

REGULATION TO AMEND REGULATION 23-103 RESPECTING ELECTRONIC TRADING

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (11), (32) and (34))

1. Regulation 23-103 respecting Electronic Trading is amended by replacing the title with the following:

“REGULATION 23-103 RESPECTING ELECTRONIC TRADING AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES”.

2. Section 1.1 of the Regulation is amended:

(1) by inserting, after the definition of the expression “automated order system”, the following:

““DEA client” means a client that is granted direct electronic access by a participant dealer;

“DEA client identifier” means a unique client identifier assigned to a DEA client;

“direct electronic access” means the access provided by a person to a client, other than a client that is registered as an investment dealer with a securities regulatory authority or, in Québec, is a foreign approved participant as defined in the Rules of the Montréal Exchange Inc., that permits the client to electronically transmit an order relating to a security to a marketplace, using the person’s marketplace participant identifier,

(a) through the person’s systems for automatic onward transmission to a marketplace; or

(b) directly to a marketplace without being electronically transmitted through the person’s systems;”;

(2) by replacing, in the French text of the definition of the expression “marketplace and regulatory requirements”, the word “règlementation” with the word “réglementation”;

(3) by inserting, after the definition of the expression “marketplace and regulatory requirements”, the following:

““marketplace participant identifier” means the unique identifier assigned to a marketplace participant to access a marketplace; and”;

(4) by replacing the definition of “participant dealer” with the following:

““participant dealer” means

(a) a marketplace participant that is an investment dealer; or

(b) in Québec, a foreign approved participant as defined in the Rules of the Montréal Exchange Inc., as amended from time to time.”.

3. Section 3 of the Regulation is amended:

(1) by replacing, in the French text of subparagraph (a) of paragraph (1), the words “au marché” with the words “aux marchés”;

- (2) by replacing, in subparagraph (a) of paragraph (2), “, and” with “; and”;
- (3) in paragraph (3):
 - (a) by replacing, at the end of subparagraph (i) of subparagraph (a), “,” with “;”;
 - (b) in the French text of subparagraph (b):
 - (i) by replacing, in subparagraph (ii), the word “octroie” with the word “accorde”;
 - (ii) by replacing, in subparagraph (iv), the words “transmis au marché” with the word “transmis”, and the word “octroie” with the word “accorde”;
 - (c) by replacing, in the French text of subparagraph (c), the word “octroie” with the word “accorde”;
 - (d) by replacing, in the French text of subparagraph (d), the words “au marché qu’il octroie” with the words “à un marché qu’il accorde”;
- (4) by replacing, in the French text of paragraph (4), the words “doit être” with the word “est”, and the word “octroie” with the word “accorde”;
- (5) by replacing, in the French text of paragraph (5), the words “ajuste de façon directe et exclusive” with the words “modifie directement et exclusivement”;
- (6) by replacing the French text of subparagraph (b) of paragraphs 6 and 7 with the following:

“b) il documente les lacunes dans la convenance et l’efficacité de ces contrôles, politiques et procédures et les corrige rapidement.”.

4. Section 4 of the Regulation is amended:

- (1) by replacing, in the French text of the title, the words “**d’ajuster**” with the words “**de modifier**”;
- (2) by replacing the part preceding the French text of subparagraph (a) with the following:

“Malgré le paragraphe 5 de l’article 3, le courtier participant peut, pour des motifs raisonnables, autoriser un courtier en placement à établir ou modifier en son nom un contrôle, une politique ou une procédure en particulier concernant la gestion des risques ou la surveillance prévu au paragraphe 1 de l’article 3, si les conditions suivantes sont réunies :”;
- (3) by replacing, in the French text of subparagraph (a), the word “client” with the words “client ultime”, and the words “et peut ainsi établir ou ajuster le contrôle, la politique ou la procédure de manière plus efficace” with the words “et qu’il peut ainsi établir ou modifier le contrôle, la politique ou la procédure plus efficacement”;
- (4) by replacing, in subparagraph (b), the words “participant dealer and investment dealer” with the words “participant dealer and the investment dealer”;

