



## CSA Notice and Request for Comment

### Proposed Amendments to National Instrument 23-101 *Trading Rules* and Proposed Changes to Companion Policy 23-101 *Trading Rules*

January 23, 2025

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed amendments to National Instrument 23-101 *Trading Rules* (**NI 23-101**) (**Proposed Amendments**) and accompanying changes to Companion Policy 23-101 *Trading Rules* (**23-101CP**) (**Proposed CP Changes**). The Proposed Amendments and Proposed CP Changes are being published for a 60-day comment period to solicit feedback and, if adopted, will amend section 6.6.1 of NI 23-101 to lower the active trading fee cap<sup>1</sup> applicable to trades in securities that are listed on both a Canadian recognized exchange and a U.S. registered national securities exchange (**U.S. Inter-listed Securities**) and make related changes to 23-101CP.

We are publishing the text of the Proposed Amendments and Proposed CP Changes in Annexes A, B, C and D to this notice, together with certain other relevant information at Annexes E, F and G. The text of the Proposed Amendments and Proposed CP Changes will also be available on the websites of the CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.asc.ca](http://www.asc.ca)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.nssc.novascotia.ca](http://www.nssc.novascotia.ca)

[www.fcmb.ca](http://www.fcmb.ca)

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

In a related initiative, the Canadian Investment Regulatory Organization (**CIRO**) published for comment a proposal to amend subsection 6.1(1) of the Universal Market Integrity Rules (**UMIR**) to align Canadian trading increments for U.S. Inter-listed Securities with U.S. market trading increments (**Proposed UMIR Amendments**).<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> [CIRO's Proposed Amendments Respecting Trading Increments](#)

## Substance and Purpose

The Proposed Amendments would continue to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced trading<sup>3</sup> fee caps adopted by the U.S. Securities and Exchange Commission (SEC) on September 18, 2024 and originally planned to be implemented on November 3, 2025. On December 12, 2024, the SEC announced an order granting a partial stay on the implementation of the rules pending judicial review of the proposals by the United States Court of Appeals for the District of Columbia Circuit.

If approved, it is intended that the Proposed Amendments, Proposed CP Changes and Proposed UMIR Amendments would come into force on the implementation date for the SEC rules or as soon as practicable thereafter. The Proposed Amendments and Proposed CP Changes will not come into effect before the SEC's stay is lifted and its rules are implemented.

## Background

### *SEC Proposed Amendments*

On December 14, 2022, the SEC published for comment four proposals to change certain fundamental elements of U.S. market structure (**SEC Proposed Amendments**).<sup>4</sup> Among these were proposals to establish a variable (and in many cases smaller) minimum trading increment for securities (**SEC Tick Size Proposal**)<sup>5</sup> and, in conjunction, reduce the trading fee caps charged in the U.S. (**SEC Trading Fee Proposal**).

CSA and CIRO staff reviewed the SEC Proposed Amendments and considered their impact on Canadian equity market structure. In October 2023, the CSA and CIRO sought feedback from stakeholders in joint [CSA/CIRO Staff Notice 23-331 Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets \(Staff Notice 23-331\)](#). The purpose of Staff Notice 23-331 was to solicit views and to seek comments on certain aspects of the SEC Proposed Amendments, with a focus on the potential impacts on Canadian capital markets and potential policy responses. Twelve comment letters were received. A summary of comments can be found [here](#).

Generally, commenters were of the view that the most pertinent SEC Proposed Amendments to the Canadian capital markets were the SEC Tick Size Proposal and the SEC Trading Fee Proposal.

Given the interconnectedness of U.S. and Canadian equity markets, most commenters were of the view that Canadian trading increments for U.S. Inter-listed Securities, contained in CIRO's UMIR, should be harmonized with the SEC Tick Size Proposal as finalized. As such, in a related notice, CIRO published for comment the Proposed UMIR Amendments.

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<sup>3</sup> In the U.S., trading fees are known as access fees.

<sup>4</sup> For background on the four SEC Proposals, refer to the following: [Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders](#); [Regulation Best Execution](#); [Disclosure of Order Execution Information](#); [Order Competition Rule](#)

<sup>5</sup> SEC Rule 612 sets a minimum trading increment of one cent.

In conjunction with the reduction of the minimum trading increments, commenters also broadly supported harmonizing Canadian equity trading fee caps established under NI 23-101 with the SEC Trading Fee Proposal. This is the subject of the Proposed Amendments and Proposed CP Changes.

As part of this notice, we are also publishing in Annex E a detailed summary of comments on Staff Notice 23-331 with respect to SEC Tick Size and Trading Fee Proposals. With respect to other SEC Proposed Amendments – regulation best execution, disclosure of order execution information and an order competition rule – most of the commenters were of the view that these proposals were either not relevant to the Canadian markets or further analysis was required prior to proposing any rule changes. Please refer to the summary of these comments [here](#).

### ***Final SEC Rules***

On September 18, 2024, SEC adopted its final rules with respect to the SEC Tick Size Proposal and the SEC Trading Fee Proposal. With respect to the SEC Trading Fee Proposal, for securities priced USD 1.00 or more, the U.S. access fee cap will be lowered to USD 0.001 per share. For U.S. securities priced less than USD 1.00, the U.S. access fee cap will be 0.1% of the quotation price.

The SEC also adopted its final rules with respect to the SEC Tick Size Proposal. As part of CISO's Proposed UMIR Amendments, the trading increments for specific securities will be adjusted semi-annually to align with increments applicable to U.S. marketplaces.

### **Summary of the Proposed Amendments and Proposed CP Changes**

Subsection 6.6.1(2) of NI 23-101 will be amended to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC. As such, for U.S. Inter-listed Securities priced at CAD 1.00 or more, the trading fee cap will be CAD 0.001 per share. Accompanying changes will be made to section 6.4.1 of 23-101CP.

Background information on the Canadian trading fee cap regime is provided in Annex F.

### ***Non-U.S. Inter-listed Securities***

The Proposed Amendments will not apply to non-U.S. Inter-listed Securities – securities that are listed in Canada and could also be listed on any foreign exchange other than a U.S. registered national securities exchange. There is currently an intentional differentiation between the fee caps for U.S. Inter-listed Securities and non-U.S. Inter-listed Securities. When fee caps were first proposed in 2016, many stakeholders expressed concerns with respect to the U.S.- aligned fee caps being too high and not reflective of the lower average prices of Canadian securities. To

address these concerns, a lower fee cap of CAD 0.0017 was proposed and approved for non-U.S. Inter-listed Securities priced at or above CAD 1.00.<sup>6</sup>

In response to Staff Notice 23-331, some commenters suggested considering extending the reduced fee caps to non-U.S. Inter-listed Securities. However, most of these commenters also cautioned against doing so without extensive analysis and consultations. As such, given the importance of maintaining Canadian and U.S. markets harmonized with respect to U.S. Inter-listed Securities, it was decided to focus on such securities for these Proposed Amendments and Proposed CP Changes.

The CSA intend to review the fee caps for non-U.S. Inter-listed Securities but are not proposing any changes at this time pending further analysis.

### ***Related amendments***

The Proposed Amendments will include the following related amendments:

- 1) The defined term “inter-listed security” in NI 23-101 will be clarified by adding a reference to U.S. This is being done to align the name of the defined term to its corresponding definition, which only includes those securities inter-listed on a U.S. registered national securities exchange. Also, the term will be made consistent with the analogous definition in the Proposed UMIR Amendments.
- 2) Section 6.6.2 of NI 23-101 will be repealed. Currently, this section is ensuring that once a security ceases to be a U.S. Inter-listed Security, the exchanges have enough time to lower the trading fees provided such fees are higher than a prescribed trading fee cap for non-U.S. Inter-listed Securities. Once the Proposed Amendments are in effect, this section will not be needed as the trading fee cap applicable to U.S. Inter-listed Securities will now be lower than the trading fee cap applicable to non-U.S. Inter-listed Securities.

### ***Alternatives to the Proposed Amendments and Proposed CP Changes***

We considered maintaining the current trading fee cap, which is not a viable option as a per-share trading fee that is too high can distort calculations of whether a price on one marketplace is “better” than on another marketplace.

Given that the Canadian equity market is highly integrated with U.S. equity market, and there is significant trading activity in equity securities listed in both Canada and the U.S., concerns arise about potential negative consequences for the Canadian equity market from establishing a trading fee cap for U.S. Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. Our view is reinforced by the responses to Staff Notice 23-331.

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<sup>6</sup> See notice of approval - [https://www.osc.ca/sites/default/files/pdfs/irps/csa\\_20170126\\_23-101\\_noa-amendments.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/csa_20170126_23-101_noa-amendments.pdf)

The Proposed Amendments will enable Canadian trading fee caps to remain harmonized with U.S. access fee caps for U.S. Inter-listed Securities at CAD 1.00 or more. As such, the Proposed Amendments are necessary to maintain the competitiveness of our capital markets, so that lower trading fees in the U.S. do not create an incentive for Canadian dealers to direct order flow in U.S. Inter-listed Securities to U.S. marketplaces.

## Consultation Questions

### Question 1:

- a) Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:
  - i) at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate, or
  - ii) at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?<sup>7</sup>
- b) Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?
- c) Do you support any alternatives not listed above?

Please provide rationale in support of or against any alternatives above.

**Question 2:** Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.

**Question 3:** Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?

**Question 4:** As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.

## Anticipated Costs and Benefits of the Proposed Amendments and Proposed CP Changes

OSC staff conducted a costs and benefits analysis of the Proposed Amendments and Proposed CP Changes as detailed in Annex G. This analysis included consultations with Canadian marketplace operators seeking input on the expected costs each marketplace would incur to implement the Proposed Amendments.

In summary, it is anticipated that marketplaces will incur minor costs to comply with the Proposed Amendments, ranging between \$5,700 and \$10,700 per entity. It is also anticipated that a reduction in the trading fee cap could lead to a \$101 million decrease in total fees collected by marketplaces and, depending on the net capture earned by marketplaces, reduced marketplace revenue. However, the net capture earned by marketplaces should not change significantly, as the

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<sup>7</sup> The CAD/USD exchange rate is approximately 1.44 at the time of publication

lower passive rebates paid (\$101 million) should offset the decrease in fees collected. Although we are unable to quantify the impact of many of the benefits of the Proposed Amendments, we anticipate that these benefits might reasonably be expected to be proportionate to the estimated costs to the extent that the Proposed Amendments preserve the relative competitive position of U.S. and Canadian marketplaces.

