



**VIA ELECTRONIC MAIL**

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**Re: 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***

Dear Sirs/Mesdames:

Nasdaq CXC Limited ("Nasdaq Canada")<sup>1</sup> appreciates the opportunity to comment on the Canadian Securities Administrators (CSA) Notice and Request for Comment on Proposed Amendments to National

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<sup>1</sup> Nasdaq Canada operates three trading books for trading TSX, TSX-Venture, CSE and Cboe Canada listed securities. Nasdaq CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority. Nasdaq

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Instrument 23-101 *Trading Rules* and Proposed Changes to Companion Policy 23-101 *Trading Rules* (“Proposed Amendments”). We understand that the Proposed Amendments are not being made in isolation but instead in preparation should the Securities and Exchange Commission (SEC) move forward and implement a reduction in the maximum fee that a marketplace can charge for executing an order equal to or greater than \$1.00 (“SEC Trading Fee Proposal”) which, while having been already adopted, is currently delayed pending a judicial review of the rule change.

Nasdaq Canada’s response and position to the Proposed Amendments has already been substantially communicated in our comment letter addressing questions raised in CSA/CIRO Staff Notice 23-331 *Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Market* (“Staff Notice 23-331”) published in 2023. At that time, we supported policy changes that would serve to protect and improve trading in inter-listed securities on Canadian marketplaces:

- i. The Universal Market Integrity Rules (“UMIR”) need to be amended and harmonized with the changes the SEC has adopted that will decrease the minimum tick size increment for constrained securities so that Canadian participants are able to trade on a level playing field and are not restricted from making equivalent and competitive markets;
- ii. Access fee limitations in Canada for inter-listed names need to be higher than the SEC Trading Fee Rule Proposal to provide an opportunity for a better incentive to provide liquidity and economic support for market makers to narrow spreads.

While we are not generally supportive of differentiating rules across jurisdictions that may create opportunities for regulatory arbitrage, we believe that taking a different regulatory approach is appropriate when a rule more effectively protects investors, ensures a more fair and efficient market or when it provides a protection for a smaller market already at a competitive disadvantage due to its size and at risk of losing its relevance and its ability to serve its domestic purpose of providing its investors with a competitive low cost market in which to trade. For example, the small size and high concentration of a limited number of large participants in Canada explains why Canadian regulation does not permit off marketplace trading or differentiated fair access rules for ATS’s where both are permitted in the US.

Competitive considerations need to be prioritized by the CSA now more than ever to protect liquidity on inter-listed names in Canada and in turn to protect the size of the Canadian equity market. Since the CSA published Staff Notice 23-331 in 2003 there has been an acceleration in the trend where the proportion of total volume traded in inter-listed securities on Canadian marketplaces has decreased, reaching a historical

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CX2 is designed to provide additional cost savings and trading efficiencies. Through unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change. Nasdaq CXD provides an alternative source of non-displayed liquidity, which facilitates robust size discovery and price improvement opportunities.

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low in April 2025. Recognizing the contribution of traded volumes in these securities to overall Canadian volumes (discussed more below), we encourage any action that can be taken to slow down or reverse this trend to protect the Canadian market. We believe that if the SEC Trading Fee Proposal is implemented that the CSA is positioned to address this issue by supporting a higher access fee in Canada and that taking a different approach than the SEC is supported by the policy rationale of needing to strengthen Canada's competitive position in order to protect an important segment of securities in Canada that is currently losing market share and in turn relevance.

We expound on the view above in our responses to each of the questions raised in the Proposed Amendments.

**Question 1/2 – Do you agree with aligning the trading fee cap for inter-listed securities with the SEC and do you believe the competitiveness of the Canadian capital markets will be impaired if this approach is taken?**

We do not agree with the CSA aligning the trading fee cap for inter-listed securities in Canada with the SEC Trading Fee Proposal as this will result in order flow on these securities continuing to migrate from Canada to the U.S. which has been a continuing trend since 2018. Instead, we strongly encourage the CSA to differentiate its approach from the SEC and support a higher access fee level that will strengthen Canada's competitive position by providing the opportunity for liquidity providers to be incentivized to make better markets in Canada.