(5) by replacing, in the French text of subparagraph (c), the words “l’ajustement” with the words “la modification” and the words “l’ajuster” with the words “le modifier”;

(6) in the French text of subparagraph (d):

(a) by replacing, in subparagraph (i), the words “l’ajustement” with the words “la modification”;

(b) by replacing subparagraph (ii) with the following:

“*ii*) il documente les lacunes dans la convenance et l’efficacité de l’établissement ou de la modification et veille à les faire corriger rapidement;”;

(7) by replacing, in the French text of subparagraph (e), the word “client” with the words “client ultime”.

5. The Regulation is amended by inserting, after Part 2, the following:

“PART 2.1 REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

“4.1. Application of this Part

This Part does not apply to a participant dealer if the participant dealer complies with similar requirements established by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of Regulation 23-101 respecting Trading Rules; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of Regulation 23-101 respecting Trading Rules.

“4.2. Provision of Direct Electronic Access

(1) A person must not provide direct electronic access unless it is a participant dealer.

(2) A participant dealer must not provide direct electronic access to a client that is acting and registered as a dealer with a securities regulatory authority.

“4.3. Standards for DEA Clients

(1) A participant dealer must not provide direct electronic access to a client unless the participant dealer

(a) has established, maintains and applies standards that are reasonably designed to manage, in accordance with prudent business practices, the participant dealer’s risks associated with providing direct electronic access; and

(b) assesses and documents that the client meets the standards established by the participant dealer under paragraph (a).

(2) The standards established by the participant dealer under subsection (1) must include the following:

(a) a client must not have direct electronic access unless the client has sufficient resources to meet any financial obligations that may result from the use of direct electronic access by that client;

(b) a client must not have direct electronic access unless the client has reasonable arrangements in place to ensure that all individuals using direct electronic access on behalf of the client have reasonable knowledge of and proficiency in the use of the order entry system that facilitates the direct electronic access;

(c) a client must not have direct electronic access unless the client has reasonable knowledge of and the ability to comply with all applicable marketplace and regulatory requirements; and

(d) a client must not have direct electronic access unless the client has reasonable arrangements in place to monitor the entry of orders through direct electronic access.

(3) A participant dealer must assess, confirm and document, at least annually, that the DEA client continues to meet the standards established by the participant dealer, including for greater certainty, those set out in this section.

“4.4. Written Agreement

A participant dealer must not provide direct electronic access to a client unless the client has entered into a written agreement with the participant dealer that provides that,

(a) in the client’s capacity as a DEA client,

(i) the client’s trading activity will comply with marketplace and regulatory requirements;

(ii) the client’s trading activity will comply with the product limits and credit or other financial limits specified by the participant dealer;

(iii) the client will take all reasonable steps to prevent unauthorized access to the technology that facilitates direct electronic access and will not permit any person to use the direct electronic access provided by the participant dealer other than those named by the client under the provision of the agreement referred to in subparagraph (vii);

(iv) the client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace or regulation services provider with respect to trading conducted pursuant to the direct electronic access provided, including, upon request by the participant dealer, providing the

marketplace or regulation services provider with access to information that is necessary for the purposes of the investigation or proceeding;

(v) the client will immediately inform the participant dealer if the client fails or expects not to meet the standards set by the participant dealer;

(vi) when trading for the accounts of another person, under subsection 4.7(1), the client will ensure that the orders of the other person are transmitted through the systems of the client and will be subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the client;

(vii) the client will immediately provide to the participant dealer in writing,

(A) the names of all personnel acting on the client's behalf that the client has authorized to enter an order using direct electronic access; and

(B) details of any change to the information in clause (A),

(b) the participant dealer has the authority to, without prior notice

(i) reject any order;

(ii) vary or correct any order to comply with a marketplace or regulatory requirement;

(iii) cancel any order entered on a marketplace; and

(iv) discontinue accepting orders from the DEA client.