### **Unpublished Materials**

In developing the Proposed Amendments and Proposed CP Changes, we have not relied on any significant unpublished study, report or other written materials.

### **Local Matters**

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex G of this notice.

### **Annexes**

- Annex A – Proposed Amendments to National Instrument 23-101 *Trading Rules*
- Annex B – Proposed Changes to Companion Policy 23-101 *Trading Rules*
- Annex C – Blackline Showing Proposed Amendments to National Instrument 23-101 *Trading Rules*
- Annex D - Blackline Showing Proposed Changes to Companion Policy 23-101 *Trading Rules*
- Annex E – Summary of responses to Staff Notice 23-331 relating to SEC Tick Size and Trading Fee Proposals
- Annex F – Background on regulation of trading fee caps in Canada
- Annex G – Local Matters – Cost Benefit Analysis (Ontario)

### **Authority of the Proposed Amendments and Proposed CP Changes**

The securities legislation in each of the CSA jurisdictions provides the securities regulatory authority with rule-making or regulatory authority in respect of the subject matter of the Proposed Amendments.

In Ontario, the Proposed Amendments and Proposed CP Changes are being made under the following provisions of the *Securities Act* (Ontario):

- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review

or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.

### **How to Provide Comments**

We welcome your comments on the Proposed Amendments and Proposed CP Changes and invite comments on the specific questions written under title “Consultation Questions”. Please provide your comments in writing by March 24, 2025. Please send your comments by email, attached in Microsoft Word format.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at [www.asc.ca](http://www.asc.ca), the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca) and the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca). Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Please address your submission to the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor  
Toronto, Ontario  
M5H 3S8  
Fax: 416-593-2318  
Email: <mailto:comment@osc.gov.on.ca>

M<sup>e</sup> Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour PwC  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
Fax: (514) 864-8381  
Email: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

## Questions

Please refer your questions to any of the following:

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Senior Legal Counsel, Trading & Markets  
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ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES*

1. *National Instrument 23-101 Trading Rules is amended by this Instrument.*
2. *Section 6.6.1 is amended*
  - (a) *in subsection (1) by adding “U.S.” before “inter-listed security”,*
  - (b) *in paragraph (2)(a) by replacing “an order involving an inter-listed security” with “an order involving a U.S. inter-listed security”,*
  - (c) *in subparagraph 2(a)(i) by replacing “\$0.0030” with “\$0.0010”,*
  - (d) *in paragraph 2(b) by replacing “a security that is not an inter-listed security” with “a security that is not a U.S. inter-listed security”, and*
  - (e) *in subsection (3) by adding “U.S.” before “inter-listed securities”.*
3. *Section 6.6.2 is repealed.*
4. This Instrument comes into force on [•].

## ANNEX B

### PROPOSED CHANGES TO COMPANION POLICY 23-101 *TRADING RULES*

1. *Companion Policy 23-101 to National Instrument 23-101 Trading Rules is changed by this Document.*
2. *Section 6.4.1 is replaced with*

“6.4.1 Trading Fees – Section 6.6.1 provides caps on the fee that a marketplace subject to section 7.1 of NI 21-101 can charge for execution against a displayed order on the marketplace. Paragraph 6.6.1(2)(a) establishes a different trading fee cap for exchange-traded securities that are U.S. inter-listed securities (i.e., listed on both a recognized exchange and a national securities exchange in the United States of America) and priced at or above \$1.00. Subsections 6.6.1 (3) and (4) provide a process to ensure transparency of a security's status as a U.S. inter-listed security, and require a recognized exchange to publish a quarterly list of all of its U.S. inter-listed securities no later than seven days after the end of each quarter. In compiling the list, an exchange may rely on representations made by its listed issuers as to their status.”
3. These changes will become effective on [•].

ANNEX C

BLACKLINE SHOWING PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT  
23-101 *TRADING RULES*

**Trading Fees**

6.6.1 (1) In this section

"exchange-traded fund" means a mutual fund

- a. the units of which are listed securities or quoted securities, and
- b. that is in continuous distribution in accordance with applicable securities legislation; and

"U.S. inter-listed security" means an exchange-traded security that is also listed on an exchange that is registered as a "national securities exchange" in the United States of America under section 6 of the 1934 Act.

**6.6.1 (2)** A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a displayed order on the marketplace that,

- a. in the case of an order involving ~~an~~ U.S. inter-listed security,
  - i. is greater than ~~\$0.0030~~ \$0.0010 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00, and
  - ii. is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00, or
- b. in the case of an order involving a security that is not ~~an~~ U.S. inter-listed security,
  - i. is greater than \$0.0017 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00, and
  - ii. is greater than \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00.

**(3)** A recognized exchange must maintain a list of U.S. inter-listed securities that are listed on the exchange as of the last day of each calendar quarter.

(4) A recognized exchange must publicly disclose on its website the list referred to in subsection (3)

- a. within 7 days after the last day of each calendar quarter, and
- b. for a period of at least 12 months commencing on the date it is publicly disclosed on the website.

**~~Ceasing to be inter-listed security—fee transition period~~**

**~~6.6.2~~** ~~If a security ceases to be an inter-listed security, paragraph 6.6.1(2)(b) does not apply if~~

- ~~a. less than 35 days has passed since the first date, following the cessation, the list referred to in subsection 6.6.1(4) was publicly disclosed, and~~
- ~~b. the fee charged is in compliance with paragraph 6.6.1(2)(a) as if the security were still an inter-listed security.~~

## ANNEX D

### BLACKLINE SHOWING PROPOSED CHANGES TO COMPANION POLICY 23-101 *TRADING RULES*

**6.4.1 Trading Fees** – Section 6.6.1 provides caps on the fee that a marketplace subject to section 7.1 of NI 21-101 can charge for execution against a displayed order on the marketplace. Paragraph 6.6.1(2)(a) establishes a ~~higher~~ **different** trading fee cap for exchange-traded securities that are **U.S.** inter-listed **securities** (i.e., listed on both a recognized exchange and a national securities exchange in the United States of America) and priced at or above \$1.00. Subsections 6.6.1 (3) and (4) provide a process to ensure transparency of a security's status as an **U.S.** inter-listed security, and require a recognized exchange to publish a quarterly list of all of its **U.S.** inter-listed securities no later than seven days after the end of each quarter. In compiling the list, an exchange may rely on representations made by its listed issuers as to their status.

~~Section 6.6.2 addresses the situation where a security's status as an inter-listed security changes, specifically, when a security is delisted from all U.S. national securities exchanges on which it was listed and is now only listed on a recognized exchange in Canada and is no longer an inter-listed security. Section 6.6.2 requires marketplaces to make any reductions to their fees that are necessary to comply with paragraph 6.6.1(2)(b) no later than 35 days following the publication of the first list indicating that the security is no longer an inter-listed security.~~

**ANNEX E**

**SUMMARY OF RESPONSES TO STAFF NOTICE 23-331 RELATING TO SEC TICK  
SIZE AND TRADING FEE PROPOSALS**

**List of Commenters**

1. Canadian Securities Exchange
2. BMO Financial Markets
3. Virtu Financial
4. TD Securities
5. Investment Industry Association of Canada (IIAC)
6. Canadian Security Traders Association, Inc (CSTA)
7. Scotiabank Global Trading & Markets
8. Tradelogiq
9. TMX
10. Cboe
11. Nasdaq CXC Limited
12. National Bank Financial Markets

Summary of Comments
<p><b>Question 1: If adopted as proposed by the SEC, please provide your views regarding whether Canada should harmonize with an amended SEC rule, including with respect to:</b></p> <ul style="list-style-type: none"> <li>a) the methodology used to calculate minimum trading increments, including, source of data (which marketplaces and what entity should be responsible for calculation) and time periods during which the metrics are calculated,</li> <li>b) securities to which any amended Canadian price increments would apply (e.g., inter-listed securities only or all or some classes of securities, exchange-traded funds and/or other exchange-traded securities),</li> <li>c) treatment of situations where the use of an aligned methodology results in different trading increments between inter-listed securities traded in Canada and the U.S. (i.e., where the time-weighted average quoted spreads in Canada and the U.S. are different for the same security).</li> </ul>
<p>a)</p> <ul style="list-style-type: none"> <li>• Some commenters supported harmonizing with the U.S. and among the Canadian regulators the methodology used to calculate minimum trading increments.</li> <li>• One commenter noted that Canadian listing exchanges should identify which inter-listed stocks are affected and therefore subject to reduced tick sizes – for example, through start of day symbol status messages.</li> </ul>
<p>b)</p> <ul style="list-style-type: none"> <li>• The vast majority of commenters supported harmonizing Canadian price increments for Inter-listed Securities. Not a single commenter expressed outright opposition to harmonizing price increments for U.S. Inter-listed Securities.</li> </ul> <p>On the issue of non- U.S. Inter-listed Securities, most commenters urged caution, or outright opposed harmonizing trading increments for non- U.S. Inter-listed Securities. Only one commenter supported harmonizing trading increments for these securities.</p>
<p>c)</p> <ul style="list-style-type: none"> <li>• A commenter noted that if the regulators cannot harmonize their data sets, Canadian regulators should apply SEC data over Canadian data.</li> <li>• Another commenter argued that in case of having different trading increments for U.S. Inter-listed Securities, the trading increment chosen for Canada should be the narrower of (1) the U.S. increment and (2) the increment calculated through the Canadian method.</li> </ul>
<p><b>Question 2: If Canadian requirements as related to minimum trading increments are not amended in response to an amended SEC rule as proposed:</b></p> <ul style="list-style-type: none"> <li>a) Would marketplace participants send less order flow to Canadian marketplaces in favor of U.S. trading venues?</li> <li>b) Does the difference in value between the Canadian and the American dollars matter in your analysis?</li> </ul>



