

## NATIONAL INSTRUMENT 23-103

### ELECTRONIC TRADING

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#### PART 1

#### DEFINITIONS AND INTERPRETATION

##### Definitions

1. In this Instrument,

“automated order system” means a system used to automatically generate or electronically transmit orders on a pre-determined basis;

“marketplace and regulatory requirements” means

- (a) the rules, policies, requirements or other similar instruments set by a marketplace respecting the method of trading by marketplace participants, including those related to order entry, the use of automated order systems, order types and features and the execution of trades;
- (b) the applicable requirements in securities legislation; and
- (c) the applicable requirements set by a recognized exchange, a recognized quotation and trade reporting system or a regulation services provider under section 7.1, 7.3 or 8.2 of NI 23-101;

and

“participant dealer” means a marketplace participant that is an investment dealer.

##### Interpretation

2. A term that is defined or interpreted in National Instrument 21-101 *Marketplace Operation*, or National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* has, if used in this Instrument, the meaning ascribed to it in National Instrument 21-101 or National Instrument 31-103.

#### PART 2

#### REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

##### Risk Management and Supervisory Controls, Policies and Procedures

3. (1) A marketplace participant must
- (a) establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace; and

- (b) record the policies and procedures required under paragraph (a) and maintain a description of the marketplace participant's risk management and supervisory controls in written form.
- (2) The risk management and supervisory controls, policies and procedures required under subsection (1) must be reasonably designed to ensure that all orders are monitored and for greater certainty, include
  - (a) automated pre-trade controls, and
  - (b) regular post-trade monitoring.
- (3) The risk management and supervisory controls, policies and procedures required in subsection (1) must be reasonably designed to
  - (a) systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing
    - (i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant,
    - (ii) the entry of one or more orders that exceed pre-determined price or size parameters;
  - (b) ensure compliance with marketplace and regulatory requirements, including, for greater certainty,
    - (i) preventing the entry of orders that do not comply with marketplace and regulatory requirements that must be satisfied on a pre-order entry basis;
    - (ii) limiting the entry of orders to those securities that a marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant, is authorized to trade;
    - (iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant; and
    - (iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, for greater certainty, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;
  - (c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;
  - (d) enable the marketplace participant to immediately suspend or terminate any access to a marketplace granted to a client with marketplace access provided by the marketplace participant; and
  - (e) ensure that the entry of orders does not interfere with fair and orderly markets.
- (4) A third party that provides risk management and supervisory controls, policies or procedures to a marketplace participant must be independent from each client with marketplace access provided by the marketplace participant, except if the client is an affiliate of the marketplace participant.
- (5) A marketplace participant must directly and exclusively set and adjust the risk management and supervisory controls, policies and procedures required under this section, including those provided by third parties.
- (6) A marketplace participant must
  - (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and
  - (b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy the deficiency.

- (7) If a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace participant must
- (a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and
  - (b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and ensure the deficiency is promptly remedied.

#### **Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures**

4. Despite subsection 3(5), a participant dealer may, on a reasonable basis, authorize an investment dealer to perform, on the participant dealer's behalf, the setting or adjusting of a specific risk management or supervisory control, policy or procedure required under subsection 3(1) if
- (a) the participant dealer has a reasonable basis for determining that the investment dealer, based on the investment dealer's relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively set or adjust the control, policy or procedure;
  - (b) a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the specific risk management or supervisory control, policy or procedure are set out in a written agreement between the participant dealer and investment dealer;
  - (c) before authorizing the investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure, the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management or supervisory control, policy or procedure;
  - (d) the participant dealer
    - (i) regularly assesses the adequacy and effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure by the investment dealer, and
    - (ii) documents any deficiencies in the adequacy or effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure and ensures that the deficiencies are promptly remedied, and
  - (e) the participant dealer provides the investment dealer with the immediate order and trade information of the ultimate client that the participant dealer receives under subparagraph 3(3)(b)(iv).

### **PART 3**

#### **REQUIREMENTS APPLICABLE TO USE OF AUTOMATED ORDER SYSTEMS**

##### **Use of Automated Order Systems**

5. (1) A marketplace participant must take all reasonable steps to ensure that its use of an automated order system or the use of an automated order system by any client, does not interfere with fair and orderly markets.
- (2) A client of a marketplace participant must take all reasonable steps to ensure that its use of an automated order system does not interfere with fair and orderly markets.
- (3) For the purpose of the risk management and supervisory controls, policies and procedures required under subsection 3(1), a marketplace participant must
- (a) have a level of knowledge and understanding of any automated order system used by the marketplace participant or any client that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system,

- (b) ensure that every automated order system used by the marketplace participant or any client is tested in accordance with prudent business practices initially before use and at least annually thereafter, and
- (c) have controls in place to immediately
  - (i) disable an automated order system used by the marketplace participant, and
  - (ii) prevent orders generated by an automated order system used by the marketplace participant or any client from reaching a marketplace.

#### **PART 4**

#### **REQUIREMENTS APPLICABLE TO MARKETPLACES**

##### **Availability of Order and Trade Information**

- 6. (1) A marketplace must provide a marketplace participant with access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required under section 3.
- (2) A marketplace must provide a marketplace participant access to its order and trade information referenced in subsection (1) on reasonable terms.

##### **Marketplace Controls Relating to Electronic Trading**

- 7. (1) A marketplace must not provide access to a marketplace participant unless it has the ability and authority to terminate all or a portion of the access provided to the marketplace participant.
- (2) A marketplace must
  - (a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner;
  - (b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented under paragraph (a); and
  - (c) document and promptly remedy any deficiencies in the adequacy or effectiveness of the controls, policies and procedures implemented under paragraph (a).

##### **Marketplace Thresholds**

- 8. (1) A marketplace must not permit the execution of orders for exchange-traded securities to exceed the price and volume thresholds set by
  - (a) its regulation services provider;
  - (b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or
  - (c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces the requirements set under subsection 7.3(1) of NI 23-101.
- (2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for the exchange-traded security or a security underlying the exchange-traded security.

### Clearly Erroneous Trades

9. (1) A marketplace must not provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by the marketplace participant.
- (2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless
- (a) instructed to do so by its regulation services provider;
  - (b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and notification is provided to the marketplace's regulation services provider; or
  - (c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment, or caused by an individual acting on behalf of the marketplace, and the consent to cancel, vary or correct has been obtained from the marketplace's regulation services provider.
- (3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.

## PART 5

### EXEMPTION AND EFFECTIVE DATE

#### Exemption

10. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

#### Effective Date

11. This Instrument comes into force on March 1, 2013.