“4.5. Training of DEA Clients

(1) A participant dealer must not allow a client to have, or continue to have, direct electronic access unless the participant dealer is satisfied that the client has reasonable knowledge of applicable marketplace and regulatory requirements and the standards established by the participant dealer under section 4.3.

(2) A participant dealer must ensure that a DEA client receives any relevant amendments to applicable marketplace and regulatory requirements or changes or updates to the standards established by the participant dealer under section 4.3.

“4.6. DEA Client Identifier

(1) Upon providing direct electronic access to a DEA client, a participant dealer must ensure the client is assigned a DEA client identifier in the form and manner required by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of Regulation 23-101 respecting Trading Rules; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of Regulation 23-101 respecting Trading Rules.

(2) A participant dealer under subsection (1) must immediately provide the DEA client identifier to each marketplace to which the DEA client has direct electronic access through the participant dealer.

(3) A participant dealer under subsection (1) must immediately provide the DEA client's name and the client's associated DEA client identifier to

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client has access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of Regulation 23-101 respecting Trading Rules and to which the DEA client has access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Regulation and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of Regulation 23-101 respecting Trading Rules and to which the DEA client has access through the participant dealer.

(4) A participant dealer must ensure that an order entered by a DEA client using direct electronic access provided by the participant dealer includes the appropriate DEA client identifier.

(5) If a client ceases to be a DEA client, the participant dealer must promptly inform

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client had access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of Regulation 23-101 respecting Trading Rules and to which the DEA client had access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Regulation and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of Regulation 23-101 respecting Trading Rules and to which the DEA client had access through the participant dealer.

“4.7. Trading by DEA Clients

(1) A participant dealer must not provide direct electronic access to a DEA client that is trading for the account of another person unless the DEA client is

(a) registered or exempted from registration as an adviser under securities legislation; or

(b) a person that

(i) carries on business in a foreign jurisdiction;

(ii) under the laws of the foreign jurisdiction, may trade for the account of another person using direct electronic access; and

(iii) is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(2) If a DEA client referred to in subsection (1) is using direct electronic access to trade for the account of another person, the DEA client must ensure that the orders of the other person are transmitted through the systems of the DEA client before being entered on a marketplace.

(3) A participant dealer must ensure that when a DEA client is trading for the account of another person using direct electronic access, the orders of the other person are subject to reasonable risk management and supervisory controls, policies and procedures established and maintained by the DEA client.

(4) A DEA client must not provide access to or pass on its direct electronic access to another person other than the personnel authorized under subparagraph 4.4(a)(vii).”.

6. Section 5 of the Regulation is amended, in the French text of paragraph (3):

(1) by replacing, in subparagraph (b), the words “par année” with the words “l’an”;

(2) by replacing, in subparagraph (c), the words “de contrôles” with the words “des contrôles” and the words “immédiatement de faire” with the words “de faire immédiatement”.

7. Section 7 of the Regulation is amended, in the French text:

(1) by replacing, in paragraph (1), the words “n’octroie” with the words “n’accorde”;

(2) by replacing, in subparagraph (c) of paragraph (2), the words “visés au” with the words “mis en œuvre en vertu du”.

8. Section 9 of the Regulation is amended, in the French text:

(1) by replacing, in paragraph (1), the words “n’octroie” with the words “n’accorde”;

(2) by replacing, subparagraph (b) of paragraph (2), the words “des parties à l’opération, les 2 parties” with the words “des deux parties à l’opération, celles-ci”.

9. The Regulation is amended by inserting, after section 9, the following:

“9.1. Support Use of DEA Client Identifiers

A marketplace must not permit a marketplace participant to provide direct electronic access to a person unless the marketplace’s systems support the use of DEA client identifiers.”

10. This Regulation comes into force on March 1, 2014.