<p>a)</p> <ul style="list-style-type: none"> <li>The majority of commenters believed that order flow to Canadian marketplaces will drop if Canadian requirements are not harmonized with SEC amendments.</li> <li>Two commenters expressed doubts with respect to the order flow drop at Canadian marketplaces; one commenter called for a more detailed, data-driven study to be undertaken.</li> </ul>
<p>b)</p> <ul style="list-style-type: none"> <li>The vast majority of commenters who responded to this question did not believe that trading increments and access fees should be viewed through the lens of foreign exchange rate. The general preference was to have those harmonized to the greatest extent possible.</li> </ul>
<p><b>Question 3: Concerns have been raised in relation to:</b></p> <ul style="list-style-type: none"> <li>a) <b>operational resiliency and systems readiness should the number of trading increments be increased, especially where they would be periodically adjusted on a per-security basis, and</b></li> <li>b) <b>increase in message traffic (i.e., electronic order and trade messages) that will result from an increase in the number of pricing increments.</b></li> </ul> <p><b>Please discuss whether you share these concerns.</b></p>
<ul style="list-style-type: none"> <li>The majority of commenters shared the identified concerns. However, the general view was that the benefits of harmonizing trading increments for U.S. Inter-listed Securities outweighed the technology-related risks. One commenter noted that the regulators should provide the industry with sufficient time to adjust their technology to smaller trading increments.</li> </ul>
<p><b>Question 4: It has been suggested that any Canadian proposal to amend minimum pricing increments would introduce complexity in managing orders. Please provide your views in this regard, including as related to:</b></p> <ul style="list-style-type: none"> <li>a) <b>complexities associated with the frequency at which minimum trading increments could change,</b></li> <li>b) <b>the necessary lead-time between establishment and implementation of new minimum trading increments both initially and on an ongoing basis,</b></li> <li>c) <b>challenges with management of existing orders entered on marketplaces at prices that have become invalid trading increments (may be particularly relevant for orders of retail investors that are entered with longer expiry dates (i.e., Good-till-Cancelled (“GTC”) orders)),</b></li> <li>d) <b>investor education challenges associated with an amended approach to minimum pricing increments.</b></li> </ul>
<ul style="list-style-type: none"> <li>Some commenters believed that such a Canadian proposal would introduce complexity in managing orders.</li> <li>Some commenters thought that GTC orders may need to be repriced and/or possibly canceled.</li> </ul>

- In terms of the timeline of implementation, one commenter preferred infrequent and predictable changes where needed; another commenter preferred to stagger the implementation.
- One commenter expressed concerns regarding the timing: under the SEC proposals, calculations, dissemination and changes of tick sizes would all have to take place between one day's close and the next day's open. Such a compressed schedule might affect markets' ability to conduct adequate quality control and testing; also, brokers may not have sufficient time to discuss and address order management issues with their clients.
- Some commenters believe that investor education associated with an amended approach to minimum trading increments might be a challenge.

**Question 5: As modifying trading increments in Canada would impact the determination of a "better price" under UMIR, please discuss whether Participants (as defined in UMIR 1.1) would still be providing meaningful price improvement in circumstances where a "better price" is required.**

- Some commenters believed that UMIR should not change its definition of a "better price."
- Some commenters thought that there would still be meaningful price improvement with modified trading increments. On the other hand, one commenter believed that a "better price" at sub-penny levels is almost immaterial, and this would not be meaningful price improvement.
- Other commenters expressed different opinions:
  - One commenter suggested redefining the concept of "better price" to an absolute amount (per share), dependent on stock price and potentially order quantity. Further, any displayed orders which do not represent a "better price" relative to round trading increments should lose order protection.
  - One commenter argued that maintaining a single general standard for "better price" as the amount by which one can improve the quoted better price would make for a simple and practical standard but is open to establishing a higher threshold.
- One commenter urged the regulators to consider the policy rationale behind the determination of "better price" and whether smaller trading increments would still be providing meaningful price improvement.

**Question 6: Please provide any views on expected outcomes (positive and negative) associated with any changes to minimum trading increments, including as related to expected quoted volume at each price increment. Additionally, please provide your views on what metrics could be used to evaluate whether any new approach to minimum trading increments results in positive or negative outcomes.**

- A number of commenters had various views on expected outcomes that would result with any changes to minimum trading increments:
  - In terms of positive outcomes,

- Several commenters noted that decreased minimum trading increments will result in tighter bid-ask spreads, leading to the lower institutional trade execution costs,
- One commenter provided that trading volume will likely increase,
- One commenter noted that reducing minimum trading increment would lead to increased potential for more precise price discovery processes for a small number of tick-constrained stocks,
- Two commenters suggested that aligning minimum trading increments with the U.S. would allow Canada to maintain competitiveness with the U.S. market.
- In terms of negative outcomes,
  - Some commenters believed that reducing tick size would reduce quoted volume available at the National Best Bid and Offer (NBBO),
  - Some commenters noted potential issues with increased message traffic, such as less ability for slower traders to quote and trade passively on the near side of the quote and the need for infrastructure upgrades, as well as increased costs to the industry,
  - A couple of commenters submitted that proposed tick size buckets are too granular, which will lead to flickering quotations, increased price instability, less aggregated liquidity, wider spreads, greater market fragmentation and ultimately will weaken the NBBO,
  - One commenter cautioned against reduced top of book size, disadvantages to liquidity providers through loss of queue priority, more challenging trade-through management due to finer tick increments and more rapid quote updates.
- Some commenters proposed the following metrics to evaluate the effect of a change in trading increments:
  - message traffic rates
  - volume traded (e.g., on inside bid/offer vs current volume; at top of book; within a one-increment spread; comparison between Canada and U.S. for U.S. Inter-listed Securities)
  - fill/cancellation rates and time to fill or cancel
  - average displayed order size and market depth
  - ratio of displayed share trading vs non-displayed share trading
  - market impact experienced by participants
  - stock quote stability and price volatility

One commenter noted that it may be challenging to determine which metrics are appropriate given the high number of variables at play and, therefore, metrics may need to evolve over time and should be periodically reassessed.

**Question 7: Please discuss whether fee caps should also apply to “taker-maker” fee models and, if so, whether their fee caps should be different.**

- Some commenters supported applying fee caps to taker-maker fee models, while four oppose fee caps in these cases.
- Two commenters emphasized their view that the access cap in Rule 610 of Regulation NMS only applies to fees for accessing (removing) liquidity, and not to the level of rebate to remove liquidity/the fee to provide liquidity.
- One commenter expressed its view that the degree of distortion permitted through rebates must be limited symmetrically for both traditional and inverted markets.

**Question 8: Generally, the exact fee or rebate for an order cannot be determined until after an execution occurs, as discounted fees or credits are determined by marketplaces at the end of the month, based on trading during the month of a Participant. To be able to calculate the full cost of a transaction at the time of execution, the SEC also proposes to require that all exchange fees and rebates be determinable at the time of execution. U.S. trading venues would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate so that market participants are able to determine what fee or rebate level would be applicable to any submitted order at the time of execution.**

**Please discuss whether we should take a similar approach in Canada.**

- Some commenters supported such a requirement, while others opposed setting this requirement.

**Question 9: If adopted as proposed by the SEC, please provide your views on a Canadian approach to fee caps,**

**including with respect to:**

- a) harmonization with an amended SEC rule, including with respect to application to inter-listed and/or non-inter-listed securities,**
- b) methodology used, including with respect to:**
  - i. application to all securities, regardless of price,**
  - ii. consideration of a fee cap that reflects tick size, similar to the methodology proposed by the SEC, and**
  - iii. consideration of a percentage-based fee cap for securities priced under CAD1.00.**

- Numerous commenters believed that harmonizing fee caps with an amended SEC rule would be beneficial for U.S. Inter-listed Securities.
- Some commenters suggested considering extending the reduced fee caps to non- U.S. Inter-listed Securities. However, most of these commenters also cautioned against doing so without extensive analysis and consultations.
- One commenter believed that if the decision is made to reduce tick sizes for Canadian non- U.S. Inter-listed Securities, a maximum access fee should be capped at 50% of the

Regulation NMS requirement for the same trading increment; also, a fee for posting liquidity on inverted markets should be limited to the maximum access fee for the same stock.

- One commenter submitted that:
  - if the SEC lowers both the minimum tick size and access fee, Canadian fee caps for U.S. Inter-listed Securities should be harmonized with non-U.S. Inter-listed Securities, currently at CAD 0.0017, or be higher, in case SEC's cap is at or above that number.
  - if the SEC lowers the minimum tick size but maintains the current access fee cap, Canadian regulators should increase the fee cap for non-U.S. Inter-listed Securities to CAD 0.0030 to harmonize it with the cap for U.S. Inter-listed Securities.
  - if the SEC maintains the current minimum tick size but lowers the access fee caps, the Canadian fee cap for U.S. Inter-listed Securities should be harmonized with those for non-U.S. Inter-listed Securities, currently at CAD 0.0017, or be higher, in case SEC's cap is at or above that number.
  - if the SEC maintains the current minimum tick size and current access fee, fee caps for non-U.S. Inter-listed Securities should be increased to be harmonized with fee caps for U.S. Inter-listed Securities.

## ANNEX F

### BACKGROUND ON REGULATION OF TRADING FEE CAPS IN CANADA

Section 6.6.1 of NI 23-101 sets out the active trading fee caps for securities (which include units of exchange traded funds (ETFs)). In 2016, they were originally set at CAD 0.0030 per share for securities traded in a continuous auction and priced CAD 1.00 or more, and CAD 0.0004 per share for securities priced below CAD 1.00.<sup>8</sup> The fee caps were imposed because of concerns that marketplaces would take advantage of the order protection rule<sup>9</sup> (OPR) to charge high fees for execution of orders that are required to be routed to the marketplace to comply with OPR regardless of the fees charged by the marketplace displaying the better-priced order.<sup>10</sup> The caps were imposed on all visible marketplaces, including ones that were not protected (and therefore not required to be accessed as a result of the OPR) because of a view that caps should be applied equally from a fairness perspective and because of concerns that fees charged and rebates provided by unprotected markets could be set at a level that may encourage inappropriate trading activities and thereby negatively affect market integrity. In addition, although OPR does not apply to unprotected marketplaces, dealers may need to access those marketplaces to comply with best execution obligations.

