



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



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March 24, 2025

Submitted via Email

Attention:

The Secretary

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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 gaps¹ as CIRO's proposal on trading increments.² 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.

¹ 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

² <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,

IIAC 
Investment Industry Association of Canada

ACCVM
Association canadienne du commerce des valeurs mobilières

