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July 6, 2016

Dear Sir/Madame:

**Re: Proposed Amendments to National Instrument 23-101 re: Active Trading Fee Cap (the "Proposed Amendments")**

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposed Amendments.

### **General**

Given the ongoing discussion about the inflated trading and market data fees in the Canadian market, the IIAC is supportive of regulatory efforts to ensure certain market participants do not use their position to create economically burdensome pricing structures that negatively impact the industry in general.

Further to this position, the IIAC generally supports the Proposed Amendments, however, we have a number of comments and seek clarification on certain elements of the Proposed Amendments.

We acknowledge the concerns expressed by the CSA in respect of limiting the scope of the trading fee cap to non-inter-listed securities. We appreciate that this change is being proposed while the CSA considers measures to deal with the \$0.0030 fee cap for inter-listed securities, which has been acknowledged as not being reflective of the lower average price of Canadian securities relative to the average price of US securities. We trust that the CSA will be monitoring, or perhaps working with the US regulators in respect of their proposed pilot program relating to fee caps at different levels as described in this document. <https://www.sec.gov/spotlight/emsac/emsac-regulation-nms-subcommittee-recommendation-041916.pdf>

### Specific Issues

Section 6.6.1 (2) of NI 23-101 states: *A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a **displayed order** on the marketplace.* We seek clarification on how the Proposed Amendments will apply where a portion of an order is executed against an iceberg order. Does the fee cap apply to the entire trade or only for the visible portion of the order? Although the notice only makes reference to a displayed order, the cap should apply to any trade, not just displayed trades.

In respect of active orders, the trader cannot control what they are trading against, so in order to ensure equitable and predictable fees, the cap should apply to all trades. If the wording in the Proposed Amendments is clarified, it is important that the scope specify all trades rather than stating both dark and lit trades, as there may be areas that are not clearly defined as either. This grey area would create uncertainty.

In order to achieve the objective of the Proposed Amendments, it is important for regulators to consider how the provisions would apply to inverted markets, where the rebate applies to the active portion of the trade, and the fee applies to the passive portion. In such cases, it should be made clear that the fee cap does not apply to the passive side for trades on inverted markets. The key distinction is that where trades are conducted on an inverted market, the investor chooses where and when to post their passive order, and as such, is in control of whether they wish to incur the trading fee. It is appropriate in these circumstances to allow market forces to dictate whether these fees are appropriate.

Given the significance of the Proposed Amendments, and wide ranging effects that they may have on market structure, it is critical that the specific outcomes in terms of market impact of the provisions on the market be analyzed to determine if they have achieved the regulatory objectives, and if any unintended consequences (positive and negative)

have resulted. The effect of the US pilot on trading fees should also be examined, in terms of its impact in the US and Canada.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', with a stylized, cursive script.

Susan Copland