

# B.6

## Request for Comments

### B.6.1 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



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

#### 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.fcnb.ca](http://www.fcnb.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>

#### 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.

<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](#)

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

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.

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 CIRO'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

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<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.

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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.

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.

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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)

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

**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 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:

Tim Baikie  
Senior Legal Counsel, Trading & Markets  
Ontario Securities Commission  
[tbaikie@osc.gov.on.ca](mailto:tbaikie@osc.gov.on.ca)

Mark Delloro  
Senior Accountant, Trading & Markets  
Ontario Securities Commission  
[mdelloro@osc.gov.on.ca](mailto:mdelloro@osc.gov.on.ca)

Alex Petro  
Trading Specialist, Trading & Markets  
Ontario Securities Commission  
[apetro@osc.gov.on.ca](mailto:apetro@osc.gov.on.ca)

Xavier Boulet  
Senior Policy Advisor  
Direction de l'encadrement des activités de négociation  
Autorité des marchés financiers  
[xavier.boulet@lautorite.qc.ca](mailto:xavier.boulet@lautorite.qc.ca)

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Serge Boisvert  
Senior Policy Coordinator  
Direction de l'encadrement des activités de négociation  
Autorité des marchés financiers  
[serge.boisvert@lautorite.qc.ca](mailto:serge.boisvert@lautorite.qc.ca)

Jesse Ahlan  
Senior Regulatory Analyst, Market Structure  
Alberta Securities Commission  
[jesse.ahlan@asc.ca](mailto:jesse.ahlan@asc.ca)

Michael Grecoff  
Securities Market Specialist  
British Columbia Securities Commission  
[MGrecoff@bcsc.bc.ca](mailto:MGrecoff@bcsc.bc.ca)

Kim Legendre  
SRO Analyst  
Direction de l'encadrement des activités de négociation  
Autorité des marchés financiers  
[Kim.Legendre@lautorite.qc.ca](mailto:Kim.Legendre@lautorite.qc.ca)

Navdeep Gill  
Senior Legal Counsel  
British Columbia Securities Commission  
[NGill@bcsc.bc.ca](mailto:NGill@bcsc.bc.ca)

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 a ~~a~~ 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 a ~~a~~ 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> <p>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,</p> <p>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),</p> <p>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).</p>
<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. 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.</li> </ul>
<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> <p>a) <b>Would marketplace participants send less order flow to Canadian marketplaces in favor of U.S. trading venues?</b></p> <p>b) <b>Does the difference in value between the Canadian and the American dollars matter in your analysis?</b></p>
<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> <p>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></p> <p>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></p> <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>

**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:**

- a) complexities associated with the frequency at which minimum trading increments could change,
- b) the necessary lead-time between establishment and implementation of new minimum trading increments both initially and on an ongoing basis,
- c) 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)),
- d) investor education challenges associated with an amended approach to minimum pricing increments.

- Some commenters believed that such a Canadian proposal would introduce complexity in managing orders.
- Some commenters thought that GTC orders may need to be repriced and/or possibly canceled.
- 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.

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- 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.

#### **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>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)

<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 (Ontario)**

**Cost-Benefit Analysis: Proposed Amendments to NI 23-101 and  
Proposed Changes to 23-101CP– Marketplace Trading Fee Caps**

**I. Background**

**a. Current regulatory framework and rationale for intervention**

Trading fees charged by marketplaces are determined by a number of factors.

The regulatory framework, including caps on fees, is designed to ensure that marketplace trading fees are fair and reasonable, marketplaces are not taking advantage of regulatory requirements to charge unreasonably high fees, and all investors have fair and non-discriminatory access to displayed orders on all marketplaces.

Most marketplaces operate either a “maker-taker” or “taker-maker” fee model. Under a maker-taker model, a marketplace charges a fee to the active order taking liquidity from the order book and pays part of that fee as a rebate to the passive order providing liquidity to the order book. Under a taker-maker model, the passive order (i.e., resting orders providing liquidity on a marketplace) pays a fee and the active order (i.e., orders that take liquidity on the marketplace) receives the rebate. In either model, the difference between the fee and rebate is the net capture for the marketplace. If a marketplace charges a larger active (passive) fee, it can afford to offer a larger passive (active) rebate to attract more order flow.

