

CSA Notice of Approval Amendments to National Instrument 21-101 *Marketplace Operation*

October 23, 2014

I. Introduction

The Canadian Securities Administrators (CSA or we) have made amendments to National Instrument 21-101 *Marketplace Operation* (NI 21-101) and its related Companion Policy 21-101CP (21-101 CP) with respect to the transparency requirements of the trading of government debt securities.

Provided all necessary ministerial approvals are obtained, the amendments to NI 21-101 and 21-101CP (the Amendments) will come into force on December 31, 2014.

II. Substance and Purpose

Currently, section 8.6 of NI 21-101 provides for an exemption from transparency requirements for government debt securities until January 1, 2015. The Amendments will extend this exemption until January 1, 2018. The purpose of the Amendments is to maintain the regulatory framework for government debt transparency but delay imposing regulatory requirements until such time they are appropriate.

III. Background

Part 8 of NI 21-101 sets out transparency requirements for marketplaces dealing in debt securities, inter-dealer bond brokers and dealers trading unlisted debt securities. Section 8.1 sets out specific pre-trade and post-trade transparency requirements for government debt securities. Section 8.6 contains an exemption from section 8.1 until January 1, 2015. This exemption was last extended in 2011.

The Amendments were published for comment along with other proposed amendments on April 24, 2014 (2014 Proposed Amendments). The CSA are now finalizing the proposed change applicable to the extension of the exemption from government debt transparency, and intend to review and proceed with the other proposed amendments included in the 2014 Proposed Amendments on a separate timetable.

Domestic Developments

Since the exemption was last extended, the CSA has continued to review regulatory developments with respect to fixed income, including government debt transparency, and the appropriateness of the exemption in section 8.6 of NI 21-101 and the alternatives for transparency of government fixed income securities.

In Canada, some regulatory developments have occurred. For example, IIROC has implemented Dealer Member Rule 3300 – *Fair Pricing of Over-The-Counter Securities* (the Fair Pricing Rule) whose purpose is to ensure that dealers’ clients, in particular retail clients, are given prices for over-the-counter securities that are fair and reasonable in relation to prevailing market conditions. Furthermore, amendments to IIROC Dealer Member Rules 29 *Business Conduct*, 200 *Minimum Records* and 3500 *Relationship Disclosure* and Dealer Member Form 1 came into force on July 15, 2014. These include requirements that dealers disclose to their retail clients, on the debt security trade confirmations, the total compensation or the gross commission taken on a trade, with additional disclosure required where gross commission is disclosed.¹

In addition, proposed IIROC Rule 2800C – *Transaction Reporting for Debt Securities* will require dealers to report, on a post-trade basis, all debt market transactions executed by a dealer member, including those executed on a marketplace or through an inter-dealer bond broker. This proposed rule is expected to facilitate the creation of a database of transaction information that would enable IIROC to carry out its responsibilities with respect to the surveillance and oversight of over-the-counter debt market trading.

International Developments

A number of noteworthy regulatory developments have recently occurred in Europe. Specifically, the final legislative texts of the new Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR) were approved by the European Parliament on April 15, 2014 and by the European Council on May 13, 2014, and entered into force on June 12, 2014. When implemented, MiFIR will establish a new transparency regime which extends to bonds, structured products, emission allowances and derivatives (collectively, non-equity financial instruments).

This regime will include requirements for pre-trade transparency for non-equity financial instruments and will apply to market operators and investment firms operating a trading venue.² Waivers from these requirements would apply, including for large orders.³ There will also be post-trade transparency requirements for non-equity financial instruments, which will also apply to market operators and investment firms operating a trading venue.⁴ The information to be made public will be the price, volume and time of the transactions, and it may be delayed in certain instances, for example, when executing large transactions or transactions in less liquid products.⁵

The European Securities and Markets Authority (ESMA) was tasked with drafting the regulatory technical standards (RTS) that will specify the precise content of the pre and post-trade information to be made transparent, including the conditions under which waivers from the pre-trade transparency requirements would be granted. ESMA was also required to develop RTS for the implementation of the post-trade transparency regime, which would include conditions for

¹ New sub-clause 200.2(I)(v)(C) of IIROC Dealer Member Rule 200 *Minimum Records*.

² MiFIR Article 8 *Pre-Trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives*.

³ MiFIR Article 9 *Waivers for non-equity instruments*.

⁴ MiFIR Article 10 *Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives*.

⁵ MiFIR Article 11 *Authorisation of deferred publication*.

the deferred publication of transactions, and the content of the information to be made public. ESMA is required to submit the draft RTSs to the European Commission by July 3, 2015, and implementation would follow at a later date.

