

CSA Notice and Request for Comment
Proposed Amendments to National Instrument 21-101 *Marketplace*
***Operation* and Proposed Changes to Companion Policy 21-101CP**
Marketplace Operation

April 18, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following materials for a 90-day comment period:

- Proposed amendments to National Instrument 21-101 *Marketplace Operation* (**Instrument**)
- Proposed amendments to Form 21-101F1 *Information Statement - Exchange or Quotation and Trade Reporting System* (**Form 21-101F1**)
- Proposed amendments to Form 21-101F2 *Information Statement – Alternative Trading System* (**Form 21-101F2**)
- Proposed amendments to Form 21-101F3 *Quarterly Report of Marketplace Activities* (**Form 21-101F3**)
- Proposed amendments to Form 21-101F5 *Information Statement – Information Processor* (**Form 21-101F5**)
- Proposed changes to Companion Policy 21-101CP *Marketplace Operation* (**Companion Policy**)

The proposed amendments to the Instrument, Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F5 and the proposed changes to the Companion Policy are together referred to as the **Proposed Amendments**. Form 21-101F1, Form 21-101F2, Form 21-101F3, and Form 21-101F5 are collectively referred to as the **Forms**. The Instrument, Forms and Companion Policy are collectively referred to as **NI 21-101**.

The purposes of the Proposed Amendments are described in the “Substance and Purpose” section below.

This Notice contains the following annexes:

- **Annex A** – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* (including proposed amendments to the Forms and proposed changes to the Companion Policy)
- **Annex B** – Blacklined Proposed Amendments to National Instrument 21-101 *Marketplace Operation* (showing the changes under the Proposed Amendments)
- **Annex C** – Local Matters (published only in local jurisdictions where such additional information is relevant)

This Notice, including its annexes, is available on the websites of the CSA jurisdictions, including:

www.albertasecurities.com
www.bsc.bc.ca
www.fcaa.gov.sk.ca
www.fcnb.ca
www.lautorite.qc.ca
www.mbsecurities.ca
nssc.novascotia.ca
www.osc.gov.on.ca

The 90-day comment period will expire on July 17, 2019. For further details, see the “Request for Comments” section below.

Background

The Instrument establishes the regulatory framework for marketplaces and information processors (**IPs**) that carry on business in the CSA jurisdictions. Together with the Forms, the Instrument requires, among other things, marketplaces and IPs to provide the CSA with comprehensive reporting of all aspects of their operations, both at the time the marketplace and the IP commence operations and anytime the marketplace and IP make changes to that information. The Instrument also requires marketplaces to report, on a quarterly basis, detailed information about the trading activity on the marketplace during the previous quarter.

The Instrument also establishes detailed requirements in relation to the information technology systems used by marketplaces and IPs to support their operations. These requirements include developing and maintaining adequate internal controls and information technology general controls over critical systems, conducting capacity stress tests on such systems, developing and maintaining reasonable business continuity and disaster recovery plans, and promptly notifying the CSA of any material failures, malfunctions, delays or security breaches in respect of these systems. Marketplaces and IPs are further required to conduct an independent review of these systems (**ISR**) on an annual basis. Exhibit G to each of Form 21-101F1, Form 21-101F2, and Form 21-101F5 establishes a detailed framework for the reporting by marketplaces and IPs of systems-related information.

Over time, the volume and breadth of reporting requirements for marketplaces and IPs has grown, in part reflecting the increased complexity and risks to fair and efficient capital markets associated with marketplaces' and IPs' systems and the need for the CSA to have adequate information to effectively oversee all aspects of the operations of marketplaces and IPs. At the same time, the extent and quality of the information needed to support the CSA's oversight of marketplaces and IPs is continually changing and some information historically reported by marketplaces and IPs is now less useful and relevant to effective oversight. In addition, exchanges are subject to additional and specific reporting requirements in the terms and conditions of their recognition orders, which, in certain instances, may duplicate reporting requirements in NI 21-101.

Given the growth and evolution of the information reported to the CSA by marketplaces and IPs, we have evaluated the reporting requirements in NI 21-101 and have identified opportunities to streamline these requirements and reduce regulatory burden by eliminating duplicative reporting and ensuring consistency of reporting across marketplaces and IPs. At the same time, we have identified opportunities to enhance the systems-related requirements in NI 21-101.

