “bourse” and “bourses”.