*The relationship between trading fees and trade-throughs*

The purpose of a trading fee limitation is to help ensure fair access to displayed orders by establishing an outer limit on the cost of accessing such quotations, especially where there is a regulatory requirement that a dealer trade with an order on a particular marketplace, such as trade-through rules that prohibit executing a buy order at a higher price than is available on another protected marketplace, or a sell order at a lower price.<sup>14</sup> Trading fee caps were designed in part to preclude individual marketplaces from raising their fees substantially in an attempt to take improper advantage of strengthened protection against trade-throughs.

Canada has had a form of trade-through regime in place for trading in exchange-traded securities for some time, although the scope of application and underlying principles have evolved. Originally, trade-through prohibitions were contained in exchange trading rules, and only protected that exchange’s orders.<sup>15</sup> Later, the prohibition on trade-throughs was extended to all marketplaces with displayed orders. As more marketplaces competed in trading, concerns arose that investors, including retail investors, would perceive an uneven playing field if their orders were not executed despite showing better prices than prices at which trades were occurring. This could lead to a loss of confidence in the fairness and integrity of the market, the subsequent withdrawal of investors and/or liquidity from the market, and a decrease in the efficiency of the price discovery process and the markets in general. As a result, proposals to formalize the Order Protection Rule (**OPR**) were finalized in November 2009 and implemented in February 2011.

However, an unintended consequence of OPR was that some marketplace fees, including trading fees, were identified as impacted by the captive consumer issue. Regarding trading fees, marketplace participants raised specific concerns about the implications of OPR on their costs to execute tradeable order flow, given that OPR makes them captive consumers required to trade with the best-priced displayed orders, regardless of the level of fees charged by marketplaces displaying those orders.

Consequently, as a result of the CSA’s review of OPR, steps were taken to help reduce the extent to which OPR acts as an unreasonable support for marketplaces and to mitigate the related cost issues borne by dealers and investors. The measures taken to cap trading fees were balanced against both the objectives of OPR and considerations related to the effect on competition and innovation. We note that the active trading fee caps apply to all visible marketplaces, even though unprotected visible marketplaces do not have captive consumers, because the CSA’s view was that fee caps should be applied equally from a fairness perspective.<sup>16</sup>

*The current fee caps*

Subsection 6.6.1(2) of National Instrument 23-101 *Trading Rules* (**NI 23-101**) places a limit (or cap) on the active trading fees that can be charged by marketplaces for execution against displayed orders on the marketplace. Fee caps apply to continuous auction trading in equity securities and exchange-traded funds (**ETFs**). There are different cap levels for inter-listed and non-inter-listed securities.

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<sup>14</sup> Under NI 23-101, “trade-through” means the execution of an order at a price that is,  
(a) in the case of a purchase, higher than any protected offer, or  
(b) in the case of a sale, lower than any protected bid.

<sup>15</sup> When it traded equities, the Montreal Exchange also prohibited trading through better-priced orders on the Toronto Stock Exchange.

<sup>16</sup> A dealer’s best execution obligation may require it to access orders on unprotected visible markets.

Fee caps were originally set in 2016 at CAD 0.0030 per share for securities priced at CAD 1.00 or more, and CAD 0.0004 per share for securities priced below CAD 1.00. As described above, the fee caps only applied to maker-taker fee models, where marketplaces collect fees on active orders and pay rebates on passive orders. The \$0.0030 fee cap mirrored the fee cap then in place for U.S. marketplaces under Securities and Exchange Commission (**SEC**) Rule 612, which is a practical necessity given the interconnectedness of the U.S. and Canadian equity markets.

To address concerns that the \$0.0030 fee cap appeared high for non-inter-listed securities (whose trading prices are generally lower than inter-listed securities), in 2017, fees for non-inter-listed securities were capped at CAD 0.0017 per share for securities priced at CAD 1.00 or more. The non-inter-listed securities trading fee cap was set lower than the cap for inter-listed securities in dollar terms but not in percentage-point terms, since non-inter-listed securities had a lower volume-weighted average price than inter-listed securities.<sup>17</sup> The existing fee caps were maintained for inter-listed securities and for all securities priced below CAD 1.00.