Substance and Purpose

1. Purposes of Proposed Amendments

The primary purpose of the Proposed Amendments is to reduce the regulatory burden associated with the reporting requirements for marketplaces and IPs. The Proposed Amendments will, in our view, streamline these reporting requirements by eliminating duplicative reporting and reporting that does not materially contribute to the CSA's oversight of marketplaces and IPs while maintaining a robust reporting framework that supports the objectives of the CSA's oversight, including providing protection to investors and fostering fair and efficient capital markets and investor confidence. The purposes of the Proposed Amendments also include enhancing the systems requirements for marketplaces and IPs by clarifying testing and reporting expectations and establishing an appropriate focus on cyber resilience. In formulating the Proposed Amendments, in addition to striving to reduce regulatory burden, we have also focussed on ensuring that the systems and reporting requirements in the Instrument continue to support innovation by marketplaces and IPs.

Specific purposes of the Proposed Amendments include:

- Streamlining reporting requirements in the Instrument and Forms by eliminating the need to report superfluous information and eliminating duplicative reporting requirements;
- Enhancing the systems-related requirements in Part 12 and Part 14 of the Instrument and related guidance in the Companion Policy by optimizing the reporting of material systems incidents by marketplaces and IPs, establishing requirements to promote the cyber resilience of marketplaces and IPs, and providing for consistency with recent proposed changes to the systems requirements for clearing agencies in National Instrument 24-102 *Clearing Agency Requirements (NI 24-102)*;
- Making other non-substantive changes, corrections and clarifications to NI 21-101.

2. *Summary of Proposed Amendments*

We discuss briefly the changes and policy rationales for the key Proposed Amendments below.

a. Streamlining reporting requirements

(i) The requirement in paragraph 3.2(3)(a) of the Instrument for a marketplace to file an amendment to the information in Form 21-101F1 or Form 21-101F2 for changes not considered significant changes has been changed to provide that the marketplace must file any such amendments on a quarterly basis rather than monthly. We expect that quarterly filings of non-significant changes to the information in Form 21-101F1 or Form 21-101F2 will alleviate a significant regulatory burden on marketplaces without comprising the effective oversight of marketplaces by the CSA.

(ii) Exhibits C and D to Form 21-101F1 and Form 21-101F2 have been amended to eliminate the requirements to report certain information in respect of a marketplace's organization and any affiliated entities. In particular, we have eliminated the requirement to report historical employment information for partners, directors and officers of a marketplace and eliminated the requirement to file constating documents for affiliated entities of a marketplace. Filing this information has been burdensome for marketplaces and has not materially contributed to or enhanced the CSA's oversight of marketplaces.

(iii) We have streamlined the information required to be reported by marketplaces in Form 21-101F3 on its trading activities during the previous quarter. In particular, we have eliminated the requirements for marketplaces to report details of the trading activity for exchange-listed equity securities and ETFs trading on equity marketplaces, to report details of the types of orders for exchange-traded securities executed on the marketplace, and to report details of the trading activity of the marketplace's top-10 marketplace participants (based on the volume of securities traded). The Investment Industry Regulatory Organization of Canada (IIROC) presently collects this information from marketplaces; the proposed changes to Form 21-101F3 will eliminate these duplicative reporting requirements.

(iv) We have lengthened the time period associated with the filing by marketplaces of amendments to the information in Exhibit L (Fees) to each of Form 21-101F1 and Form 21-101F2 to at least 15 business days before the marketplace implements a change to its fees. We expect that this change will result in a more reasonable opportunity for the CSA to review marketplace fee filings without imposing any undue burden on marketplaces proposing fee changes.

b. Financial reporting

New section 4.3 has been added to require recognized exchanges to file interim financial statements within 45 days of the end of the interim period. Currently, specific financial reporting requirements for exchanges are included in the terms and conditions of the exchanges' recognition orders.

c. Systems requirements

(i) The concept of ‘cyber resilience’ has been added to subparagraph 12.1(a)(ii) and subparagraph 14.5(1)(a)(ii) of the Instrument as one of the information technology general controls that a marketplace or IP must develop and maintain. While cyber resilience should already be covered by an entity’s controls, the explicit addition of the concept in the Instrument is intended to be reflective of the increasing importance of ensuring that an entity has taken adequate steps to address cyber resilience.

(ii) The concept of “security breach” in relation to the notifications that must be provided by a marketplace and IP under paragraph 12.1(c), paragraph 12.1.1(b) and paragraph 14.5(1)(e) has been broadened to “security incident”. The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We describe “security incidents” in the Companion Policy with reference to general definition of the concept used by the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST)¹.