The CAD 0.0030 fee cap mirrored the fee cap then in place for U.S. marketplaces under the SEC Rule 612. The cap represented an established baseline that was created in the U.S. in the context of similar order protection requirements.

#### *Securities below CAD 1.00*

For the cap on active trading fees for securities priced below CAD 1.00, the CSA considered applying the U.S. cap for similarly priced securities, which was 0.3% of the trade price. However, when comparing marketplace fee levels for securities priced under \$1.00, trading fees were for the most part already below what would be charged if the U.S. cap was applied. Additionally, imposing a cap applied as a percentage of value traded diverged from conventional billing practices, which are to charge at a per share or unit rate. As a result, the cap for securities priced below CAD 1.00 was set at the highest rate then being charged, which was CAD 0.0004 per share or unit traded. The rationale for not implementing a similar cap as the U.S. for trades in securities priced under CAD 1.00 remains relevant.

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<sup>8</sup> See notice of approval - <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-approval-amendments-national-instrument-23-101-trading-rules-and-companion-policy-23>.

<sup>9</sup> Part 6, NI 23-101.

<sup>10</sup> CSA Notice and Request for Comment: Proposed Amendments to NI 23-101 Regarding Order Protection Rule Review, <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-and-request-comment-proposed-amendments-ni-23-101-regarding-order-protection-rule> (May 15, 2014)

### ***Non-U.S. Inter-listed Securities***

To address concerns that the CAD 0.0030 fee cap appeared high for non-U.S. Inter-listed Securities<sup>11</sup> (whose trading prices are generally lower than Inter-listed Securities), in 2017 fees for non-U.S. Inter-listed Securities were capped at CAD 0.0017 per share for securities priced CAD 1.00 or more. This was done to ensure that the trading fee reflected the value of the security traded. The CAD 0.0030 cap for U.S. Inter-listed Securities represented 1.2 basis points of the volume-weighted average price for those securities. The CAD 0.0017 cap represents the basis point equivalent of the volume-weighted average price for non-U.S. Inter-listed Securities.

### ***Maker-taker and taker-maker fee models***

The fee caps only apply to maker-taker fee models<sup>12</sup> and do not apply to inverted (taker-maker) markets, as these do not create the same risk of excessive fees to take advantage of OPR creating captive consumers. The fees the marketplaces charge for posting or providing liquidity will not directly affect a dealer who needs to trade with an order on that marketplace to comply with OPR or best execution; the dealer will either receive a rebate or not be charged a fee.<sup>13</sup> As liquidity providers are not required to post orders on any inverted market, we believe that competitive forces will limit the fees that can be charged by these marketplaces.

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<sup>11</sup>Securities, including ETF units, that are not also listed on a national securities exchange registered under section 6 of the 1934 Act.

<sup>12</sup> The “maker-taker” marketplace fee model charges a fee for the execution of an order that removes liquidity from an order book and pays a rebate to the provider of liquidity for the same transaction.

<sup>13</sup>The size of the fee would indirectly affect the size of any rebate.

**ANNEX G**

**LOCAL MATTERS**

**Not Applicable in Alberta**



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March 31, 2025

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office  
Canadian Investment Regulatory Organization

care of

Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto, Ontario M5H 3S8  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Via Email

**Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules and Proposed Changes to Companion Policy 23-101 Trading Rules**

Scotiabank appreciates the opportunity to contribute to the CSA Request for Comments regarding the proposed amendments to 23-101 Trading Rules.

### General Remarks

In keeping with our previously published views and our response to Staff Notice 23-331 (Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets), we believe that any policy response to developments in the U.S. market should be considered and assessed with two primary criteria:

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1. Maintaining the differentiated characteristics of Canadian capital markets, including the fundamental framework that encourages order flow into a multilateral negotiation.
2. Supporting the competitiveness of Canadian capital markets as a hub for capital formation and long-term investment.

The topic of access fees and trading rebates should be seen from the lens of cross-border order flow competitiveness. A higher cost of accessing quotations in Canada would drive order flow to the U.S. market, and reduce Canada's competitiveness. We therefore support harmonization of the access fee & rebate regime with US market, particularly for interlisted stocks.

**Answers to questions posed by the CSA.**

**Question 1:**

*a) Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:*

- i) *at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate, or*
- ii) *at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?<sup>7</sup>*

*b) Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?*

*c) Do you support any alternatives not listed above? Please provide rationale in support of or against any alternatives above.*

We agree with the CSA's proposal to align the maximum fee for executing an order in an interlisted stock at \$0.0010/sh.

We do not agree with setting the Canadian access fee cap at a rate that is FX-adjusted to the USD/CAD exchange rate. The level of access fees and rebates is inextricably linked to the size of the trading increment. The relative value of trading fees on an FX-adjusted basis is, at most, a secondary consideration that is primarily relevant only to the subset of firms that engage in highly rebate-sensitive cross-border trading. Further, if the level of trading fees is benchmarked to the prevailing USD/CAD exchange rate, a process would need to be developed to periodically re-calibrate Canadian access fees on a post-hoc basis. These factors suggest that this approach is overly complex, unnecessary, and primarily benefits a narrow and largely non-Canadian constituency.

Further, we do not agree with aligning to the current non-interlisted fee cap. This fee cap was reduced below the existing \$0.0030/sh interlisted cap for reasons of structural distortion and the observation

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that Canadian non-interlisted stocks trade at typically lower price point than interlisted stocks. If the same analysis was performed using the \$0.0010/sh proposed cap, the result would be a non-interlisted fee cap that is lower, not higher. Therefore, aligning interlisted fees to a higher level adds to distortion and counteracts the robust rationale the CSA put forth to reduce non-interlisted trading fee caps to \$0.0017/sh.

**Question 2:** *Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.*

Access fees associated with trading executions is one aspect of the cost to investment in the Canadian marketplace. We encourage policies that work towards removing barriers to entry and overall complexity, including expensive exchange fees for non-interlisted securities. We therefore support a simple, un-tiered and cost effective fee cap for all securities trading in Canada.

As we note above, we believe that the CSA's proposed interlisted cap of \$0.0010/sh is an appropriate policy action. We further believe the CSA's prior argument in favour of reducing non-interlisted trading fees continues to stand. Therefore, we recommend reducing the trading fee cap to \$0.0010/sh for all Canadian stocks. Such an outcome will significantly reduce marketplace fee complexity in Canada.

**Question 3:** *Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?*

We believe the degree of distortion permitted through trading fees and rebates must be limited symmetrically for both traditional and inverted markets. This analysis should assume a bid-ask spread at the minimum trading increment, and distortions should be limited to a small percentage of this minimal bid-ask spread.

We recommend that posting fees on inverted markets are subject to the same access fee cap as active fees on a traditional venue.

While we acknowledge that resting orders on inverted markets is not required, in practice the existence of inverted trading creates externalities on the market at large. These distortions raise overall transactions costs for the market at large, as they encourage fragmentation without a corresponding benefit to price discovery.

Current trading fees in Canada create a difference in total economics of nearly one-half cent for non-interlisted stocks when one compares fees on the highest make-take market with fees on the highest inverted market. For liquidity seekers, the difference between best and worst is 44 mils. In a half-cent trading increment environment, and in the absence of changes to fees for inverted markets and non-

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interlisted stocks, this trade-off approximates the trading increment itself. This distortion would render price discovery at the half-cent increment meaningless, as in some circumstances investors become indifferent between the bid and the ask when all fees are taken into account.

For these reasons, we believe that the CSA should limit the maximum fee for posting on inverted markets in a similar manner to the existing caps on active fees.

**Question 4:** *As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.*

Yes. We believe that pre-trade fee transparency is a net benefit to the investment community. Allowing investors to understand the full extent of execution costs enhances order execution decision-making.

Furthermore, we strongly believe that fees for each execution on all markets should be communicated with each fill on execution reports.

We appreciate the opportunity to comment.

Respectfully,

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March 24, 2025

By email

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

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M<sup>e</sup> Philippe Lebel  
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Dear Sirs/Mesdames,

**Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 *Trading Rules* and Companion Policy 23-101 *Trading Rules* to Reduce Fee Caps for “U.S. Inter-listed Securities”**

We appreciate the opportunity to comment on the above-noted proposed rule amendments and the related revisions to the associated guidance (together, the **Proposed Amendments**).

Tradelogiq Markets Inc. (**Tradelogiq**) is a regulated Canadian marketplace operator with two separate alternative trading systems (**ATs**): Omega ATS and Lynx ATS. By accessing our two ATs, our subscribers, all being registered investment dealers and CRO members, can trade securities that are listed on Canadian recognized exchanges and are charged trading fees, which are the subject of the Proposed Amendments.

Our responses to the specific questions asked are provided in the attached appendix.

Our general views on the matters for which commentary is being sought remain unchanged since we provided feedback on substantially similar questions in connection with CSA/CIRO Staff Notice 23-331 *Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets* (our response to that CSA/CIRO Staff Notice referred to herein as the **2023 Response**).<sup>1</sup>

Our general view continues to be that we should tread carefully and only follow the US's lead where the risks of not doing so (or any benefits) more than offset the additional costs, complexities, and challenges. A low-touch approach that minimizes the risks and costs while also allowing room for further consideration through study of the impact of the SEC changes on the US markets is more desirable than following an unproven lead.

Regarding the proposed changes to the fee caps for interlisted securities, we support an approach that reduces the existing caps on those securities, but only to the level necessary to avoid certain distortions that would arise if taking fees (and the associated passive rebates) were to exceed a half-trading increment. Specifically, for interlisted securities that would have their tick size reduced to a half-penny if related proposed amendments<sup>2</sup> are implemented (**Affected Interlisteds**), we suggest a reduction in the fee cap from 30 mills to 25 mills (25 mills being half of the reduced tick size). For simplicity of implementation, and considering that most of the trading on make-take markets in securities priced \$1 and over is already occurring at a fee rate of around 26 or 27 mills per share,<sup>3</sup> we suggest our proposed reduction to the interlisted fee cap to 25 mills be extended to all interlisteds.