#### *SEC market structure reform proposals*

On September 18, 2024, the SEC finalized rules setting two minimum pricing increments, either USD 0.005 or USD 0.01, for the quoting and trading of National Market System (**NMS**) securities priced at or above USD 1.00 per share based on the time-weighted average quoted spread on U.S. marketplaces during an evaluation period. The minimum pricing increment is to be recalculated on a semi-annual basis (**SEC Trading Increment Rule**). The SEC Trading Increment Rule was to be effective on November 3, 2025 but is currently subject to an SEC order staying implementation pending the outcome of litigation.

In Canada, minimum pricing increments are set by the Canadian Investment Regulatory Organization (**CIRO**) through Universal Market Integrity Rule (**UMIR**) 6.1(1). The increments are currently set at one cent for securities trading at or above \$0.50 and \$0.005 for securities trading below \$0.50. In response to the SEC Trading Increment Rule, CIRO has proposed aligning the trading increments for inter-listed securities.

In light of the SEC Trading Increment Rule, the SEC has reduced the access fee<sup>18</sup> caps in response to the proposed lower pricing increments. For securities priced USD 1.00 or more, the SEC has finalized amendments to reduce access fee cap levels to \$0.001/share for protected quotations and other best bids and offers in NMS stocks priced at \$1.00 or more regardless the tick size or pricing increment for the security. For securities priced less than USD 1.00, the SEC lowered the access fee cap of from 0.3% to 0.1% of the quotation price per share. Implementation of the reduced access fee cap is also stayed.

#### **b. Proposed changes**

The Canadian Securities Administrators (the **CSA**) propose to amend section 6.6.1 of NI 23-101 and section 6.4.1 of Companion Policy 23-101CP *Trading Rules (23-101CP)* to lower the active trading fee cap applicable to trading in inter-listed securities (the **Proposed Amendments**) from CAD 0.0030 to CAD 0.0010 for securities priced CAD 1.00 or more. For securities priced less than CAD 1.00, the CSA does not consider it necessary to reflect these in Canada since the current Canadian regime governing trading fee caps for securities priced less than \$1.00 is different than that of the U.S.<sup>19</sup>

The Proposed Amendments, if implemented, will continue to align Canadian trading fee caps with U.S. access fee caps for inter-listed securities. Maintaining this harmonization is necessary to maintain effective functioning of the capital markets, so that lower trading fees in the U.S. do not create an incentive for Canadian dealers to direct order flow in inter-listed securities to lower-cost U.S. marketplaces. If the revised U.S. access fee cap is not implemented, the CSA will not proceed with the Proposed Amendments.

Additionally, if trading increments are reduced, marketplace fees must also be reduced so they do not distort pricing. OPR, in section 6.1 of NI 23-101, requires dealers to have policies and procedures reasonably designed to prevent trade-throughs (that is, trades occurring at inferior prices to those available on another protected marketplace).<sup>20</sup> High trading fees can distort the analysis of whether a price on one market is in fact “better” than a price on another. The Proposed Amendments will continue to protect marketplace participants from marketplaces charging high trading fees for execution of orders that are required to be routed to the marketplace to comply with OPR. The recalibration of trading fee caps in light of the reduction Canadian minimum

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<sup>17</sup> CSA, CSA Notice and Request for Comment: Proposed Amendments to National Instrument 23-101 Trading Rules, April 7, 2016, <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101/csa-notice-and-request-comment-proposed-amendments-national-instrument-23-101-trading-rules>.

<sup>18</sup> In the U.S., trading fees are known as access fees.