(iii) We have added requirements in the Instrument under section 12.1 and section 12.1.1 that marketplaces keep records of any systems failures, malfunctions, delays or security incidents and, if applicable, document reasons with respect to the materiality of the event. We have also added a requirement at section 12.1.2 that marketplaces must annually engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace’s compliance with paragraphs 12.1(a) and 12.1.1(a) of the Instrument. Section 12.1.2 replaces guidance previously set out in the Companion Policy on vulnerability assessments and is consistent with similar requirements being proposed for recognized clearing agencies in NI 24-102.

(iv) Under subsection 12.2(1) and paragraph 14.5(1)(c) of the Instrument, we clarify the CSA’s expectation that marketplaces and IPs engage one or more “qualified external auditors” to conduct and report on its independent systems reviews. We consider a qualified external auditor to be a person or company, or a group of persons or companies, with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Before engaging a qualified external auditor, we also expect marketplaces and IPs to discuss with the CSA their choice for qualified external auditor and the scope of the systems review mandate.

d. Non-substantive changes

Lastly, several non-substantive changes, corrections and clarifications are proposed. By their nature, none of the non-substantive changes should have any significant impact on the application of NI 21-101 to marketplaces and IPs.

¹ The NIST definition of “security incident” is available at <https://csrc.nist.gov/Glossary>.

Request for Comments

We welcome your comments on the Proposed Amendments. Please submit your comments in writing on or before July 17, 2019. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to the following CSA member commissions:

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

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

The Secretary
 Ontario Securities Commission
 20 Queen Street West, 22nd Floor
 Toronto, Ontario M5H 3S8
 Fax: 416-595-2318
 E-Mail: comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
 Corporate Secretary
 Autorité des marchés financiers
 800, rue du Square-Victoria, 22^e étage
 C.P. 246, tour de la Bourse
 Montréal (Québec) H4Z 1G3
 Fax: 514-864-6381
 E-mail: consultation-en-cours@lautorite.qc.ca

Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment

period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions with respect to this Notice or the Proposed Amendments may be referred to:

Christopher Byers
Senior Legal Counsel, Market Regulation
Ontario Securities Commission
Tel: 416-593-2350
Email: cbyers@osc.gov.on.ca

Kortney Shapiro
Legal Counsel, Market Regulation
Ontario Securities Commission
Tel: 416-593-2328
Email: kshapiro@osc.gov.on.ca

Heather Cohen
Legal Counsel, Market Regulation
Ontario Securities Commission
Tel: 416-204-8955
Email: hcohen@osc.gov.on.ca

Serge Boisvert
Senior Policy Advisor
Exchanges and SRO Oversight
Autorité des marchés financiers
Tel: 514-395-0337, poste 4358
Email: serge.boisvert@lautorite.qc.ca

Maxime Lévesque
Senior SRO Analyst
Exchanges and SRO Oversight
Autorité des marchés financiers
Tel: 514-395-0337, poste 4324
Email: maxime.levesque@lautorite.qc.ca

Bruce Sinclair
Securities Market Specialist
Legal Services, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6547
Email: bsinclair@bcsc.bc.ca

Katrina Prokopy
Senior Legal Counsel
Alberta Securities Commission
Tel: 403-297-7239
Email: Katrina.Prokopy@asc.ca

Sasha Cekerevac
Regulatory Analyst, Equity Markets
Alberta Securities Commission
Tel: 403-297-4219
Email: Sasha.Cekerevac@asc.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 3.2 is amended

(a) in subsection (2) by replacing “seven” with “15”,

(b) in paragraph (3)(a) by replacing “month” with “calendar quarter”, and

(c) by adding the following subsection:

- (6) For purposes of subsection (5), where information in a marketplace’s Form 21-101F1 or Form 21-101F2, as applicable, has not changed since the marketplace previously filed Form 21-101F1 or Form 21-101F2 under subsection (5), the marketplace may incorporate that information by reference into its updated and consolidated Form 21-101F1 or Form 21-101F2..

3. Subsection 4.2(1) is amended by deleting “the requirements outlined in”.

4. Part 4 is amended by adding the following section:

4.3 Filing of Interim Financial Reports

A recognized exchange and a recognized quotation and trade reporting system must file interim financial reports within 45 days after the end of each interim period in accordance with paragraphs 4.1(1)(a) and (b)..

