Canadian Securities Administrators — Autorités canadiennes en valeurs mobilières

CSA Notice
Regulation to Amend Regulation 23-101 respecting Trading Rules and amendments to its related policy statement

January 26, 2017

I. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) have approved amendments to *Regulation 23-101 respecting Trading Rules* (**Regulation 23-101**) and its related policy statement (**Policy Statement 23-101**) (together, the **Amendments**).

The text of the Amendments, together with certain other relevant information, is published with this notice and will also be available on the websites of the CSA jurisdictions, including:

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

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on April 10, 2017.

II. Substance and Purpose

The substance and purpose of the Amendments is to amend Regulation 23-101 to lower the active trading fee cap[1] applicable to trading in certain securities. In setting out the maximum fee that can be applied to the execution of an order entered to execute against displayed volume, the Amendments distinguish between securities that are listed on both a Canadian and a U.S. exchange (**Inter-listed Securities**) and securities that are listed on a Canadian exchange, but not listed on a U.S. exchange (**Non-Inter-listed Securities**).

The Amendments amend section 6.6.1 of Regulation 23-101 to cap active trading fees for Non-Inter-listed Securities at $0.0017 per security traded for an equity security or per

[1] An active trading fee refers to the fee applied for executing an order that was entered to execute against a displayed order on a particular marketplace.

unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to $1.00.

III. Background

As of July 6, 2016, an active trading fee cap of $0.0030 per share or unit traded has been imposed on equity securities and exchange-traded funds priced at or above $1.00.[2] This cap is an established benchmark created by the U.S. Securities and Exchange Commission in the context of order protection requirements similar to those in Regulation 23-101.

However, when we proposed the $0.0030 per share or unit fee cap in 2014, we acknowledged that the U.S. trading fee cap was considered by some to be too high. These concerns were also reflected in the comments received on the proposed fee cap, where a number of commenters indicated that the cap was not reflective of the lower average price of Canadian securities relative to the average price of U.S. securities.

We recognized the views of some stakeholders that the fee cap should be lower. However, our market is highly integrated with the U.S. and there is significant trading activity in Inter-listed Securities in the U.S. As a result, we remained concerned about the potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by Canadian marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.

However, the concerns noted above do not apply for Non-Inter-listed Securities, and in determining a method by which we could address some of the concerns raised in relation to trading fee costs, we considered, among other things, the comments that the trading fee should reflect the value of the stocks traded. We calculated the volume-weighted average price for Inter-listed Securities[3] and found that the $0.0030 cap for Inter-listed Securities represents 1.2 basis points. We then calculated the volume-weighted average price for Non-Inter-listed Securities and applied the same basis point equivalent. The results are illustrated in the table below.

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[2] The trading fee cap for equity securities and exchange-traded funds priced below $1.00 is $0.0004 per security or unit traded. The Amendments do not change this cap.

[3] The volume-weighted average price is calculated from June 29, 2014 to June 28, 2015.

	Volume-Weighted Average Price	Trading Fee Cap	Basis Point Equivalent
Inter-listed Securities	$25.26	$0.0030 per share or unit	1.2 bps
Non-Inter-listed Securities	$14.30	$0.0017 per share or unit	1.2 bps

IV. The Amendments

The Amendments cap active trading fees for Non-Inter-listed Securities at $0.0017 per security traded for an equity security or per unit traded for an exchange-traded fund, if the execution price of the security or unit traded is greater than or equal to $1.00. The $0.0030 per share or unit cap will continue to apply to Inter-listed Securities priced at or above $1.00. The current cap of $0.0004 per share or unit priced at less than $1.00 remains in place for both Inter-listed Securities and Non-Inter-listed Securities.

We received comments concerning a marketplace's ability to identify when a security's status as Inter-listed or Non-Inter-listed changes, and particularly where an Inter-listed Security becomes a Non-Inter-listed Security (e.g., the issuer has delisted the security from all U.S. exchanges on which it was listed), and becomes subject to the lower trading fee cap. In response to these comments, we have made non-material amendments to Regulation 23-101 and Policy Statement 23-101. New subsections 6.6.1(3) and 6.6.1(4) require a recognized exchange to publish a quarterly list of Inter-listed Securities, and new section 6.6.2 requires marketplaces to make any required reductions to their active trading fees no later than 35 days following publication of the list. We are of the view that this requirement will have limited impact because some exchanges currently publish this information, and all exchanges can require listed issuers to provide them with this information. It will not be onerous for listed issuers to inform their listing exchange of their status as Inter-listed or not.

The exchanges' lists are to be as of the last day of each calendar quarter and published no later than 7 days after the quarter end. A transitional provision provides that the first lists are to be as of April 10, 2017, and published no later than April 17, 2017. Marketplaces must make any required fee adjustments no later than May 15, 2017.