This represents the least intrusive approach, while leaving the most flexibility in terms of fee competition – both within Canada and with the US. A scenario whereby Canadian marketplaces are afforded the opportunity to pay higher passive rebates on interlisteds than what is available in the US due to a higher access fee cap in Canada should be expected to lead to improved liquidity provision and tighter spreads in Canada – the opposite of the potential negative outcomes that contributed to the previous CSA decisions to not reduce access fee caps for interlisteds to levels below the US caps.

We also wish to voice our concerns with the proposed repeal of Section 6.6.2. Without a replacement to account for the reverse scenario, its repeal would lead to the same outcome of technical non-compliance that Section 6.6.2 was originally meant to address. Under the Proposed Amendments, and under the assumption that marketplaces are expected to continue to follow the existing processes involving the quarterly identification and communication by the listing exchanges of a “list” of interlisted securities to be used for the purposes of the application of the fee caps for the quarter, the same issue of non-compliance could arise in the more-likely scenario where a non-interlisted security subject to a higher fee cap becomes interlisted in the US and would therefore be immediately subject to a lower fee cap. A modified form of Section 6.6.2 to address this reverse scenario is therefore both appropriate and necessary.

Otherwise, if it is to be expected that all marketplaces immediately apply lower fee caps for interlisted securities upon a security becoming interlisted, then mechanisms should be developed to ensure consistency in application given that non-listing marketplaces like Tradelogiq do not currently source and integrate information to identify interlisted securities from anywhere other than the quarterly lists published under the existing fee cap regime. To address this, listing exchanges – being the only parties with direct relationships with their issuers – could be made responsible for maintaining and publishing a list of interlisted securities on a daily basis. Or, if CIRO were to determine that it will need to publish a daily list of interlisted securities to avoid similar issues of technical non-compliance arising from its related proposed changes to tick sizes, then marketplaces could all rely on CIRO's published list for both the reduced tick size and revised fee cap regimes. We suggest the CSA communicate and coordinate with CIRO on possible solutions as we expect that CIRO is presumably considering similar issues with its related tick size proposal.<sup>4</sup>

<sup>1</sup> Our 2023 Response is available at: [https://www.osc.ca/sites/default/files/2023-12/com\\_20231204\\_23-331\\_tradelogiq.pdf](https://www.osc.ca/sites/default/files/2023-12/com_20231204_23-331_tradelogiq.pdf).

<sup>2</sup> See CIRO Proposed Amendments Respecting Trading Increments at: <https://www.ciro.ca/rules-and-enforcement/consultations/proposed-amendments-respecting-trading-increments>.

<sup>3</sup> Based on our review of the fee schedules for TSX and Nasdaq CXC.

<sup>4</sup> Tradelogiq raised concerns about similar technical non-compliance issues in relation to CIRO's proposal. See our comment letter to CIRO at: <https://www.ciro.ca/media/11436/download?inline>.

Thank you again for the opportunity to provide our views on this important initiative.

Should you have any questions or would like to discuss these views further, please do not hesitate to contact us.

Best regards,

*“Jonathan Sylvestre”*

Jonathan Sylvestre  
Chief Compliance Officer & Head of Market Structure  
Tradelogiq Markets Inc.

cc: Laurence Rose, Chairman, President and CEO, Tradelogiq  
Cindy Petlock, Chief Legal Officer and Corporate Secretary, Tradelogiq  
Travis Felker, Head of Product and Strategy, Tradelogiq



**APPENDIX  
RESPONSES TO SPECIFIC QUESTIONS****Question 1:**

- a) *Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:*
- i) *at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate, or*
  - ii) *at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?*
- b) *Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?*
- c) *Do you support any alternatives not listed above?*

We do not agree with the proposal to align the maximum fee for interlisteds with either the adopted US reduced access fee cap or the current non-interlisted fee caps for the same reasons as provided in our 2023 Response.

Instead, we propose essentially the same alternative approach now as we put forward then – that current fee caps only be adjusted for securities subject to reduced tick sizes (which would be limited to Affected Interlisteds, but for simplicity could be extended to all interlisteds), and then only to the extent needed to address certain distortions that would arise if taking fees (and the associated passive rebates) were to exceed a half-trading increment – to address this, we suggest reducing the current cap from 30 mils to 25 mils. This would generally limit the scope of change, and allow instead for study of the broader impacts of the US fee cap changes before making further reductions in Canada.

For our supporting rationale, see the response we provided for Question 9 in the Appendix to our 2023 Response.

**Question 2:** *Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.*

We question the extent to which a 3 to 4 mil per share differential on an FX-adjusted basis between a 10 mil USD per share cap applicable to trades in NMS securities in the US and a 17 mil CAD per share cap applicable to trades in non-interlisteds might negatively impact the competitiveness of the Canadian capital markets.

Consistent with our comments in this letter and in our 2023 Response, we suggest studying the impact of the US amendments before making any further changes.



**Question 3:** *Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?*

Our response to this question is the same as was provided in our 2023 Response to a similar question. The regulatory rationale for capping taking fees do not extend to posting fees, and it is not necessary to cap posting fees given the application of implicit economic constraints on those fees, and the resulting effect of market and competitive forces. In fact, imposing restrictions to passive fees where liquidity provision is voluntary, and thereby also effectively restricting active rebates, does nothing other than limit our ability to attract volume and compete domestically, as well as with US markets on interlisteds given the access fee caps in the US do not apply to inverted fees.

Please refer to the response we provided for Question 7 in the Appendix to our 2023 Response, from the paragraph that starts with “In addition, the SEC proposed rule changes contemplate only a change in the capped fee levels for taking liquidity...”, for the purposes of the remainder of our response to this question. Also, please refer to our response for Question 9 in the Appendix to our 2023 Response – specifically the paragraph that starts with “As indicated in our response to Question 7, we also do not think it is necessary to cap liquidity-taking rebates for securities subject to reduced tick-sizes...”.

**Question 4:** *As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.*

We do not believe this is necessary for the same reasons as was provided in our 2023 Response to a similar question. Please refer to the response we provided for Question 8 in the Appendix to our 2023 Response for the purposes of our formal response to this question.

March 24<sup>th</sup>, 2025

Delivered By Email:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety,  
Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules and Proposed Changes to Companion Policy 23-101 Trading Rules**

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**Background**

BMO Capital Markets<sup>1</sup> (“BMO”) is responding to the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules and Proposed Changes to Companion Policy 23-101 Trading Rules.

On September 18, 2024, SEC adopted its final rules with respect to the SEC Tick Size Proposal and the SEC Trading Fee Proposal. With respect to the SEC Trading Fee Proposal, for securities priced USD 1.00 or more, the U.S. access fee cap will be lowered to USD 0.001 per share. For U.S. securities priced less than USD 1.00, the U.S. access fee cap will be 0.1% of the quotation price. On December 12, 2024, the SEC announced an order granting a partial stay on the implementation of the rules pending judicial review of the proposals by the United States Court of Appeals for the District of Columbia Circuit.

The U.S. Securities and Exchange Commission’s rule changes, if implemented, will inevitably affect Canadian equity markets due to the deep integration of financial systems between the two countries. However, predicting the precise impact on U.S. markets is challenging, and forecasting the ripple effects on Canadian markets is even harder. Given the interconnected nature and structural differences between the two markets, BMO’s view is that continued harmonization of tick sizes and access fees for interlisted securities will ensure US and Canadian markets continue to operate in a fair, orderly, and efficient manner for the benefit of all market participants.

**Harmonizing Fees for Interlisted Securities**

Access fees ultimately drive liquidity and rebate incentives. Caps on access fees are in effect a cap on rebates that can be given in any market. Historically<sup>2</sup> the Canadian regulators have separated access fee cap regulations for non-interlisted versus interlisted fees to maintain comparable liquidity incentive structures across both markets.

In 2017<sup>3</sup> the Canadian regulators lowered access fee caps for non interlisted securities. However, they recognized the potential impact to liquidity if access fee caps for interlisted securities were lowered in Canada but remained higher in the US. Specifically, OSC cited concerns “about the potential negative

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<sup>1</sup> BMO Capital Markets is a trade name used by BMO Financial Group for the wholesale banking businesses of Bank of Montreal, BMO Bank N.A. (member FDIC), Bank of Montreal Europe p.l.c, and Bank of Montreal (China) Co. Ltd, the institutional broker dealer business of BMO Capital Markets Corp. (Member FINRA and SIPC) and the agency broker dealer business of Clearpool Execution Services, LLC (Member FINRA and SIPC) in the U.S., and the institutional broker dealer businesses of BMO Nesbitt Burns Inc. (Member Canadian Investment Regulatory Organization and Canadian Investor Protection Fund) in Canada and Asia, Bank of Montreal Europe p.l.c. (authorized and regulated by the Central Bank of Ireland) in Europe and BMO Capital Markets Limited (authorized and regulated by the Financial Conduct Authority) in the UK and Australia. “Nesbitt Burns” is a registered trademark of BMO Nesbitt Burns Inc., used under license. “BMO Capital Markets” is a trademark of Bank of Montreal, used under license. “BMO (M-Bar roundel symbol)” is a registered trademark of Bank of Montreal, used under license. ® Registered trademark of Bank of Montreal in the United States, Canada and elsewhere. ™ Trademark of Bank of Montreal in the United States and Canada. © 2023 BMO Financial Group

<sup>2</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-approval-amendments-national-instrument-23-101-trading-rules-and-companion-policy-23-0>

<sup>3</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-approval-amendments-national-instrument-23-101-trading-rules-and-companion-policy-23-0>

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.”<sup>4</sup> We agree with the concerns stated in 2017 that differing access fees and, in turn, rebates across the Canadian and US markets could have negatively impacted liquidity. For that same reason we believe continued harmonization of access fees, in response to potentially lower US access fee caps, is warranted.

However well-intentioned foreign exchange adjusted access fee caps are as an idea, we believe regulators in the US and Canadian markets should not create materially different liquidity incentives for interlisted securities. We recommend continued harmonization of interlisted access fees, specifically should the US markets begin capping access fees at USD \$0.0010 per share, the Canadian markets should mirror and cap interlisted access fees at CAD \$0.0010.

Similarly, if the SEC adopts more granular tick sizes for interlisted securities the Canadian regulators should consider harmonizing tick sizes for the affected securities to maintain parity with the US in quoted spread, incentive structures, and overall liquidity competitiveness.