5. Subparagraph 12.1(a)(i) is replaced with the following:

- (i) adequate internal controls over those systems, and.

6. Subparagraph 12.1(a)(ii) is amended by adding “cyber resilience, after “information security,”.

7. Subparagraph 12.1(b)(ii) is replaced with the following:

- (ii) conduct capacity stress tests to determine the processing capability of those systems to perform in an accurate, timely and efficient manner,.

8. Paragraph 12.1(c) is replaced with the following:

- (c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any systems failure, malfunction, delay or security incident that is material and provide timely updates on the status of the failure, malfunction, delay or security incident, the resumption of service and the results of the marketplace's internal review of the failure, malfunction, delay or security incident, and.

9. Section 12.1 is amended by adding the following paragraph:

- (d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the marketplace considered the systems failure, malfunction, delay or security incident not to be material..

10. Section 12.1.1 is replaced with the following:

12.1.1 Auxiliary Systems - For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must

- (a) develop and maintain adequate information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and
- (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any security incident that is material and provide timely updates on the status of the incident, the resumption of service and the results of the marketplace's internal review of the security incident, and
- (c) keep a record of any such security incident and, if applicable, document the reasons why the marketplace considered that such security incident was not material..

11. Part 12 is amended by adding the following section:

12.1.2 Vulnerability Assessments - On a reasonably frequent basis and, in any event, at least annually, a marketplace must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities

and measure the effectiveness of information security controls that assess the marketplace's compliance with paragraphs 12.1(a) and 12.1.1(a)..

12. Subsection 12.2(1) is replaced with the following:

- (1) On a reasonably frequent basis and, in any event, at least annually, a marketplace must engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices that assesses the marketplace's compliance with
 - (a) paragraph 12.1(a),
 - (b) section 12.1.1, and
 - (c) section 12.4..

13. In the following provisions "and" is replaced with "or":

- (a) Paragraph 12.3(1)(a); and
- (b) Paragraph 12.3(2)(a).

14. Paragraph 12.3(3.1)(a) is amended by replacing "(2)(a)" with "(2)(b)".

15. Subsection 12.4(3) is replaced with the following:

- (3) A recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101 must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the recognized exchange or quotation and trade reporting system, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system..

16. Section 14.5 is amended by renumbering it as subsection 14.5(1).

17. Paragraph 14.5(1)(a) is amended

- (a) in subparagraph (i) by deleting "an",
- (b) in subparagraph (i) by deleting "system of" after "adequate", and
- (c) in subparagraph (ii) by adding "cyber resilience," following "information security,".

18. Subparagraph 14.5(1)(b)(ii) is replaced with the following:

- (ii) conduct capacity stress tests of its critical systems to determine the processing capability of those systems to perform in an accurate, timely and efficient manner,.

19. Paragraph 14.5(1)(c) is replaced with the following:

- (c) on a reasonably frequent basis and, in any event, at least annually engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices that assesses the information processor's compliance with paragraph (a) and section 14.6,.

20. Subparagraph 14.5(1)(d)(ii) is amended by deleting "and" following "year end,".**21. Paragraph 14.5(1)(e) is replaced with the following:**

- (e) promptly notify the following of any systems failure, malfunction, delay or security incident that is material and provide timely updates on the status of the failure, malfunction, delay or security incident, the resumption of service and the results of the information processor's internal review of the failure, malfunction, delay or security incident:
 - (i) the regulator or, in Québec, the securities regulatory authority, and
 - (ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor, and.

22. Subsection 14.5(1) is amended by adding the following paragraph:

- (f) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the information processor considered the systems failure, malfunction, delay or security incident not to be material.

23. Section 14.5 is amended by adding the following subsection:

- (2) An information processor must provide the regulator or, in Québec, the securities regulatory authority with a report by the 30th day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident referred to in paragraph (1)(f).

24. Part 14 is amended by adding the following section:

14.5.1 Vulnerability Assessments

On a reasonably frequent basis and, in any event, at least annually, an information processor must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the information processor's compliance with paragraph 14.5(1)(a).

