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July 4, 2025

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

**General Comments on Proposal**

TD Securities thanks the CSA for the opportunity to comment on proposed changes to NI 23-101 - Trading Rules and look forward to continued dialog on these important market structure issues. The access fee and tick rules made final in the US in September of 2024 have broad and significant implications for Canadian market structure given the existence of North American inter-listed securities and the likelihood that some Canadian securities listed in the US will be impacted by the new US rules. As such, it is important that rules developed in Canada are aligned with US rules to avoid potential trading volume leakage to the US on Canadian names.

Importantly, the final rule passed by the SEC provides not only the necessity to conform with the US on securities deemed tick constrained but also provides regulators in Canada with the opportunity to study the issues of access fees and tick constrained names from a uniquely Canadian perspective. Unfortunately, the approach proposed by Canadian regulators appears to be one that is designed to minimize impact and potential harm to the Canadian market, and this results in a critical missed opportunity to study these important market structure features for Canadian issuers and ETFs that are large-cap, liquid and tick-constrained. While it is critical to ensure names deemed tick constrained in the US are included in any Made in Canada rule, it is not accurate to assume that these securities are the only Canadian names that may benefit from narrower ticks and lower access fees. Strictly following the US rule also poses the risk that US regulators decide to narrow the definition of tick constrained names and this results in a much smaller list of impacted securities which might include only one or two inter-listed securities. Some market followers believe that the new SEC Administration in Washington will consider narrowing the scope of the tick/access fee rules as part of a so-called "Grand Bargain" with exchanges currently litigating against the SEC over the breadth of coverage of the rules. This outcome would be somewhat ludicrous as the Canadian market would be forced to undertake adjustments for ticks and access fees that potentially impact less than a handful of Canadian securities.

Finally, from an administrative perspective, we are frustrated that Canadian regulators did not issue a joint release covering both access fees and ticks together. While we recognize that there are jurisdictional issues at hand, issuing separate proposals from two different regulators is confusing and un-necessary, especially for non-domestic investors. At the very least, if forced to keep the proposals separate, then it would have been nice if the release of the documents were in sync and not months apart.

**Answers to Specific Questions**

**Question 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 rate, or**

**ii) 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.**

We agree that for any US-Inter-listed security the access fee should match the US's reduced rate at CAD 0.0010 without consideration for the FX rate. This is the current fee structure used for Inter-listed names and exists without complaint. Adjusting for FX introduces unnecessary complexity to fee structures and complicates Canadian market structure. We would recommend further that ALL securities including ETFs migrate to a CAD 0.0010 fee rate and a Canadian version of the tick-constrained test be studied.

For a made-in-Canada tick test, a rule should be structured such that all names considered tick constrained in the US are included on the Canadian list as well as names considered tick constrained based on a Made in Canada definition. Please see our thoughts in the General Comments section for more details on why a made-in-Canada rule for tick constrained securities is important.

Finally, we would like to note that any suggestion that Canada should keep access fees purposefully higher than the US to attract resting liquidity is misguided, will not materially increase inter-listed share and will serve to benefit market makers at the expense of active takers of liquidity which are mostly broker or investor orders.

**Question 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.**

In our opinion there is no reason to only reduce the access fee caps for U.S. Inter-listed Securities. Recall that when Canadian non-Inter-listed securities were reduced to 17mils there were no complaints from liquidity providers and there is nothing to suggest that liquidity would be harmed now if access fees and rebates were lowered across the board.

Harmonizing the access fee for all securities would aid in simplifying Canadian market structure.

**Question 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?**

Yes, the trading fee caps should apply to inverted venues. Fee structures generally have remained symmetrical for both inverted and non-inverted venues. To continue to maintain dynamics established within the Canadian market structure environment the fee caps should be brought in line with traditional structures.

Additionally reducing the fee limit to CAD 0.0010 will aid in ensuring that new inverted venues bring genuine innovation to the market when launched – not just a new fee structure. The wider the opportunity set of available fees, the lower the bar for a market to launch without a new product offering. Aligning fees across the board in Canada will help to simplify the market structure and likely paves the way for more innovation from new marketplaces

**Question 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.**

Canadian regulators should use this consultation process to bring fee issues such as the so-called "sliding scale pricing" into review. The practice, which we understand is designed to allow firms to determine the make and take fees on a client by client and potentially order by order basis as long as the net capture to the exchange remains the same, skates close to the line in terms of Canada's ban on payment for order flow and at the very least requires more transparency into the practice than footnotes on fee schedules. We question if this practice benefits the Canadian market or violates fair access rules. However, it is impossible to know for sure without more transparency into the practice.

**Conclusion**

We again thank the CSA for the opportunity to comment and look forward to future opportunities to provide feedback and insights.

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