Generally, limits on trading fee should be harmonized with the US markets, whether limits are applied to fees to remove liquidity or fees to provide liquidity. While the overall level of fees is important, it is equally important that the fee and tick size incentives, which drive market quality and market share, remain on parity across Canadian and US markets for interlisted securities.

## **Conclusion**

The SEC’s rule changes to tick sizes and access fees are a significant regulatory shift with long-term commercial and liquidity implications for the U.S. equity markets. US policy changes that impact interlisted securities necessitate a response to ensure US and Canadian markets continue to operate in a fair, orderly, and efficient manner for the benefit of all market participants. It would be prudent for CSA to harmonize its regulation on access fees and where applicable tick sizes with the SEC for those interlisted securities impacted by U.S. policy changes.

Sincerely,

“Eric Stockland”

Eric Stockland  
Managing Director, Global Markets  
BMO Capital Markets

“Grant McLaughlin”

Grant McLaughlin  
Managing Director, Global Markets  
BMO Capital Markets

“Antonio Trillo”

Antonio Trillo  
Managing Director, Global Markets  
BMO Capital Markets

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<sup>4</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-approval-amendments-national-instrument-23-101-trading-rules-and-companion-policy-23-0>

# CSA Notice and Request for Comments - Proposed Amendments to National Instrument 23-101, Trading Rules and Proposed Changes to Companion Policy 23-101 ("Proposed Amendments")

March 24, 2025



CONTENTS

EXECUTIVE SUMMARY ..... 3

CANADA FIRST: OVERALL POLICY CONSIDERATIONS..... 4

CANADA’S UNIQUE MARKET CONDITIONS ..... 4

THE IMPACT OF PRICING..... 5

HISTORICAL CONSIDERATIONS ..... 6

ALTERNATIVE APPROACHES..... 6

ANSWERS TO CONSULTATION QUESTIONS ..... 7

    North American Inter-Listed Securities ..... 7

    Question No. 1 ..... 7

    Question No. 2: ..... 8

    Question No. 3: ..... 8

    Question No. 4: ..... 8

CONCLUSION ..... 8

**March 24, 2025**

**Submitted via Email**

Attention:

**The Secretary**

Ontario Securities Commission  
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**Phillippe Lebel**

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Dear Mr. Sir/Madam:

**EXECUTIVE SUMMARY**

The CSA's positive intentions are recognized and appreciated. To improve the competitiveness of Canada's capital markets, the CSA must do more than achieve parity with SEC regulations. The CSA is strongly encouraged to make efforts to adopt an innovative and globally differentiated approach to fee caps that improves the competitiveness of the Canada's financial markets.

As currently drafted, the CSA's Proposed Amendments reflect the same gaps<sup>1</sup> as CIRO's proposal on trading increments.<sup>2</sup> Whereas the SEC regulations on access fee caps and trading increments were informed by the needs of US markets, the Proposed Amendments are only designed to keep pace with the SEC. Moreover, while the SEC has adopted fee caps and trade increment amendments as part of a consolidated effort to improve US markets, Canada has approached these issues as discrete concerns without recognition of their interconnection as drivers for intermediation.

Marketplace pricing is one of the integral components of competitiveness along with product quality (latency, rule fairness) and quantity (liquidity). The risk of the Proposed Amendments, as currently drafted, is the codification of a system where Canada will have reduced, if any, comparative advantage to the U.S., or, be disadvantaged in the trading of its own securities and/or from differentiating Canadian from US marketplaces based on fee structure.

<sup>1</sup> [https://iiac-accvm.ca/wp-content/uploads/2025/01/IIAC-Letter-to-CIRO-re-Proposed-Amendments-and-Guidance-Respecting-Trading-Increments\\_January-27-2025.pdf](https://iiac-accvm.ca/wp-content/uploads/2025/01/IIAC-Letter-to-CIRO-re-Proposed-Amendments-and-Guidance-Respecting-Trading-Increments_January-27-2025.pdf)

<sup>2</sup> <https://www.ciro.ca/newsroom/publications/proposed-guidance-applicable-trading-increments>

Certain harmonization may be necessary to ensure comfort and confidence for market participants. The necessity and degree of harmonization can be determined by marketplaces themselves, who may currently and voluntarily reduce fees, should they choose to reflect US levels, without being mandated to do so.

A Canadian advantage may involve the elimination of all fee caps for North American inter-listed securities to allow marketplaces to set their own fees, subject to regulatory approval. Alternatively, potentially differing fee caps could offer competitive advantage for Canada. Different fees at the open, close and the central limit order book present many opportunities for arbitrage, liquidity gaps and discontinuity. For example, in a world with a reduced spread, the incremental fee difference in the market-on-close and the central order book, renders where to place liquidity a more material decision. These approaches will provide marketplaces with the flexibility to either differentiate or align with US market rules as a means of increased competition.

#### **CANADA FIRST: OVERALL POLICY CONSIDERATIONS**

Canada, as a unique nation, with unique needs, has had its capital markets evolve in their own way, often influenced by, at times led by, and at other times, leading U.S. markets. The result is that Canada has the only capital markets of its size that has promoted the smallest of issuers to senior issuers and eventually inter-listing. It is important to recognize that growth of issuers occurred prior to 2008, the practical launching of a multiple marketplace environment and the ensuing focus on trading fees generated by the competitive forces of multiple markets.

As the U.S. focuses on tariff and non-tariff barriers in its economic relationship with Canada for the benefit of US market growth, we encourage the CSA to reconsider our regulatory framework in the context of increasing Canada's competitive advantages.

This is not the time for a well-intentioned cut and paste copying of the U.S. approach. Canada's markets need differentiation on a global scale.

#### **CANADA'S UNIQUE MARKET CONDITIONS**

A core element of Canada's uniqueness is the widely varied liquidity characteristics of its securities. To the extent exchange pricing reflects the value of the price discovery process across liquidity types, it is imperative that Canadian marketplaces have the maximum flexibility to adapt their models in manners which will not only maintain but build upon their competitiveness through differentiation.

SEC regulations are based on US market conditions that differ substantively from Canada's capital markets. The US market structure is driven by the needs of super liquid securities, which trade in the thousands of dollars, but may have ATWS at sub-penny or so close to zero, such that market maker liquidity probably isn't necessary in normal trading circumstances.

To the extent that those super liquid securities continue to have increasing prices, continually reduced fee caps reflect both a reduced "friction" in those names, and consequently the lack of value add in exchanges'



provision of liquidity or price discovery in those names. That is, to the extent that economic fees generally reflect value or utility provided for any economic service, lower fee caps consequently reflect a lesser value add.

Canada generally does not have stocks trading at highest notional US prices or with ATWS near zero. The price discovery mechanism is of great importance to most names, and fee structures need to be flexible enough to reflect the value created by marketplace operators and the interaction of their participants. Canada has effectively three radically different equity market pools:

**1. Highly liquid, deeply traded, mostly non-intermediated inter-listed equity securities markets:**

Canada is the only nation that has a freely traded “inter-listed” market with the world’s largest capital market. Our large cap companies benefit from exposure and liquidity in the United States, allowing their securities to trade as naturals. The global peer set of securities resembling the trading activity of these names may be S&P small and mid-cap companies. The inter-listed capability is a unique and competitive advantage of our markets on a global scale.

**2. Liquid, intermediated, non-inter-listed senior equity securities market:**

This group includes many of the non-inter-listed names qualifying for listings on the senior Toronto Stock Exchange and trading as Tier A liquidity securities. The peer set for these companies may be commonly held equities which are domestically traded in markets such as Australia, Italy, and the Scandinavian countries. This tier of securities benefits from a highly competitive secondary trading mechanism, which itself is a unique asset to Canada compared to economies of a similar size.

**3. Illiquid, Tier B, heavily intermediated secondary trading of junior and venture-oriented equity securities:**

These securities number in the 1000s across a variety of junior exchanges including TSX venture and the CSE. Market capitalizations range from 1/2mm to over \$100mm. In this regard, there are almost no marketplaces in the world which are as properly regulated and as robust in providing primary financing opportunity to such securities with the breadth of activity as Canada. This capability is also a unique and competitive advantage of Canadian markets on a global scale, which remains challenged on a secondary trading basis.

Any proposed amendments should seek to maintain the competitiveness of Group 1 and seek to create advantages for primary listings in Group 2 and secondary trading in Group 3.

### **THE IMPACT OF PRICING**

Marketplace pricing is one of the integral components of competitiveness, along with product quality (latency, rule fairness) and quantity (liquidity).

As pricing is integral, it can be reasonably argued that fee caps, or regulatory interventionist economic models which generate regulatory “lock-in,” do not generate the right economic incentives necessary for true competitiveness. The danger of fee regulation and fee caps also extends to the lock in on a way of thinking, impeding change and therefore innovation.

The result is that fee regulation has been seen as a key contributor to the decline of Canada's equity markets.

### **HISTORICAL CONSIDERATIONS**

Canada has not always been in lockstep with the United States on fee issues. Leadership in pricing models and flexibility resulted in Canada's halcyon days of leading market share on capital raising, inter-listed securities and a generally robust issuer base.

Prior to 2005, Canada's pricing model was based substantially on the European system of applying a fee based on the percentage of the value traded. The Toronto Stock Exchange was one of the first exchanges to introduce a volume-based pricing model and offered volume-based rebates on inter-listed securities before the NYSE offered them. A pilot of volume-based fees was introduced on AMEX and NASDAQ inter-listed names when volume-based models were run on ATS.' These were expanded to NYSE inter-listed names and other securities in 2006.

Had regulators capped fees on dollar value traded, the Toronto Stock Exchange would have been unable to successfully introduce volume-based pricing or would have been unable to do so as expeditiously.

In 2008, the Toronto Stock Exchange introduced volume-based discounts, which coupled with rebates at the highest tier of activity for market makers, led to the highest liquidity rebates globally. A rebate schedule more generous than the U.S. contributed to Canadian marketplaces increased level of market share on Canadian inter-listed securities and strong overall activity on Canadian marketplaces.

