

1.1.2 OSC Staff Notice 23-704 – Compliance with National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces

OSC STAFF NOTICE 23-704

**COMPLIANCE WITH NATIONAL INSTRUMENT 23-103
ELECTRONIC TRADING AND DIRECT ACCESS TO MARKETPLACES**

Purpose of Notice

Staff of the Market Regulation Branch conducted a review of marketplaces' compliance with the applicable requirements of National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (NI 23-103) (Review) which came into force on March 1, 2013. This staff notice summarizes our findings and reminds marketplaces of their obligations under NI 23-103.

Background

Part 4 of NI 23-103 sets out the requirements applicable to marketplaces relating to electronic trading. The Companion Policy to NI 23-103 (23-103CP) further clarifies the requirements and expectations of marketplaces.

Part 4 of NI 23-103 requires marketplaces to:

- provide marketplace participants with reasonable access to their order and trade information to enable them to implement the risk management and supervisory controls, policies and procedures they must maintain in order to meet their own obligations set out in NI 23-103;
- ensure they have the ability and authority to terminate all, or a portion, of the access provided to a marketplace participant;
- regularly assess and document whether they require any risk management and supervisory controls, policies and procedures in addition to those that marketplace participants are required to have;
- regularly assess and document the adequacy and effectiveness of such additional risk management and supervisory controls, policies and procedures, and promptly remedy any deficiencies¹; and
- prevent the execution of orders outside the thresholds set by the regulation services provider or the marketplace itself, as applicable.

Part 4 of NI 23-103 also confirms the process for the cancellation, variation or correction of clearly erroneous trades.

Objectives of the Review

The specific objectives of the Review were to assess marketplaces' compliance with the applicable requirements set out in NI 23-103.

In addition, since IIROC Notice 15-0186 *Guidance on Marketplace Thresholds*, published on August 25, 2015, will establish the operation of price thresholds beyond which orders must be prevented from trading, as required by NI 23-103, we also enquired about marketplaces' readiness for compliance with these thresholds.

Summary of Findings

Overall, we found that marketplaces were compliant with most provisions of NI 23-103. For example, each marketplace:

- demonstrated it had the ability and authority to provide its marketplace participants with access to their order and trade information;
- had the ability to terminate all, or a portion, of the access provided to its marketplace participants; and
- demonstrated it had the ability to cancel, vary or correct trades, in accordance with the process set out in NI 23-103.

¹ 23-103CP clarifies that a regular assessment would constitute, at a minimum, an assessment conducted annually and whenever a substantive change to a marketplace's operations, rules, controls, policies or procedures that relate to electronic trading is made.

In addition, all marketplaces demonstrated a general understanding of their marketplace participants' risk management and supervisory controls, policies and procedures and provided information about their own controls, policies and procedures.

We did find, however, that not all marketplaces had documentation evidencing that they conducted regular assessments of whether they required risk management and supervisory controls, policies and procedures in addition to those that their marketplace participants are required to maintain. As such, we could not verify, in some cases, the steps taken by the marketplaces to conduct such assessments. Subsequent to the formal review, all marketplaces confirmed their approach and provided the necessary documentation evidencing their review.

Staff Views

Marketplaces are required to conduct assessments of their marketplace participants' risk management and supervisory controls, policies and procedures on a regular basis. These assessments are necessary to ensure that marketplaces continue to have an understanding of their marketplace participants' current controls, policies and procedures, so that they can determine whether there are any deficiencies in the control framework that need to be addressed.

As noted above, 23-103CP clarifies that the expectation of marketplaces is to conduct these assessments, at a minimum, on an annual basis or whenever a substantive change to a marketplace's operations, rules, controls, policies or procedures that relate to electronic trading is made. Marketplaces, however, should conduct such assessments more frequently if they deem it necessary. 23-103CP provides examples of instances where more frequent assessments should be conducted.

The results of such assessments must be documented and the documentation must be maintained as required by the recordkeeping requirements for marketplaces set out in Part 11 of National Instrument 21-101 *Marketplace Operation*.

We will continue to review marketplaces' compliance with the requirements in NI 23-103 on a regular basis as part of our ongoing oversight of marketplaces' trading activities.

Questions

Please refer your questions to any of the following:

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