Permitting a higher access fee in Canada will allow Canadian marketplaces to better compete in aggregate for order flow on inter-listed names with U.S. exchanges. Higher access fee limitations provide marketplaces the option to support higher rebates which in turn serve to attract liquidity provision and reduce spreads. Pricing decisions are constrained by the maximum trading fee permitted by regulation. Using a typical maker-taker fee model a higher fee cap provides the option for a higher corresponding rebate to be offered to liquidity providers. By permitting a higher access fee, liquidity providers that trade in both the U.S. and Canada will be offered an incentive to quote better markets in Canada as they will seek to earn a higher rebate on the same security. Better quoted markets in turn could attract more order flow.

The relationship between the level of a rebate and the ability to attract liquidity provision and in turn order flow has been acknowledged by the CSA and has served as the rationale for taking a different regulatory approach for inter-listed securities in the past. In 2016 when the CSA proposed to lower the access fee in Canada for non-inter-listed securities, the access fee for inter-listed securities remained the same because of concerns about the impact of liquidity provision if rebates were not permitted to be as high in Canada as those in the U.S.

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“We remained concerned about the potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by Canadian marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.”<sup>2</sup>

The relationship between the level of the rebate and the ability to attract liquidity provision recognized by the CSA is the basis for encouraging the CSA to support a higher access fee cap today.

### **The Importance of Inter-listed Securities to the Canadian market**

There are 198 inter-listed securities that trade on marketplaces in Canada and the U.S. This represents a decrease from 206 as of October 21, 2023, at the time of the Staff Notice 23-331. It also reflects a concern where public issuers are now choosing more frequently to list on U.S. exchanges instead of Canadian exchanges and those who have been listed in Canada are choosing to not maintain their Canadian listings.

While the number of inter-listed securities in Canada may be small, their contribution to overall Canadian volume is significant. The number of inter-listed securities in Canada represents less than 6% of all listed securities in Canada.<sup>3</sup> However, volume traded in these securities represents 28.03%<sup>4</sup> of total Average Daily Volume (“ADV”) across all Canadian securities. Comparing this to the U.S., the number of inter-listed securities represents approximately 3.6% of all securities, but volume traded in these securities only represents 4.78%<sup>5</sup> of ADV.

As noted previously there has been a concerning trend where the percentage of volume traded in Canada on inter-listed securities compared to volume traded in these securities in the U.S. has been decreasing. Since October 2018, when more volume traded in Canada than the U.S., market share on these names has continued to migrate to U.S. marketplaces; this trend has accelerated since the time of the Staff Notice 23-331, when U.S. market share was 57%, to now, when that market share is 72.2%.<sup>6</sup> This is a concerning development and one that continues to pose a threat to Canadian equity volume on these names and the size of the Canadian market.

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<sup>2</sup> Published on January 26, 2017, at: (2017), 40 OSCB 963.

<sup>3</sup> There are over 3500 Canadian listed securities.

<sup>4</sup> Rosenblatt Trading Talk – Market Structure Analysis Canadian Trading Monthly: April 2025.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

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**The CSA should permit a higher access fee cap on inter-listed names to protect the Canadian market.**

In Nasdaq Canada's 2023 Response, we suggested that the same trading fee cap for non-inter-listed securities (\$0.0017) should also be used for inter-listed securities. This would provide the benefit of removing complexity by aligning trading fee caps across all securities in Canada while also providing the potential for higher rebates to be offered by Canadian marketplaces than otherwise would be permitted in the U.S. However, since this time we have seen a detrimental trend in market share for inter-listed securities, which supports a higher differentiated fee cap.