Although fee caps were introduced in the U.S. and Canada due to concern for escalating rebates, sufficient time may not have been given to determine if the advantage could be maintained in Canada. (For example, regulatory concerns may have been served by requiring best execution to incorporate access fees and rebates.) Had Canada continued to offer higher rebates to liquidity providers, it is possible that the core of North American inter-listed liquidity would have been recaptured.

### **ALTERNATIVE APPROACHES**

The Proposed Amendments miss an opportunity to develop a market structure that reflects the unique characteristics and needs of Canada's capital markets. To increase the competitiveness of Canada's capital markets, the CSA is encouraged to revisit advantages through differentiation.

As stated, the necessity and degree of harmonization can be determined by marketplaces themselves, who may currently and voluntarily reduce fees, should they choose to reflect US levels, without being mandated to do so.

Fee caps effectively become a cap on rebates for liquidity providers. To the extent that the US has fee caps, the elimination of fee caps (and therefore rebates) may attract capital to Canada.

Alternatively, potentially differing fee caps could offer competitive advantages for Canada. Different fees at the open, close and the central limit order book present many opportunities for arbitrage, liquidity gaps and discontinuity. For example, in a world with a reduced spread, the incremental fee difference in the market-on-close and the central order book, renders where to place liquidity a more material decision.

Fee caps effectively become a cap on rebates for liquidity providers.

Elimination of fee caps and other fee changes, at the marketplace's discretion, with a view to their unique needs, and subject to regulatory approval, allows the flexibility needed for competition.

## **ANSWERS TO CONSULTATION QUESTIONS**

### **North American Inter-Listed Securities**

For the purposes of the Proposed Amendments, it is necessary to differentiate between securities that are listed on exchanges in Canada from securities that are inter-listed on exchanges in Canada and the US. Going forward the CSA should refrain from adopting "U.S. Inter-Listed Security" as the defined term. "U.S. Inter-Listed Security" gives prominence to US-listed and originated securities that have subsequently been listed on an exchange in Canada as opposed to Canadian listed and originated securities. A more neutral and accurate term is "North American Inter-Listed Security."

#### **Question No. 1**

- (a) Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:
  - (i) at CAD 0.0010, as proposed above, without consideration for the current foreign exchange; or
  - (ii) at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?
- (b) Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?
- (c) Do you support any alternatives not listed above?

Please provide rationale in support of or against any alternatives above.

The proposal to align the maximum fee for executing an order involving an Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC at CAD 0.0010 without consideration for the current foreign exchange rate does not account for the fact that rebates for passive liquidity would by necessity, for profitable trading, need to be set lower than CAD 0.0010 per share. The flexibility and competitiveness of Canadian markets depends on this rebating mechanism.

The adoption of a fee cap of CAD 0.0014 to approximate the SEC's access fee cap based on the current foreign exchange rate is impractical and would require additional and ongoing amendments to account for future changes in exchange rates.

Alignment of the maximum fee for executing an order involving an inter-listed security priced at CAD 1.00 or more with the current fee cap of CAD 0.0017 for non-Inter-listed securities is also not supported. The concern is an arbitrary alignment of fee caps for inter-listed securities with the existing, but outdated fee caps, for non-inter-listed securities.

Please see the above comments regarding alternatives proposed.

**Question No. 2:**

Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.

Yes. Rebates do attract liquidity and have been proven to generate competitiveness for North American inter-listed securities. Marginal liquidity is imputed in the spread of a security. Higher rebates might lead to higher fees, but over time, concentration of more liquidity will tighten spreads, and the net benefit will be better execution for North American inter-listed securities.

**Question No. 3:**

Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?

Please see the above comments regarding trading fee cap concerns.

The rise of inverted markets (taker-maker) is an example of the possibilities of innovation given that, historically, only the active side received a fee. Fee caps are not conducive to innovation.

**Question No. 4:**

As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.

The SEC rules are due to the proliferation of dark pools, multiple intermediaries, and market complexity. In contrast, Canada has a strong order-exposure rules, and this incentivizes a strong understanding of order direction prioritization. In Canada, all fees are published so all desks can effectively make such a determination with the capability to incorporate this determination in their routing mechanism.

Great care should be taken not to codify pricing lock-in and to maintain flexibility in fee options to foster innovation through pricing differentiation.

**CONCLUSION**

The CSA is encouraged to re-evaluate the Proposed Amendments with a view to supporting Canada's competitiveness through differentiation. By locking Canada's exchanges into a mandatory fee cap that are tied to the SEC, the CSA is inadvertently eliminating choice and applying a "one-size-fits all" approach that does not reflect the needs of Canada's capital markets at this time. The Proposed Amendments benefit US markets by implementing regulations that are informed by US market needs and may be considered a regulatory subsidy for those markets.

Respectfully submitted,

INCLUDES COMMENT LETTERS RECEIVED

**IIAC** 

Investment Industry Association of Canada

**ACCVM**

Association canadienne du commerce des valeurs mobilières





March 24, 2025

**VIA E-MAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules and Proposed Changes to Companion Policy 23-101 Trading Rules (the “Request for Comment”)**

TMX Group Limited (“**TMX**” or “**we**”), welcomes the opportunity to comment on the Request for Comment regarding the Canadian Securities Administrators’ (“**CSA**”) proposal to reduce trading fee caps (or “access fee caps”) in Canada for U.S. inter-listed securities, as described below (the “**Proposed Amendments**”). TMX strongly opposes reducing Canadian access fee caps as contemplated under the Proposed Amendments, as doing so will negatively impact market liquidity and competition with the U.S., overlooking the distinct Canadian market and the crucial



role of market makers. Instead, we believe that a more market-driven approach that allows flexible fees will enhance liquidity and overall Canadian market competitiveness.

All capitalized terms used but not defined in this letter have the meaning as set out in the Request for Comment.

## TMX

TMX Group Limited (“**TMX**” or “**we**”) is an integrated, multi-asset-class exchange group with global operations. TMX’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange (“**TSX**”), TSX Venture Exchange (“**TSXV**”), Alpha Exchange (“**Alpha**”), The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited, TMX Trayport, TMX VettaFi and other TMX companies provide securities listing markets, trading markets, clearing facilities, depository services, technology solutions, data products and other services to the global financial community, and play a central role in Canadian capital and financial markets.

## The Request for Comment

The CSA is proposing certain changes to National Instrument 23-101 *Trading Rules* to lower the active trading fee cap applicable to trades in U.S. inter-listed securities. In particular, the Proposed Amendments seek to mimic the maximum fee for executing an order involving a U.S. inter-listed security priced at CAD 1.00 or more with the reduced access fee caps (i.e. \$0.0010 (or “10 mills”) per security traded)<sup>1</sup> adopted by the U.S. Securities Exchange Commission (“**SEC**”).<sup>2</sup>

Rather than fostering competition, the reduction in access fee caps for inter-listed securities set out in the Proposed Amendments risks diminishing market liquidity, widening spreads, and driving order flow to U.S. venues. The Proposed Amendments overlook the critical role of market makers and the potential for unintended consequences resulting from a uniform regulatory approach that disregards the distinct economic and political landscape of Canada. Furthermore, we believe that a market-driven fee structure that respects the unique characteristics of the Canadian market allows for flexibility in pricing access fees for U.S. inter-listed securities may present opportunities for improved liquidity provision in Canada, and increase the competitiveness of our markets.

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<sup>1</sup> The Proposed Amendments will not apply to non-U.S. inter-listed securities and the trading fee cap will remain at \$0.0017 (or “17 mills”) per traded security where the security is priced at CAD 1.00 or more.

<sup>2</sup> The reduced trading fee caps [were adopted by the SEC](#) on September 18, 2024, and were originally planned to be implemented on November 3, 2025. However, December 12, 2024, the SEC issued an order staying the implementation of the amended rules pending completion of judicial review.



### *Constraints on Competition*

TMX believes that the Proposed Amendments will trigger a cascade of negative consequences. A reduction in trading fee caps in Canada in an attempt to align with the U.S. trading fee structure may inadvertently diminish the competitive landscape in Canada instead of fostering it. The Canadian market operates in a distinct economic and regulatory environment, with inherent differences in size and liquidity compared to the U.S. By reducing trading fee caps in Canada, we risk reducing the crucial ability of Canadian marketplaces to differentiate themselves, which could have adverse effects on the overall competition within Canada's trading ecosystem.

A key consideration related to the Proposed Amendments is the potential for shifts in order flow from Canadian to U.S. markets. U.S. capital markets, with their greater liquidity, broader institutional participation, and economies of scale, offer inherent advantages. Reducing Canadian access fee caps could further incentivize Canadian investors and traders, particularly those handling large orders and institutional trading, to utilize U.S. venues, leading to decreased order flow in Canada as liquidity migrates to the U.S., where potentially higher rebates could be offered. This potential shift in liquidity could lead to a reduction in market depth and price discovery within Canadian markets. This may disproportionately affect retail investors and smaller institutional investors who rely on the efficiency of Canadian capital markets. The absence of active market makers and liquidity providers would result in reduced liquidity, widening spreads and increasing trading costs. This, in turn, would negatively impact price discovery, impairing market stability.

Additionally, a migration of trading activity to U.S. venues could impact Canadian issuers' access to domestic capital, potentially affecting the growth and sustainability of the Canadian economy. Furthermore, increased trading costs and reduced liquidity would disincentivize listings on Canadian markets, making them less attractive to both existing and potential issuers. We must strategically calibrate Canadian capital markets policies in a way that maximizes the competitiveness of our markets, particularly against the backdrop of the current geopolitical landscape.

### *U.S. and Canadian Competitive and Political Landscape*

TMX cautions against a uniform approach to access fees, emphasizing the critical differences between Canadian and U.S. markets. Applying a blanket 10 mils cap on U.S. inter-listed securities, as proposed, does not serve Canadian interests and disregards Canada's unique economic and regulatory environment, potentially crippling our marketplaces' ability to utilize competitive rebates for liquidity. The current geopolitical landscape, marked by heightened U.S. protectionism where U.S. policy prioritizes domestic interests and trade tensions, necessitates a strategic calibration of Canada's capital market policies. While collaboration remains important, mimicking U.S. regulations, such as trading fee caps, risks undermining our competitive advantage. We must critically assess each proposal through the lens of Canadian market health, prioritizing policies that attract investment and trading flow to our marketplaces, and foster a uniquely competitive environment.