25. Exhibit B of Form 21-101F1 is replaced with the following:

Exhibit B – Ownership

For an exchange or quotation and trade reporting system that is a corporation, provide a list of the beneficial holders of five percent or more of any class of securities of the exchange or quotation and trade reporting system. For each listed security holder, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest, including the total number of securities held, the percentage of the exchange or quotation and trade reporting system's issued and outstanding securities held, and the class or type of security held.
4. Whether the security holder has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation).

In the case of an exchange or quotation and trade reporting system that is a partnership, sole proprietorship, or other form of organization, please provide a list of the registered or beneficial holders of the partnership interests or other ownership interests in the exchange or quotation and trade reporting system. For each person or company listed, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.
4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation)..

26. *Item 5 of section 1 of Exhibit C of Form 21-101F1 is repealed.*
27. *Exhibit D of Form 21-101F1 is amended by*
- (a)repealing Item 2 of section 2,*
- (b)repealing Item 5 of section 2, and*
- (c)repealing Item 6 of section 2.*
28. *Exhibit G of Form 21-101F1 is amended by replacing “are” with “is” in Item 2 under “IT Risk Assessment”.*
29. *Exhibit B of Form 21-101F2 is replaced with the following:*

Exhibit B – Ownership

For an ATS that is a corporation, provide a list of the beneficial holders of five percent or more of any class of securities of the ATS. For each listed security holder, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest, including the total number of securities held, the percentage of the ATS’s issued and outstanding securities held, and the class or type of security held.
4. Whether the security holder has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation).

In the case of an ATS that is a partnership, sole proprietorship, or other form of organization, please provide a list of the registered or beneficial holders of the partnership interests or other ownership interests in the ATS. For each person or company listed, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.
4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation)..

30. Item 5 of section 1 of Exhibit C of Form 21-101F2 is repealed.

31. Exhibit D of Form 21-101F2 is amended by

(a) repealing Item 2 of section 2, and

(b) repealing Item 5 of section 2.

32. Exhibit G of Form 21-101F2 is amended by replacing “are” with “is” in Item 2 under “IT Risk Assessment”.

33. Section 6 of Part A of Form 21-101F3 is replaced with the following:

6. Systems – A log and summary description of systems failures, malfunctions, delays or security incidents during the quarter in respect of any systems, operated by or on behalf of the marketplace, that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing and a log and summary description of each security incident during the quarter for any system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing that, if breached, would pose a security threat to one or more of the previously mentioned systems..

34. Section 1 of Part B in Chart 1 of Form 21-101F3 under the heading “Exchange-Traded Securities” is amended by

(a) deleting row 1, and

(b) deleting row 2.

35. Section 1 of Part B in Chart 3 of Form 21-101F3 is amended by

(a) by deleting row 2, and

(b) by deleting row 7.

36. Section 1 of Part B of Form 21-101F3 is amended by repealing Item 5 and Chart 5.

37. Item 5 of section 1 of Exhibit C of Form 21-101F5 is repealed.

38. The Instrument comes into force on [•], 2019.

Schedule 1
Changes to
Companion Policy 21-101CP Marketplace Operation

1. Companion Policy 21-101CP Marketplace Operation is changed by this Document.

2. Subsection 6.1(6) is changed by replacing “seven” with “15” immediately before “business days before the expected implementation date”.

3. Section 6.2 is replaced with the following:

Filing of Financial Statements

Part 4 of the Instrument sets out the financial reporting requirements applicable to marketplaces. Subsections 4.1(2) and 4.2(2) respectively require an ATS to file audited financial statements initially, together with Form 21-101F2, and on an annual basis thereafter. These financial statements may be in the same form as those filed with IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

Section 4.3 requires recognized exchanges and recognized quotation and trade reporting systems to file interim financial reports within 45 days after the end of each interim period. In the view of the Canadian securities regulatory authorities, the term interim period means a period commencing on the first day of the recognized exchange’s or quotation and trade reporting system’s financial year and ending nine, six or three months before the end of the same financial year.

The Canadian securities regulatory authorities expect that financial statements and reports filed under subsections 4.2 and 4.3 should disclose the accounting principles used to prepare them. For clarity, financial statements and reports should include:

- (a) in the case of annual financial statements, an unreserved statement of compliance with IFRS;
- (b) in the case of an interim financial report, an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*.

4. Section 14.1 is changed by replacing subsection (1) with the following:

- (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain adequate internal controls over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information

technology planning, acquisition, development and maintenance, computer operations, information systems support, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants – Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO) or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls that support the processing integrity of the models used to quantify, aggregate, and manage the marketplace's risks..