<sup>19</sup> In a [2014 CSA Notice](#), we noted that: “when comparing current marketplace fee levels for included securities priced under \$1.00, they are in many cases already well below what would be charged if the U.S. cap was applied. In addition, we estimate that over the last three months of 2013, only approximately 6% of the total volume traded in securities priced below \$1.00 would have occurred at fee levels above the U.S. cap. Consequently, we questioned the rationale for implementing a similar cap at this time for trades in included securities priced under \$1.00. We also questioned the rationale for imposing a cap that is applied as a percentage of value traded given that current billing practices for the included securities are to charge at a per share or unit rate. We determined it would therefore be appropriate that if imposing a cap for included securities priced below \$1.00, it be set at the highest rate currently being charged for either of TSX or TSXV-listed securities- being 4 mills or \$0.0004 per share or unit traded.”

<sup>20</sup> A “protected market” is one that displays bids and offers publicly, allows those orders to be executed immediately and has a minimum market share. For exchanges, it also includes the exchange on which a security is listed.

trading increments, contained in CISO's UMIR 6.1(1), will also prevent potential market distortions that could occur when trading fees exceed half the minimum increment and represent an outsized proportion of the minimum quotation increment.

A reduction in the minimum pricing increment without reducing the trading fee caps could permit trading fees to become a higher percentage of the minimum pricing increment, which could potentially undermine price transparency and exacerbate the other concerns with maker-taker fees.

Inverted (taker-maker) markets do not create the same risk of distortion because the fee is applied to the passive order. The fees the marketplaces charge for posting liquidity will not directly affect a dealer who needs to trade with an order on that marketplace to comply with OPR; the dealer will either receive a rebate or not be charged a fee.<sup>21</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.

The Proposed Amendments would balance several considerations, such as ensuring that the fees are competitive with U.S. markets while also seeking to preserve the ability of marketplaces to continue to operate and affording them continued flexibility to develop and utilize different fee structures, including the currently used maker-taker fee model. The proposed trading fee caps would allow marketplaces to largely maintain their current net capture rate (the difference between marketplace fees and rebates) and not impair their current fee models, though some fee models may change.

We also note that the Proposed Amendments could lower investor costs, including costs associated with trading fees and intermediation. With respect to the latter, concerns have been raised about excessive intermediation, which may occur in the trading of sufficiently liquid securities. In pursuit of earning rebates, high frequency traders and latency sensitive liquidity providers crowd out individual investors and long-term investors from being able to access liquidity passively.

## **II. Stakeholders affected by the proposed Instrument/Rule**

### **Marketplaces**

Marketplaces will need to revise their fee schedules, including fees charged on active orders and rebates paid to passive orders. There are 6 maker-taker marketplaces with active trading fees that exceed the proposed trading fee cap of CAD 0.001 for inter-listed securities.

There are approximately 200 inter-listed securities, of which roughly 180 are priced at CAD 1.00 or more. These inter-listed securities account for about 30% of total trading volume on Canadian marketplaces as of October 2023.<sup>22</sup>

### **Dealers**

Revenues and costs for various dealers with different business models will be impacted by the changes to marketplace fees and rebates.

### **Investors**

Investors are not expected to be directly impacted by the Proposed Amendments as dealers do not typically pass on trading fee charges or rebates directly to customers. Longer term, lower marketplace trading fees for active trades may contribute to continuing reductions in brokerage commissions.

## **III. Impact of the Proposed Amendments on each of the OSC mandate components**

The OSC considers the impact of proposed rulemaking on the OSC's mandate to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in the capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

The Proposed Amendments may impact the competition, efficiency and capital formation components of the OSC's mandate.

Competition – The Proposed Amendments impact competition in the following ways:

- Competition between Canadian marketplaces – The Proposed Amendments may impact current marketplace business models. Marketplaces pay rebates to attract order flow to a particular platform and to partly

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<sup>21</sup> The size of the fee would indirectly affect the size of any rebate.

<sup>22</sup> CBOE, Canadian Equity Exchanges Today, November 13, 2023, <https://www.cboe.com/insights/posts/canadian-equities-exchanges-today/>.

compensate liquidity providers for the costs associated with market making. Given that rebates are funded in part by trading fees, the proposal to lower trading fees could lower the total amount of fees collected by some marketplaces, reducing the amount of rebates distributed by those marketplaces, possibly impacting their ability to attract order flow. The fee cap may decrease the opportunity for marketplaces to compete on trading fees but may encourage greater competition along other dimensions.