Furthermore, given the recent political tensions surrounding the U.S., particularly with the ongoing trade and tariff disputes, it is critical for Canada to maintain a competitive edge in the financial markets. Reducing trading fee caps at this time could undermine Canada's position as an attractive market for both investors and market participants. This is particularly important as Canada needs to stay competitive not only with the U.S. but also globally, in attracting capital and ensuring that its markets remain robust and resilient. If Canada becomes less attractive due to regulatory changes that harm competition, we risk further disadvantaging our market and potentially losing both domestic and international investment.

The Proposed Amendments also do not account for the fluctuating currency exchange rate between the Canadian and U.S. dollars. While a simple numerical harmonization of trading fee caps might suggest parity, the reality is that currency exchange rates introduce a layer of complexity and must be considered. Attempting to align trading fee caps in Canada with U.S. levels without considering the impact of currency fluctuations could disproportionately impact Canadian market participants as currency differences would effectively grant U.S. marketplaces a significant advantage in rebate offerings, further exacerbating the outflow of liquidity from Canada.

Safeguarding the well-being of Canadian capital markets requires a nuanced approach and therefore, we must be prepared to diverge from U.S. practices when it strengthens our position, ensuring that our markets remain vibrant, competitive, and resilient in the face of evolving global dynamics. Ultimately, maintaining a unique and competitive trading fee structure tailored to Canada's specific market conditions will help preserve the strength and independence of Canada's financial infrastructure.

#### *Impact on Market Makers*

Market makers are fundamental to the efficient operation of markets, providing essential liquidity, facilitating accurate price discovery, and contributing to overall market efficiency. As such, the relationship between trading fee caps and marketplace rebates is crucial for market maker participation, and must be carefully considered by the CSA. The Request for Comment states that lower access fees will lead to lower rebates paid by marketplaces, however, the assumption that capping trading fees will directly translate to lower rebates offered by marketplaces overlooks the critical role rebates play on market makers.

Market makers are crucial for maintaining market liquidity and price stability, and the rebates they receive in maker-taker markets are essential for offsetting the costs associated with their continuous quoting obligations. These rebates directly support their ability to provide tight spreads and ensure efficient price discovery. A reduction in rebates offered by a marketplace to counteract the lower trading fee caps could affect a market maker's willingness and ability to meet their existing quoting and trading obligations, which in turn could negatively impact liquidity and result in wider bid-ask spreads for Canadian investors. Prioritizing trading fee caps over market maker incentives risks triggering a domino effect, where reduced market maker participation



diminishes overall market efficiency and quality. Therefore, it is imperative to avoid unintended consequences by ensuring that any regulatory changes to trading fee caps do not inadvertently undermine the vital role of market makers.

### *Market-Driven Fees*

We believe that market forces will foster trading fee structures in Canada that are competitive with those of the U.S., while allowing for a tailored approach that effectively balances investor protection with the promotion of a robust Canadian capital markets, and respects the unique characteristics of the Canadian market. The view that reduced fee caps in the U.S. may result in a migration of active order flow to the U.S., while understandable, is overly simplistic in that it fails to account for the compelling pressure of market forces. This market-driven principle is illustrated by TMX, where the application of the current fee cap is primarily confined to ETFs trading on TSX. Notably, a substantial majority, over 90%, of lit CLOB trading on Alpha, AlphaX, TSX, and TSXV is conducted at fees below the proposed cap. This demonstrates the capacity of marketplaces to establish competitive fee structures, including in competition with U.S. markets, while remaining responsive to market dynamics. Unlike the U.S., where trade location may be less critical, Canadian exchanges are committed to ensuring order flow remains within our borders, and will continue to leverage competitive trading fee structures to maintain a thriving domestic market.

Allowing market forces to determine the appropriate level for trading fees fosters a dynamic and efficient marketplace. In a competitive environment, marketplaces are incentivized to attract order flow by offering fee structures that balance profitability with competitive pricing. This natural competition leads to innovation and responsiveness to market demands, ensuring that fees reflect the true costs of providing services and enable marketplaces to operate effectively. For example, Canadian marketplaces invest significant resources in providing innovation and tailored services to Canadian investors, market makers, and institutional participants. A flexible fee structure that enables marketplaces to generate revenue necessary for innovation and incentivize active market participation is crucial. Furthermore, by permitting market-driven fee structures, market participants are empowered to choose the venues that best meet their needs, ultimately promoting a more robust and adaptable trading ecosystem.

Regulatory trading fee caps, while intended to protect market participants, if miscalibrated, risk stifling innovation and limit the ability of Canadian marketplaces to compete effectively with global platforms and could lead to market inefficiencies, as they remove the ability of marketplaces to respond dynamically to market conditions. Rather than reducing fee caps as reaction to U.S. regulatory developments, the CSA should focus on creating a regulatory environment that allows Canadian exchanges to thrive and provide valuable services to investors.

### **Conclusion**

TMX strongly believes that the Proposed Amendments could harm competition, reduce liquidity in Canadian markets, and ultimately disadvantage Canadian investors and market participants. A



one-size-fits-all approach that fails to account for the distinct dynamics of the Canadian landscape, including the crucial role of market makers who rely on rebates to support liquidity provision, undermines efforts to keep Canada's capital markets competitive on the global stage. Furthermore, the Proposed Amendments fail to strike the right balance between regulatory requirements and natural competitive forces, ultimately hindering the long-term health and vitality of our financial ecosystem. The CSA must prioritize the unique needs of the Canadian market and allow for greater flexibility in access fee pricing to ensure that Canada remains a robust and attractive destination for capital formation.

We appreciate the opportunity to respond to the Request for Comment. We look forward to continuing to engage with the CSA on this important issue.

Sincerely,

*"Doug Clark"*

Doug Clark  
Managing Director, Equity Product Design, TMX Markets, Equity Trading Products  
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Friday, March 14, 2025

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Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Office of the Superintendent of Securities, Nunavut

**Re: Canadian Securities Administrators (CSA) Notice and Request for Comment – Proposed Amendments to National Instrument (NI) 23-101 *Trading Rules* and Proposed Changes to Companion Policy 23-101 *Trading Rules***

The **Canadian Independent Finance and Innovation Counsel** (CIFIC) appreciates the opportunity to provide comments to the CSA regarding its proposed amendments to NI 23-101: Trading Rules.

The Canadian Independent Finance and Innovation Counsel represents national Investment Dealers and their industry's position on securities regulation, public policy, and industry issues. We represent notable CRO-regulated Investment Dealers in the Canadian securities industry.

**Reiterating CIFIC's Comments Submitted to CRO**

As stated in our comment letter submitted to CRO on January 24, 2025, the Investment Dealers we represent believe that CRO's proposed amendments enhance clarity; ensure harmonization with U.S. markets; and introduce structured updates, fostering a more efficient and competitive trading environment for inter-listed securities.

CRO's Proposed Amendments Respecting Trading Increments are seen as a positive by the Investment Dealers we represent, improving the clarity and effectiveness of trading regulations.

These proposed changes align, as they should, with the U.S. SEC's updates to minimum pricing increments under Rule 612 of Regulation NMS, effective November 3, 2025. This ensures a seamless trading environment for U.S. inter-listed securities.

The proposal maintains alignment between Canadian and U.S. markets to prevent issues like market fragmentation; arbitrage; reduced liquidity; and regulatory complications. This harmonization supports efficient trading and reflects the interconnectedness of both markets. The Investment Dealers we represent are in support of CRO's proposed amendments.

**National Instrument 23-101 and Companion Policy 23-101**

**Consultation Questions**

**Question 1:**

**a) Do you agree with the proposal to align the maximum fee for executing an order involving a U.S. Inter-listed Security priced at CAD 1.00 or more with the reduced access fee cap adopted by the SEC:**

- i) at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate, or
- ii) at CAD 0.0014, which approximates the SEC's adopted access fee cap with consideration for the foreign exchange rate (USD 0.0010 x 1.44)?

b) Alternatively, do you support aligning the access fee cap for U.S. Inter-listed Securities with the current fee cap for non-U.S. Inter-listed securities (CAD 0.0017)?

c) Do you support any alternatives not listed above?

Please provide rationale in support of or against any alternatives above.

**CIFIC Response:** The Investment Dealers we represent prefer option i): *at CAD 0.0010, as proposed above, without consideration for the current foreign exchange rate.* Having lower fees (including foreign exchange rates) would provide an advantage to the Canadian markets in terms of the total cost for trades made by Canadian brokers.

**Question 2:**

Will the competitiveness of the Canadian capital markets be impaired if only the trading fee caps are lowered for U.S. Inter-listed Securities? Please provide supporting rationale.

**CIFIC Response:** The Investment Dealers we represent believe that most companies will not use dual listing because of the cost and regulation involved. We doubt this will change due to new fees.

**Question 3:**

Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets? Please provide supporting rationale. What would be the costs and benefits of applying the cap to inverted markets?

**CIFIC Response:** Passive orders on inverted markets are usually the domain of High Frequency traders (HFT) and other professional traders. Retail firms mostly use them to get paid for their flow. This would diminish revenues for most firms.

**Question 4:**

As part of the final rules adopted on September 18, 2024, the SEC rules prohibit a national securities exchange from imposing any fee or providing any rebate for the execution of an order

in an NMS stock unless such fee or rebate can be determined at the time of execution. Please discuss whether we should take a similar approach in Canada.

**CIFIC Response:** This should always be the case: fees or rebates should be determined at the time of execution. Brokers should be able to take into account the trading fees when deciding where they send their orders.

### Conclusion

We commend the CSA for its efforts to maintain the reputation, integrity, and liquidity of the Canadian markets.

Thank you for considering our comments on this important proposal.

As always, we are available to discuss the content of this submission further, address any concerns you may have, or provide additional information as needed. Your feedback is invaluable to us, and we are committed to ensuring that we all achieve our objectives effectively and efficiently.

Please feel free to contact me at [annie@cific.co](mailto:annie@cific.co) with any questions, comments, or to schedule a call to discuss any aspects of the letter or explore potential next steps. We look forward to our continued collaboration on this matter.

Sincerely,

*A. Sinigagliese*

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