5. ***Section 14.1 is changed by replacing subsection (2) with the following:***

- (2) Capacity management requires that a marketplace monitor, review, and test (including stress test) the actual capacity and performance of its systems on an ongoing basis. Accordingly, paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, processing capability and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once every 12 months. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently..

6. ***Section 14.1 is changed by replacing subsection (2.1) with the following:***

- (2.1) Paragraph 12.1(c) of the Instrument requires a marketplace to promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material. A failure, malfunction, delay or security incident is considered “material” if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the marketplace's operations or on participants. Non-material events may become material if they recur or have a cumulative effect. With respect to the prompt notification requirement, the Canadian securities regulatory authorities expect that a marketplace will provide notification of a systems failure, malfunction, delay or security incident that is material, orally or in writing, upon escalating the matter to its senior management. It is expected that, as part of the required notification, the marketplace will provide updates on the status of the failure, malfunction, delay or incident and the resumption of service. The marketplace should also have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all incidents. In this regard, the marketplace should undertake a “post-incident” review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the marketplace's participants. The

results of such internal reviews are required to be communicated to the regulator or, in Québec, the securities regulatory authority as soon as practicable. A security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of any of the systems that support the functions listed in section 12.1 or any system that shares network resources with one or more of these systems or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. Any security incident that requires non-routine measures or resources by the marketplace would be considered material and thus reportable to the regulator or, in Québec, the securities regulatory authority. The onus would be on the marketplace to document the reasons for any security incident it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security incident. The criteria for public disclosure of a security incident should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected..

7. ***Section 14.1 is changed by replacing subsection (3) with the following:***

- (3) Subsection 12.2(1) of the Instrument requires a marketplace to engage one or more qualified external auditors to conduct an annual independent systems review to assess the marketplace's compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the "Trust Services Criteria" developed by the American Institute of CPAs and CPA Canada. The focus of the assessment of any systems that share network resources with trading-related systems required under paragraph 12.2(1)(b) would be to address potential threats from a security incident that could negatively impact a trading-related system. For purposes of subsection 12.2(1), we consider a qualified external auditor to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified external auditor to conduct the independent systems review, a marketplace is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period..

8. ***Section 14.1 is changed by replacing subsection (3.1) with the following:***

- (3.1) Section 12.1.2 of the Instrument requires a marketplace to engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls. We would expect a marketplace to implement appropriate improvements where necessary. For the purposes of section 12.1.2, we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the marketplace or an affiliated entity of the marketplace but may not be persons responsible for the development or operation of the systems or capabilities being tested. The regulator or, in Québec, the securities regulatory authority may, in accordance with securities legislation, require the marketplace to provide a copy of any such assessment..

9. ***Section 14.1 is changed by deleting subsection (4).***

10. ***Section 14.1 is changed by replacing subsection (5) with the following:***

- (5) Under section 15.1 of the Instrument, the regulator or, in Québec, the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage one or more qualified external auditors to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or, in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest and the length of the exemption, the regulator or, in Québec, the securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, changes to systems or staff of the marketplace and whether the marketplace has experienced material systems failures, malfunction or delays..

11. ***Section 14.3 is changed by replacing subsection (1) with the following:***

- (1) Business continuity management is a key component of a marketplace's operational risk-management framework. Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans,

including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs..

12. These changes become effective on [●], 2019.

ANNEX B

**BLACKLINED PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION**

**NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

PART 1 DEFINITIONS AND INTERPRETATION**1.1 Definitions – In this Instrument**

"accounting principles" means accounting principles as defined in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"alternative trading system",

- (a) in every jurisdiction other than Ontario, means a marketplace that
 - (i) is not a recognized quotation and trade reporting system or a recognized exchange, and
 - (ii) does not
 - (A) require an issuer to enter into an agreement to have its securities traded on the marketplace,
 - (B) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,
 - (C) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and
 - (D) discipline subscribers other than by exclusion from participation in the marketplace, and
- (b) in Ontario has the meaning set out in subsection 1(1) of the *Securities Act* (Ontario);

"ATS" means an alternative trading system;

"corporate debt security" means a debt security issued in Canada by a company or corporation that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101, and does not include a government debt security;

"exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of this Instrument and NI 23-101;

"foreign exchange-traded security" means a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada;