- Competitiveness with U.S. Markets – Harmonizing the U.S. and Canadian requirements for inter-listed securities should, at a minimum, preserve the existing competitive position of Canadian marketplaces.
- Efficiency – Price or market efficiency concerns the extent to which market prices reflect all available information. Operational efficiency concerns relate to transaction costs.<sup>23</sup> To the extent that the reduction in the tick size and accompanying reduction in the trading fee cap lower transaction costs, the Proposed Amendments could potentially improve both price and operational efficiency.
- Capital formation – The Proposed Amendments facilitate capital formation by working to ensure orderly and liquid secondary markets.

**IV. Anticipated costs and benefits**

a. Benefits to stakeholders

**Marketplaces**

- Continued alignment with the U.S. marketplace fees and rebates to avoid potential loss of order flow to the United States.
- Lower fees will lead to lower rebates paid out by the marketplaces. Overall, the impact on the net marketplace fees is expected to be minor—as noted earlier, the proposed trading fee caps would allow marketplaces to largely maintain their current net capture rate and not impair their current fee models, though some fee models may change.

**Dealers**

- Lower trading fees will reduce costs on dealers who predominately execute active trades on behalf of investors. Table 1 estimates the impact of the proposed trading fee cap on total trading fees paid and rebates received by marketplace participants.

**Table 1: Estimated total annual “maker-taker” marketplace trading fees and rebates under the current and proposed trading fee cap**

	<b>Current</b>	<b>Proposed</b>
<b>Shares traded, billions</b>	54.2	54.2
<b>Active fees, \$ millions</b>	144.4	43.4
<b>Active fees, mils per share</b>	12-27	4-10
<b>Passive rebates, \$ millions</b>	122.8	21.8
<b>Passive rebates, mils per share</b>	6-24	0-6

Note: These results are calculated based on 2023 trading volumes among other assumptions.<sup>24</sup> Source: Bloomberg, OSC staff calculations.

<sup>23</sup> Bauer, Gregory H., *A Taxonomy of Market Efficiency*. Bank of Canada Financial System Review, 2004, <https://www.bankofcanada.ca/wp-content/uploads/2012/01/fsr-1204-bauer.pdf>.

<sup>24</sup> Table 1 assumptions calculated on a best-efforts basis:

1. The proposed trading fee cap impacts US inter-listed securities priced at C\$1.00 per share or more (about 180 securities).
2. Impacted “maker-taker” marketplaces (6) have active trading fees above 10 mils.
3. The current headline fees and rebates on impacted maker-taker marketplace is applied to 2023 trading volume for impacted US inter-listed securities to estimate current total fees collected and rebates paid. All trading is subject to the same top-level fees and rebates charged by each marketplace without discounts.
4. Under the proposed trading cap, the marketplace net capture rate remains unchanged. Trading fees and rebates on impacted marketplaces for inter-listed securities are lowered to a range of 4-10 mils (\$0.0004-\$0.001 per share) and 0-6 mils (C\$0.0000-\$0.0006 per share), respectively. The weighted-average trading fees and rebates are 8 mils and 4 mils, respectively, for the impacted marketplaces, which is closer to the top of the new range under the proposed trading fee cap.

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- Lower trading fees and rebates will reduce the incentive to route orders to the best-priced marketplace with the lowest fees or highest rebates. This reduction in fee and rebate distortions should simplify order routing, resulting in operational efficiencies.

### b. Costs to stakeholders

#### Marketplaces

##### 1. Marketplace Compliance Costs

In May 2024, OSC staff sent a voluntary survey to 7 equity marketplace operators seeking input on the expected costs each marketplace would incur to implement the Proposed Amendments. Specifically, the survey asked equity marketplace operators to provide an estimate of the amount of time needed to perform the necessary work by firm function (Legal, Compliance and IT). The survey also captured whether the equity marketplace operator expected to use in-house or external resources to complete the work. The following section considers the incremental costs of the Proposed Amendments based on survey responses from 4 of the 7 marketplaces.

