

CSA Staff Notice 23-322

Trading Fee Rebate Pilot Study

March 16, 2018

I. Introduction

On March 14, 2018, the United States Securities and Exchange Commission (**SEC**) published proposed rules that would establish a Transaction Fee Pilot to study the impacts of transaction fees and rebates on order routing behaviour, execution quality and market quality (the **Proposed Transaction Fee Pilot**).¹

The Canadian Securities Administrators (the **CSA**, or **we**) have been considering a similar study for a number of years. With the publication of the Proposed Transaction Fee Pilot, this CSA Staff Notice serves as an update on our plans in this regard.

II. Background

On May 15, 2014, the CSA published a Notice and Request for Comment (the **2014 Notice**) that proposed amendments to National Instrument 23-101 *Trading Rules* in relation to the Order Protection Rule (**OPR**).²

In the context of our OPR review, we heard concerns about both the level of trading fees in Canada, as well as the predominant trading fee model employed by marketplaces at the time. This fee model (known as the “maker-taker” 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.

The 2014 Notice described the issues associated with rebate payments and communicated our view that the payment of rebates was a contributing factor to the creation of conflicts of interest as well as the segmentation of orders. The 2014 Notice further highlighted our intention to implement a pilot study that would examine the impact of prohibiting the payment of rebates by marketplaces.

However, CSA staff also identified certain risks associated with a pilot study, and many commenters to the 2014 Notice expressed similar concerns. These risks arise due to the interconnected nature of North American markets and relate to securities that are interlisted with the United States. Inclusion of these securities in a pilot study could negatively impact Canadian liquidity in these securities unless a similar study was undertaken in the United States. Liquidity providers who would not receive a rebate on certain marketplaces in Canada could reduce their trading activity or leave the market entirely.

¹ Published at: <https://www.sec.gov/rules/proposed/2018/34-82873.pdf>

² Published at: http://www.nbsc-cvmb.ca/nbsc/uploaded_topic_files/23-101-CSAN-2014-05-15-E.pdf

The amendments proposed in the 2014 Notice were finalized on April 7, 2016,³ and in finalizing the amendments we noted our continued support for the operation of a pilot study. However, given the concerns with respect to interlisted securities, we indicated that we would not be moving forward with a pilot study at that time. We further indicated our intention to liaise with our U.S. regulatory colleagues and that we would consider a co-operative initiative where possible.

III. Next Steps

We have been engaged in dialogue with our U.S. colleagues on this issue and will continue to do so in the context of the publication of the Proposed Transaction Fee Pilot. As such, we will continue our discussions with SEC staff about coordinating the potential pilot studies, where appropriate. Any proposal to introduce a pilot study for Canadian marketplaces will be published in a separate notice for comment. However, in the interim, we welcome any input or comments on a potential Canadian pilot study.

IV. Questions

Questions and comments may be referred to:

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³ Published at: http://www.nbsec-cvmb.ca/nbsec/uploaded_topic_files/23-101-NOA-2016-04-07-E.pdf. Effective April 10, 2017, the trading fee cap for securities listed on a Canadian exchange, but not listed on a U.S. exchange was reduced.