We therefore encourage the CSA to take a proactive approach by taking no action and leaving the access fee for inter-listed securities at its current level of \$0.0030. We understand this option was considered by the CSA but was not considered viable based on the view that "fee differences that are too high can distort calculations on whether a price on one marketplace is better than on another marketplace."<sup>7</sup>

While we agree that at some point that material differences in fees between marketplaces operating in different jurisdictions may create price distortions, this is not an issue when all marketplaces are subject to the same limitation in the same jurisdiction. Therefore, no issues will be created for participants to comply with best price requirements if the current access fee for inter-listed securities is maintained. Understanding that if the SEC Trading Fee Proposal is implemented in the U.S. and the current access fee for inter-listed securities is maintained in Canada, there could be a maximum allowable difference of \$0.0020 in rebates between the two countries on a stand-alone comparison. However, when foreign exchange rates are taken into consideration, this difference for U.S. participants is only \$0.01449. We believe this to be a reasonable level as it serves two purposes: i) it is low enough to prevent any price distortions and ii) it is high enough to potentially provide an incentive to liquidity providers to make markets in Canada that could help counteract the disadvantage of quoting on a smaller market.

We hope that the CSA will recognize the seriousness threat to the Canadian equity market from the current trend of decreasing volume traded in Canada compared to that traded in the U.S. on inter-listed securities and in response will leave the current access fee for these securities at its current level. However, if the CSA continues to be hesitant to take this approach, we would then support using the highest fee level proposed as options in the Proposed Amendments to be the fee limitation or the maximum fee for non-inter-listed securities, which is \$0.0017.

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<sup>7</sup> Published on January 23, 2025, at: (2025), 48 OSCB 915.

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**Question 3: Should the trading fee caps apply to trading fees paid by passive orders in inverted (taker-maker) markets?**

There should be no regulatory restriction on the level of fees for passive orders or associated rebates for active orders on inverted venues because a natural limit already exists that is determined by market forces. On an inverted venue, the viability of the fee model requires the venue to charge a higher fee than the rebate it offers. At some point, the liquidity providing fee becomes too expensive for participants to make markets and liquidity providers will stop quoting. Any regulatory restriction on the fee level for passive orders or active rebates is therefore not necessary because of this self-correcting mechanism. Furthermore, if a regulatory limit is introduced for passive fees, it would be interventionist by unnecessarily limiting competition, interrupting competitive forces and depriving active traders of the benefit of higher rebates which in turn could increase trading costs.

**Question 4: Should Canada take a similar approach where an exchange is not permitted to allow a trade where the fee or rebate cannot be determined at the time of execution?**

Nasdaq Canada has previously suggested a solution for addressing any potential conflicts created by marketplace rebates when dealers make routing decisions – that dealers should be required to pass-through rebates and fees to their end customers.<sup>8</sup> We note, however, that regulators did not adopt our suggestion.

Without there being benefit provided to clients from knowing the full cost of a transaction, introducing a new requirement that would require development work and new functionality to make the full cost of a transaction available at the time of execution does not seem justified. There also does not appear that there is any benefit that would be brought to dealers or their clients as there are only a few volume tier pricing programs in Canada and those that target qualifying for monthly discounts are already able to monitor their trading levels and standing in trading incentive programs during the month.

We support the principle of fee certainty -- where the fee or rebate is disclosed and knowable by a participant at the time when the participant enters an order. In circumstances where participants have opportunities to interact with other order flow in ways that offer different fees or rebate outcomes, we believe that it is consistent with the principle of fee certainty that participants are fully aware of each potential outcome when entering an order and that there is a mechanism by which they can opt out of the possibility of a differentiated fee outcome if they so choose.

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<sup>8</sup> See [https://www.osc.ca/sites/default/files/pdfs/irps/comments/com\\_20190301\\_23-323\\_nasdaq-canada.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20190301_23-323_nasdaq-canada.pdf).

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Nasdaq Canada appreciates the opportunity to share its views on the Proposed Amendments and would welcome the opportunity to discuss them in more detail.

Sincerely,

Nasdaq Canada