

Note: [28 Jan 2010 and 01 Feb 2011] – Amendments to NI 23-101. Refer to CSA Notice announcing amendments to NI 23-101 and NI 21-101 dated 13 Nov 2009.

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1.1 Amendments

(1) This Instrument amends National Instrument 23-101 *Trading Rules*.

(2) The following definitions are added to section 1.1:

“automated functionality” means the ability to

- (a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;
- (b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;
- (c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;
- (d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and
- (e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;

“protected bid” means a bid for an exchange-traded security, other than an option

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

“protected offer” means an offer for an exchange-traded security, other than an option,

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider; and

“protected order” means a protected bid or protected offer”.

(2.1) The following definitions are added to section 1.1:

“calculated-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

- (a) is not known at the time of order entry; and
- (b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

“closing-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is

- (a) entered on a marketplace on a trading day; and
- (b) subject to the conditions that
 - (i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price;

“directed-action order” means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

- (a) when entered on or routed to a marketplace is to be immediately
 - (i) executed against a protected order with any remainder to be booked or cancelled; or
 - (ii) placed in an order book;
- (b) is marked as a directed-action order; and
- (c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

“non-standard order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted; and

“trade-through” means the execution of an order at a price that is,

- (a) in the case of a purchase, higher than any protected offer, or
 - (b) in the case of a sale, lower than any protected bid.
- (3) Subsection 3.1(2) is amended by adding “and the *Derivatives Act*” between “*Securities Act*” and “(Québec)”.
- (3.1) Part 6 is amended by adding the following:
- (a) “and Locked or Crossed Orders” after “Trading Hours” in the title of Part 6; and
 - (b) 6.2 Locked or Crossed Orders – A marketplace participant shall not intentionally
 - (a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
 - (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.
- (4) Part 6, as amended by subsection (3.1), is repealed and replaced by the following:

“PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection – (1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and
- (b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

- (a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
- (b) the execution of a directed-action order;
- (c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
- (d) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;
- (e) a trade-through that results when executing
 - (i) a non-standard order;
 - (ii) a calculated-price order; or
 - (iii) a closing-price order;
- (f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay – (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

- (a) all other marketplaces;
- (b) all regulation services providers;
- (c) its marketplace participants; and
- (d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

- (a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;
- (b) all regulation services providers;
- (c) its marketplace participants; and
- (d) any information processor disseminating information under Part 7 of NI 21-101.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

- (a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and
- (b) all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection – (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs other than the trade-throughs listed below:
 - (i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
 - (ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
 - (iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;
 - (iv) a trade-through that results when executing

- (A) a non-standard order;
- (B) a calculated-price order; or
- (C) a closing-price order;
- (v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally

- (a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
- (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – A marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

6.8 Application of this Part – In Québec, this Part does not apply to standardized derivatives.”.

(5) Part 7 is amended by:

(a) repealing paragraph 7.2(c) and replacing it with the following:

“(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, and

- (ii) the conduct of the recognized exchange, as applicable; and”; and
- (b) repealing paragraph 7.4(c) and replacing it with the following:
 - “(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:
 - (i) the conduct of and trading by marketplace participants on and across marketplaces, and
 - (ii) the conduct of the recognized quotation and trade reporting system, as applicable; and”; and
 - (c) amending section 7.5 by striking out “under this Part” and substituting “under Parts 7 and 8”.
- (6) Paragraph 8.3(d) is repealed and replaced by the following:
 - “(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:
 - (i) the conduct of and trading by marketplace participants on and across marketplaces, and
 - (ii) the conduct of the ATS; and”.
- (7) Section 9.3 is amended by striking out “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” and substituting “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets”.
- 1.2 Effective Date – (1) This Instrument, other than subsections 1.1(2.1) and 1.1(4), comes into force on January 28, 2010.
 - (2) Subsections 1.1(2.1) and 1.1(4) come into force on February 1, 2011.