We note that if a Non-Inter-listed Security becomes an Inter-listed Security, the Amendments will not require a marketplace to adjust its trading fee as the maximum fee for a Non-Inter-Listed Security is below the maximum fee for an Inter-listed Security.

V. Summary of Written Comments Received by the CSA

Proposed amendments were published for comment on April 7, 2016. We received submissions from six commenters. We have considered the comments received and thank all of the commenters for their input. A list of those who submitted comments and a summary of the comments and our responses are attached at Annexes A and B to this notice, respectively. Copies of the comment letters are available at www.osc.gov.on.ca.

VI. Local Matters

Certain jurisdictions are publishing other information required by local securities legislation.

VII. Annexes

A. List of commenters;

B. Summary of Comments and CSA Responses.

VIII. Questions

Please refer your questions to any of the following:

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ANNEX A

List of Commenters

Canadian Advocacy Council for the Canadian CFA Institute
Canadian Foundation for the Advancement of Investor Rights
Canadian Securities Exchange
Investment Industry Association of Canada
Nasdaq CXC
TMX Group Ltd.

ANNEX B

Summary of Comments and CSA Responses

Topic	Summary of Comments	CSA Response
Size of Trading Fee Cap	Responses were mixed, with some supporting the proposed cap, some suggesting a higher cap, and one suggesting a lower cap.	We acknowledge that the comments received in relation to amount of the cap were mixed. However, we continue to be of the view that a cap of $0.0017 per share or unit of Non –Inter-listed Securities is the most appropriate way to address concerns previously raised that the current $0.0030 cap is too high.
	Two commenters were concerned about the impact on the market, as lowering active fees would lead to lower rebates, which may affect liquidity, particularly in exchange traded funds and less liquid securities. It was noted that marketplaces in Canada and the US lost market share when they unilaterally lowered fees and rebates. If liquidity is damaged, small cap Canadian issuers considering an initial public offering may choose to list in foreign markets, and currently-listed issuers may migrate to those markets. One commenter suggested a cap of $0.0023 as a compromise.	We believe the impact of the fee cap will be mitigated by the fact that it will apply to active orders on all lit marketplaces. We also note that the cap is proportionate to the existing $0.0030 cap when the average price of Non-Inter-listed Securities is compared to the average price of Inter-listed Securities.
	One commenter suggested that the proposed fee cap is too high and would permit rebates that overcompensate liquidity providers, as does the current $0.0030 cap. The correct comparison is to the	We will monitor over time whether the level of the fee cap remains appropriate.

	average US share price of $75 rather than the Canadian average of $25.26 for Inter-listed Securities. The cap should be closer to $0.0006 per share.	
Application to Inverted-Fee Markets	One commenter suggested that the fee cap apply to marketplaces with inverted (take-make) pricing, where the passive order pays a fee and the active order receives a rebate. One commenter believed that it should not apply to these marketplaces.	The fee cap is intended to apply to orders that a marketplace participant may be required to interact with as a result of the order protection rule. No one is required to post a passive order on an inverted market. In an inverted maker taker structure, setting a fee to post liquidity that is too high would most likely result in a reduction in posted liquidity which will ultimately impact the passive flow routed to that marketplace and the corresponding trading revenue. This provides an incentive to keep any fee at a reasonable level. Despite this, we will continue to examine trading fees to determine what, if any, regulation is required for inverted fee models.
Application to Iceberg Orders and Dark Marketplaces	One commenter asked whether the cap would apply to iceberg orders.	The cap currently applies to iceberg orders on marketplaces that display orders. The fee cap does not apply to marketplaces that do not display orders.
Compliance Issues	One commenter suggested it may be difficult for marketplaces to know whether a security is a Non-Inter-listed Security, particularly in the case where an issuer of a security listed on a US exchange delists.	We have amended the rule to require recognized exchanges to publish a quarterly list of their Inter-listed securities.

	The CSA or IIROC should provide a list of Non-Interlisted Securities. It will be difficult to change fees in the middle of a billing cycle if necessary.	 To address this concern, we have amended the rule to provide that such changes must be made no later than 35 days following publication of the quarterly list.
SEC Trading Fee Pilot	Three commenters suggested that the CSA monitor any Securities Exchange Commission (SEC) trading fee pilot and consider participating.	We are monitoring and will continue to monitor developments in the US, including the recommendations of the SEC's Equity Market Structure Advisory Committee for an access (trading) fee pilot.
Ban Rebates	One commenter suggested banning rebates on Non-Interlisted Securities, as there is no risk of loss of order flow to US marketplaces	Before considering a ban, we will monitor developments with the US fee pilot.
Other Comments	One commenter made a number of suggestions with respect to pricing and availability of market data.	These comments are out of scope of the request for comments. We note that the CSA has recently adopted a formal methodology for reviewing marketplaces' market data fees. See CSA Staff Notice 21-319 dated December 8, 2016.