"government debt security" means

- (a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,
- (b) a debt security issued or guaranteed by any municipal corporation or municipal body in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (c) a debt security issued or guaranteed by a crown corporation or public body in Canada,

- (d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the *Education Act* (Ontario), or
- (e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l'île de Montréal that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"information processor" means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5 and,

- (a) in Ontario and Saskatchewan, that is a designated information processor, and
- (b) in Québec, that is a recognized information processor;

"inter-dealer bond broker" means a person or company that is approved by IIROC under IIROC Rule 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IIROC Rule 36 and IIROC Rule 2100 Inter-Dealer Bond Brokerage Systems, as amended;

"market integrator" **[repealed]**

"marketplace",

- (a) in every jurisdiction other than Ontario, means
 - (i) an exchange,
 - (ii) a quotation and trade reporting system,
 - (iii) a person or company not included in clause (i) or (ii) that
 - (A) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
 - (B) brings together the orders for securities of multiple buyers and sellers, and
 - (C) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
 - (iv) a dealer that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker, and
- (b) in Ontario has the meaning set out in subsection 1(1) of the *Securities Act* (Ontario);

"marketplace participant" means a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS;

"member" means, for a recognized exchange, a person or company

- (a) holding at least one seat on the exchange, or
 - (b) that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange,
- and the person or company's representatives;

"NI 23-101" means National Instrument 23-101 Trading Rules;

"order" means a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security;

"participant dealer" means a participant dealer as defined in Part 1 of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces;

"private enterprise" means a private enterprise as defined in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"publicly accountable enterprise" means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"recognized exchange" means

- (a) in Ontario, a recognized exchange as defined in subsection 1(1) of the *Securities Act* (Ontario),
- (b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization, and
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

- (a) in every jurisdiction other than British Columbia, Ontario and Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system,
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange,
- (b.1) in Ontario, a recognized quotation and trade reporting system as defined in subsection 1(1) of the *Securities Act* (Ontario), and
- (c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization;

"regulation services provider" means a person or company that provides regulation services and is

- (a) a recognized exchange,
- (b) a recognized quotation and trade reporting system, or
- (c) a recognized self-regulatory entity;

"self-regulatory entity" means a self-regulatory body or self-regulatory organization that

- (a) is not an exchange, and
- (b) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority;

"subscriber" means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS, and the person or company's representatives;

"trading fee" means the fee that a marketplace charges for execution of a trade on that marketplace;

"trading volume" means the number of securities traded;

"unlisted debt security" means a government debt security or corporate debt security; and

"user" means, for a recognized quotation and trade reporting system, a person or company that quotes orders or reports trades on the recognized quotation and trade reporting system, and the person or company's representatives.

1.2 Interpretation – Marketplace – For the purpose of the definition of "marketplace" in section 1.1, a person or company is not considered to constitute, maintain or provide a market or facilities for bringing together buyers and sellers of securities, solely because the person or company routes orders to a marketplace or a dealer for execution.

1.3 Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

(1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is a controlled entity of,

(i) that other,

(ii) that other and one or more persons or companies each of which is a controlled entity of that other, or

(iii) two or more persons or companies, each of which is a controlled entity of that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

1.4 Interpretation – Security

(1) In British Columbia, the term "security", when used in this Instrument, includes an option that is an exchange contract but does not include a futures contract.

(2) In Ontario, the term "security", when used in this Instrument, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the *Commodity Futures Act* or the form of which is not accepted by the Director under the *Commodity Futures Act*.

(3) In Québec, the term "security", when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*.

1.5 Interpretation – NI 23-101

Terms defined or interpreted in NI 23-101 and used in this Instrument have the respective meanings ascribed to them in NI 23-101.

PART 2 APPLICATION

2.1 Application – This Instrument does not apply to a marketplace that is a member of a recognized exchange or a member of an exchange that has been recognized for the purposes of this Instrument and NI 23-101.

PART 3 MARKETPLACE INFORMATION
3.1 Initial Filing of Information

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system Form 21-101F1.
- (2) A person or company must not carry on business as an ATS unless it has filed Form 21-101F2 at least 45 days before the ATS begins to carry on business as an ATS.

