

NOVA SCOTIA SECURITIES COMMISSION

**RULE 21-101 (AMENDMENT)
MARKETPLACE OPERATION**

-AND-

**CONSEQUENTIAL AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 *PASSPORT SYSTEM* AND
NATIONAL INSTRUMENT 23-101 *TRADING RULES***

-AND-

**CHANGES TO
COMPANION POLICY 23-101CP TO NATIONAL INSTRUMENT
23-101 *TRADING RULES***

WHEREAS:

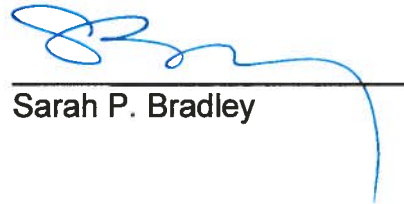
1. Pursuant to section 150 of the Securities Act, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amending Instrument for Multilateral Instrument 11-102 *Passport System* and Amendments to National Instrument 23-101 *Trading Rules* (the Rule) and Changes to Companion Policy 23-101CP to National Instrument 23-101 *Trading Rules* (the Companion Policy) , copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication in the Royal Gazette or the Commission's website, issues the Companion Policy as a policy statement of the Commission; and

- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on **July 1, 2012**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 11th day of April, 2012.



Sarah P. Bradley

Attachments

**Amending Instrument for
Multilateral Instrument 11-102 *Passport System***

- 1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.***
- 2. *Appendix D is amended by repealing the row that contains “Marketplace operation” in the Provision column and substituting the following row:***

Marketplace operation	NI 21-101 (only Parts 3, 4, 7, 8, 11 and 13 and sections 5.1(1), 5.1(2), 5.9, 5.10, 6.1, 6.2, 6.3, 6.7, 6.9 and 6.11, as those parts and sections apply to an ATS)
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- 3. *The provisions of this Instrument come into force on July 1, 2012.***

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1. *National Instrument 23-101 Trading Rules is amended by this Instrument.*
2. *Part 6 is amended by:*
 - (a) *replacing “The following are the trade-throughs referred to in paragraph 6.1(1)(a)” with “For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are” in section 6.2;*
 - (b) *replacing “marketplace participant” with “marketplace participant or a marketplace that routes or reprices orders” in section 6.5.*
3. *Part 11 is amended by:*
 - (a) *replacing “this Part” with “the requirements in section 11.2” in subsection 11.1(2);*
 - (b) *replacing “record” with “record in electronic form” in subsection 11.2(1);*
 - (c) *replacing “; and” with “;” in paragraph 11.2(1)(r);*
 - (d) *replacing “.” with “;” in paragraph 11.2(1)(s);*
 - (e) *adding the following after paragraph 11.2(1)(s):*
 - (t) each unique client identifier assigned to a client accessing the marketplace using direct electronic access; and
 - (u) whether the order is a directed-action order.;
 - (f) *replacing “records” with “records in electronic form” in subsection 11.2(7).*
4. This Instrument comes into force on July 1, 2012.

SCHEDULE

1. ***The changes to Companion Policy 23-101CP to National Instrument 23-101 Trading Rules are set out in this Schedule.***
2. ***Part 4 is amended by replacing “an ATS” with “a marketplace” in subsection 4.1(6).***
3. ***Part 5 is amended by***
 - (a) adding “or a” after “recognized exchange” in section 5.1;***
 - (b) deleting “or an exchange or quotation and trade reporting system that has been recognized for the purposes of the Instrument and NI 21-101” in section 5.1; and***
 - (c) replacing “quotation and trading system” with “quotation and trade reporting system” throughout section 5.1.***
4. ***Part 6 is amended by replacing section 6.4 with the following***

6.4 Locked and Crossed Markets

(1) Section 6.5 of the Instrument provides that a marketplace participant or a marketplace that routes or reprices orders shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. This provision is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

The Canadian securities regulatory authorities consider an order that is routed or repriced to be “entered” on a marketplace. The Canadian securities regulatory authorities do not consider the triggering of a previously-entered on-stop order to be an “entry” or “repricing” of that order.

(2) Section 6.5 of the Instrument prohibits a marketplace participant or a marketplace that routes or reprices orders from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. This could also occur where a marketplace system is programmed to reprice orders without checking to see if the new price would lock the market or where the marketplace routes orders to another marketplace that results in a locked market.

There are situations where a locked or crossed market may occur unintentionally. For example:

- (a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,
- (b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,
- (c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer,
- (d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid,
- (e) the locking or crossing order was entered on a particular marketplace in order to comply with securities legislation requirements such as Rule 904 of Regulation S of the *Securities Act of 1933* that requires securities subject to resale restrictions in the United States to be sold in Canada on a “designated offshore securities market”,
- (f) the locking or crossing order was displayed due to “race conditions” when competing orders are entered on marketplaces at essentially the same time with neither party having knowledge of the other order at the time of entry,
- (g) the locking or crossing order was a result of the differences in processing times and latencies between the systems of the marketplace participant, marketplaces, information processor and information vendors,

- (h) the locking or crossing order was a result of marketplaces having different mechanisms to “restart” trading following a halt in trading for either regulatory or business purposes, and
- (i) the locking or crossing order was a result of the execution of an order during the opening or closing allocation process of one market, while trading is simultaneously occurring on a continuous basis on another market,

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of a directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

5. These changes become effective on July 1, 2012.