Final Amendments

We note that no other jurisdiction has mandated transparency requirements for government debt securities, and we believe it would be appropriate to extend the existing exemption as we continue to monitor international developments, including those described above.

Therefore, the Amendments will further defer the introduction of the transparency requirements in section 8.1 until January 1, 2018, in order to allow the CSA an opportunity to consider international and domestic regulatory and industry developments and to determine what, if any, mandatory requirements are needed in this area.

IV. Summary of Written Comments Received by the CSA

We received eight comment letters in response to the 2014 Proposed Amendments and two commenters specifically responded to the proposed amendment relating to the extension of the government debt transparency exemption. Both commenters were in favour of the proposed extension of the exemption. A list of those who submitted comments, as well as a summary of the comments pertaining to the extension of the government debt transparency exemption and our responses to them are contained in Annex D of this notice. Copies of the comment letters are posted at www.osc.gov.on.ca and www.lautorite.qc.ca.

V. Contents of Annexes

Annex A – Amending Instrument for NI 21-101

Annex B – Blackline of Part 8 of NI 21-101 indicating the Amendments

Annex C – Blackline of Part 10 of 21-101CP indicating the Amendments

Annex D – Comment Summary and CSA Responses

VI. Local Matters

In Ontario, the Amendments to NI 21-101 and other required materials were delivered to the Minister of Finance on October 17, 2014. The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by December 17, 2014, the Amendments will come into force on December 31, 2014.

In Québec, the Amendments will be delivered to the Minister of Finance for approval. The Amendments will come into force on December 31, 2014.

Questions

The Amendments are available on certain websites of CSA members, including:

www.lautorite.qc.ca

www.albertasecurities.ca

www.bcsc.ca

www.osc.gov.on.ca

Please refer your questions to any of the following:

Ruxandra Smith
Senior Accountant
Ontario Securities Commission
416-593-8322
ruxsmith@osc.gov.on.ca

Alex Petro
Oversight Analyst
Ontario Securities Commission
416-263-3796
apetro@osc.gov.on.ca

Serge Boisvert
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 ext. 4358
serge.boisvert@lautorite.qc.ca

Maxime Lévesque
SRO Analyst
Autorité des marchés financiers
514-395-0337 ext. 4324
maxime.levesque@lautorite.qc.ca

Bonnie Kuhn
Manager, Legal
Alberta Securities Commission
403-355-3890
bonnie.kuhn@asc.ca

Meg Tassie
Senior Advisor
British Columbia Securities Commission
604-899-6819
mtassie@bcsc.bc.ca

ANNEX A

AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

- 1. *National Instrument 21-101 Marketplace Operation is amended by this Instrument.***
- 2. *Section 8.6 is amended by replacing “2015” with “2018”.***
- 3. This Instrument comes into force on December 31, 2014.**

ANNEX A

SCHEDULE

1. *The changes to Companion Policy 21-101CP to National Instrument 21-101 Marketplace Operation are set out in this Schedule.*
2. *Subsection 10.1(1) is amended by replacing “2015” with “2018”.*
3. These changes become effective on December 31, 2014.

ANNEX B

NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

**PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR
MARKETPLACES DEALING IN UNLISTED DEBT SECURITIES,
INTER-DEALER BOND BROKERS AND DEALERS**

8.6 Exemption for Government Debt Securities - Section 8.1 does not apply until January 1, 201~~5~~**8**.

ANNEX C

**COMPANION POLICY 21-101 TO NATIONAL INSTRUMENT 21-101
*MARKETPLACE OPERATION***

**PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED
DEBT SECURITIES**

10.1 Information Transparency Requirements for Unlisted Debt Securities

- (1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2015~~8~~. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.

ANNEX D

COMMENT SUMMARY AND CSA RESPONSES

Commenters:

Scotia Capital Inc.
Investment Industry Association of Canada

Topic	Summary of Comments	Response to Comments
Extension of exemption for the transparency requirements applicable to government debt securities in section 8.6 of NI 21-101 to January 1, 2018.	<p>Both commenters supported the proposal to extend the exemption for the transparency requirements applicable to government debt securities in section 8.6 to January 1, 2018.</p> <p>One commenter cited that as no other international jurisdictions have mandated transparency for government debt trading, it would not be appropriate to do so in Canada at this time.</p> <p>Another commenter stated that there have been significant advances in debt market transparency delivered by the marketplace since the original government debt transparency exemption was put in place and the prevalence of electronic trading in government debt securities in Canada today has contributed favourably to price discovery. This commenter also noted that CanPx, the designated information processor for Canadian corporate debt markets, continues to voluntarily provide transparency on government debt transactions.</p>	<p>We note the support for the extension of the exemption for government debt transparency.</p>