



**CANADIAN SECURITY TRADERS ASSOCIATION, INC.**  
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Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Registrar of Securities, Department of Justice, Northwest Territories  
Registrar of Securities, Government of Yukon Territory  
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut  
Registrar of Securities, Prince Edward Island  
Saskatchewan Financial Services Commission  
Superintendent of Securities, Newfoundland and Labrador  
Ontario Securities Commission  
c/o John Stevenson, Secretary  
Ontario Securities Commission  
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Dear Sir/Madam,

**Re: Notice of Proposed Amendments to National Instrument 21-101 Market Place Operations  
And National Instruments 23-101 Trading Rules**

## **I. Introduction**

The Canadian Security Traders Association, Inc. (CSTA) is taking this opportunity to respond to the Canadian Security Administrators (CSA) proposed amendments to National Instruments 21-101 Market Place Operations and National Instruments 23-101 Trading Rules and the related companions.

The CSTA was formed in 2000 to serve as a national voice for our affiliate trading associations: the Institutional Equity Trader Association (Toronto), Association des Arbitragistes Institutionnels (Montreal), and the Vancouver Security Traders Association. The CSTA is comprised of over 900 equity traders nationwide and is led by Governors from each of our three distinct regions. The CSTA is also affiliated with the Security Traders Association (U.S.A), which has 6000 members globally. The CSTA welcomes the opportunity to comment in regards to the proposed rule changes as stated above.

The CSTA has submitted numerous letters to both the CSA and the Investment Industry Regulatory Organization of Canada (IIROC) voicing our opinion that the Canadian regulators should follow the lead taken by the United States Securities and Exchange Commission (SEC) which has imposed the burden of responsibility on the individual marketplaces for complying with their version of the trade-through rule; Regulation NMS Rule 611. The rule requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent "trade-through". This opinion has not changed.

In regards to the proposed rule changes for the Canadian market, below is a set of responses to the fifteen question asked by the CSA for opinion. The CSTA believe in the need to balance the interests of all investors, institutional as well as retail. Flexibility is essential in rule design and implementation due to the variety of investor needs and trading styles.

## **II. Response to Request for Comment**

### **Question 1**

**Should marketplaces be permitted to pass on the trade-through obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.**

It is the view of the CSTA that the marketplace should not be able to pass on the trade through obligation to marketplace participants. While the marketplaces may choose how to implement this obligation, they are not able to avoid this obligation by placing the onus on the participants. However, on an exception basis, a participant may initiate the process by which they are responsible for the trade through obligation.

### **Comments on the Proposed Trade-through Protection Rule**

A dealer's fiduciary duty to their clients has been and is an essential part of the service and value it brings to its clients. Any regulatory requirement that interferes with this duty should be carefully considered and properly justified. As such, any framework that allows a dealer to opt out of best execution requirements must be properly justified, transparent and documented. A system must maintain flexibility within a forward looking, untested set of rules.

Exemptions to the trade-through must be justified by the perceived benefit to the best execution of the client order. Best execution is generally measured by three standards: provision of liquidity, price improvement and speed of execution. To justify the breaking of price improvement (trade-through) it needs to be balanced against the gain received in terms of liquidity or speed. There has to be a net benefit to the client and no detriment to the integrity of the market place. Generally, any order type that can be measured by these standards and justified against the back drop of best execution should be considered for exemption.

Protected Orders must be limited to the open visible book during market hours and certain terms order that are within the context of the market "snapshot" at the time of the execution. "Minimum Fill" and "Special Terms" orders are examples of order types that should be protected during the trading day if they can be filled and provide price improvement to the next level in the visible book.

The depth of book is justified for protection beyond the top of the book unlike the United States. The level of depth may encounter technology issues as the order sweeps and causes latency. The level of protection could be as much as five ticks depending upon the technology constraints.

In regards to function, malfunction and material delays, trade through for that market place must be allowed to take place as there is no process available to interact with that market. The onus must remain with the marketplace having the issues to protect the client orders in their book by providing timely notification and advice to market participants.

### **Question 2**

**What length of time should be considered an "immediate" response by a marketplace to a received order?**

An immediate response must be considered in the context of the relative speed of messaging between the various vendors and marketplace participants. A subjective time of less than one second seems appropriate.

### Question 3

#### **Are any additional exceptions required?**

Not at this point. Exceptions may arise outside of the above mentioned situations and should be considered on a case by case basis. The CSA should remain open to reassessing the rules as they come up.

### Question 4

#### **Please comment on the various alternatives available to a marketplace to route orders to another marketplace.**

No Comment

### Question 5

#### **Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IROC Universal Market Integrity Rule 6.1 as this limit?**

In our opinion, the CSA should set an upper limit on fees that can be charged to access an order for trade-through purposes. We also agree that it is appropriate to reference the minimum price increment described in UMIR Rule 6.1 as the limit. The principle of the rule should be non-discriminatory.

### Question 6

#### **Should there be a prohibition against creating a "locked market"?**

There should be a prohibition against intentionally creating a locked a market to protect the integrity and function of the market as a whole.

### Question 7

#### **Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?**

All information in regards to the marketplace should be made available. It is important for all participants to be able to interpret the data for their specific needs.

### Question 8

#### **Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?**

The marketplace should report on specific order types. This would include, for example, derivative and internal crosses. There is a benefit in knowing the separation between what constitutes real attainable liquidity as opposed to special situation prints.

### Question 9

#### **Should the focus of liquidity measures be the number of orders or the cumulative number of shares?**

The focus should be the cumulative number of shares. The number of orders should be considered as a secondary tool for putting the market depth into context.

#### Question 10

**Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?**

Yes, measures of this information would be useful. We would suggest having statistics that include the percentage of total orders that use the iceberg function and the percentage of the total order that is disclosed.

#### Question 11

**Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States? What price increment away from the quote would be appropriate to use in the Canadian market?**

Near the quote order reporting should be required dependant upon the level of protected orders in the book. As mentioned above, five ticks from the top of the book would be appropriate.

#### Question 12

**Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?**

All statistics are useful on each marketplace but without a consolidated book measurement is difficult.

#### Question 13

**Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?**

Yes, the time frames used to assess speed and certainty of execution on a marketplace suggested under 11.1.1 of NI 21-101 are appropriate.

#### Question 14

**In addition to the proposed reporting requirements for marketplaces would other information, such as the following, be useful to dealers or advisors to assess best execution:**

- a) A breakdown of the information by order size(i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);
- b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;
- c) The proportion of trades (in number of trades based on our decision) executed inside the best bid and ask price?

We believe all this information would be useful.

#### Question 15

**Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?**

We agree that the information processor should disseminate consolidated trade information with a feed that contains the best bid and offering. We feel this is absolutely essential. We believe price levels should be limited to five. This is the same amount of levels that we feel should be protected in the book against trade through.

## Amendment

We would like the Canadian Security Administrators (CSA) to consider future discussion on the topic of consolidated opening and closing prices. The CSTA feels this will be an important topic in the very near term.

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