The estimated compliance costs are based on the following assumptions and observations:

- Marketplaces already have policies and procedures in place that govern the updating of existing marketplace fee schedules. As such we do not expect that the Proposed Amendments will have a material incremental impact on existing processes.
- We anticipate that marketplaces will incur minor one-time initial implementation costs but there will be no significant ongoing compliance costs associated with the Proposed Amendments.
- While we expect that the costs associated with the trading fee cap will be relatively minor, survey respondents noted that the costs to implement the change in the minimum pricing increment would be significantly higher.<sup>25</sup> For the purposes of this cost-benefit analysis, we are primarily concerned with the costs associated with the proposed trading fee cap.
- Survey respondents indicated that they do not expect to incur any non-labour costs (e.g., significant investment in IT infrastructure) as a result of the Proposed Amendments.

Based on the survey responses, we estimate that the total number of compliance hours required to implement the Proposed Amendments range between 40 and 70 hours across the different firm functions. Survey respondents indicated that internal staff performing the work necessary to comply with the Proposed Amendments would include the following:

- **Legal**<sup>26</sup> – Senior Legal Counsel; Assistant/Associate General Counsel; General Counsel
- **Compliance**<sup>27</sup> – Senior Compliance Officer; Compliance Manager; Chief Compliance Officer
- **Internal IT**<sup>28</sup> – Product Manager, Software Engineer, Site Reliability Engineer

Table 2 sets out the estimated per firm and aggregate compliance costs associated with the Proposed Amendments.

**Table 2: Estimated compliance costs associated with the proposed trading fee cap**

	Low	High
Total per firm labour costs	\$5,700	\$10,700
Aggregate industry costs <sup>29</sup>	\$39,900	\$74,900

We note that the estimated compliance costs are small relative to marketplace annual revenue.

<sup>25</sup> One respondent estimated that the costs to implement the change to the minimum pricing increment would be three times the estimated costs to implement the trading fee cap.

<sup>26</sup> Hourly rates for legal staff are based on ZSA Counselwell's *2024 In-House Lawyer Salary Guide* (available here: <https://www.zsa.ca/wp-content/uploads/2024/03/ZSA-Version-ZSA-X-Counselwell-In-House-Salary-Report-2.pdf>)

<sup>27</sup> Hourly rates for compliance staff are based on the Robert Half *2024 Canada Salary Guide* (available here: <https://www.roberthalf.com/ca/en/insights/salary-guide>)

<sup>28</sup> Hourly rates for internal IT staff are based on the Robert Half *2024 Canada Salary Guide*.

<sup>29</sup> Assuming a total of 7 impacted marketplace operators.

**2. Marketplace Revenue Impact**

In a maker-taker model, profit earned by marketplaces on each trade depends in part on the difference between the fees paid by liquidity takers and the rebates paid to liquidity providers. Table 1 (above) sets out estimates the impact of the proposed changes to trading fees and rebates for maker-taker marketplaces with active trading fees above the proposed trading fee cap. We anticipate that 6 marketplaces will need to lower fees as they currently charge above the proposed cap, and should consequently lower rebates.

**Dealers and other liquidity providers**

- Decreased revenues due to lower trading fee rebates; in particular, for firms specializing in liquidity provision and rebate capturing, such as HFT firms (Table 1).
- Need to reconfigure order routing strategies to account for changes to trading fees could impose a one-time cost.

**V. Summary comparison of costs and benefits**

We anticipate that marketplaces will incur minor costs to comply with the Proposed Amendments. We estimate that these costs will range between \$5,700 and \$10,700 per marketplace operator. We also anticipate that a reduction in the trading fee cap could lead to a \$101 million decrease in total fees collected by marketplaces (see Table 1). However, the net capture earned by marketplaces should not change significantly, as the decrease in 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 estimated costs to the extent that the Proposed Amendments preserve the relative competitive position of U.S. and Canadian marketplaces.

**VI. Alternatives considered**

Please refer to the section titled “Alternatives to the Proposed Amendments” in the accompanying CSA Notice and Request for Comment.