3.2 Change in Information

- (1) Subject to subsection (2), a marketplace must not implement a significant change to a matter set out in Form 21-101F1 or in Form 21-101F2 unless the marketplace has filed an amendment to the information provided in Form 21-101F1 or in Form 21-101F2 in the manner set out in the applicable form at least 45 days before implementing the change.
 - (1.1) A marketplace that has entered into an agreement with a regulation services provider under NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the applicable exhibit to its regulation services provider at least 45 days before implementing the change.
 - (2) A marketplace must file an amendment to the information provided in Exhibit L – Fees of Form 21-101F1 or Exhibit L – Fees of Form 21-101F2, as applicable, at least ~~15~~seven business days before implementing a change to the information provided in Exhibit L – Fees.
 - (3) For any change involving a matter set out in Form 21-101F1 or Form 21-101F2 other than a change referred to in subsection (1) or (2), a marketplace must file an amendment to the information provided in the applicable form by the earlier of
 - (a) the close of business on the 10th day after the end of the ~~calendar quarter~~month in which the change was made, and
 - (b) if applicable, the time the marketplace discloses the change publicly.
 - (4) The chief executive officer of a marketplace, or an individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace's current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the applicable form.
 - (5) A marketplace must file an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year.
 - (6) For purposes of subsection (5), where information in a marketplace's Form 21-101F1 or Form 21-101F2, as applicable, has not changed since the marketplace previously filed Form 21-101F1 or Form 21-101F2 under subsection (5), the marketplace may incorporate that information by reference into its updated and consolidated Form 21-101F1 or Form 21-101F2.

3.3 Reporting Requirements

A marketplace must file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the marketplace has carried on business.

3.4 Ceasing to Carry on Business as an ATS

- (1) An ATS that intends to cease carrying on business as an ATS must file a report on Form 21-101F4 at least 30 days before ceasing to carry on that business.
 - (2) An ATS that involuntarily ceases to carry on business as an ATS must file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.
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3.5 Forms Filed in Electronic Form

A person or company that is required to file a form or exhibit under this Instrument must file that form or exhibit in electronic form.

PART 4 MARKETPLACE FILING OF AUDITED FINANCIAL STATEMENTS

4.1 Filing of Initial Audited Financial Statements

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system, together with Form 21-101F1, audited financial statements for its latest financial year that
- (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or IFRS,
 - (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and
 - (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an unmodified auditor's report.
- (2) A person or company must not carry on business as an ATS unless it has filed, together with Form 21-101F2, audited financial statements for its latest financial year.

4.2 Filing of Annual Audited Financial Statements

- (1) A recognized exchange and a recognized quotation and trade reporting system must file annual audited financial statements within 90 days after the end of its financial year in accordance with ~~the requirements outlined in~~ subsection 4.1(1).
- (2) An ATS must file annual audited financial statements.

4.3 Filing of Interim Financial Reports

A recognized exchange and a recognized quotation and trade reporting system must file interim financial reports within 45 days after the end of each interim period in accordance with paragraphs 4.1(1)(a) and (b).

PART 5 MARKETPLACE REQUIREMENTS

5.1 Access Requirements

- (1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (2) A marketplace must
- (a) establish written standards for granting access to each of its services, and
 - (b) keep records of
 - (i) each grant of access including the reasons for granting access to an applicant, and
 - (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.
- (3) A marketplace must not
- (a) permit unreasonable discrimination among clients, issuers and marketplace participants, or
 - (b) impose any burden on competition that is not reasonably necessary and appropriate.

5.2 No Restrictions on Trading on Another Marketplace – A marketplace must not prohibit, condition, or otherwise limit, directly or indirectly, a marketplace participant from effecting a transaction on any marketplace.

5.3 Public Interest Rules

- (1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system
- (a) must not be contrary to the public interest; and
 - (b) must be designed to
 - (i) ensure compliance with securities legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade, and
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

(2) **[repealed]**

5.4 Compliance Rules – A recognized exchange or a recognized quotation and trade reporting system must have rules or other similar instruments that

- (a) require compliance with securities legislation; and
- (b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

5.5 Filing of Rules – A recognized exchange or a recognized quotation and trade reporting system must file all rules, policies and other similar instruments, and all amendments thereto.**5.6 [repealed]****5.7 Fair and Orderly Markets** – A marketplace must take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.**5.8 Discriminatory Terms** – A marketplace must not impose terms that have the effect of discriminating between orders that are routed to the marketplace and orders that are entered on that marketplace for execution.**5.9 Risk Disclosure for Trades in Foreign Exchange-Traded Securities**

- (1) A marketplace that is trading foreign exchange-traded securities must provide each marketplace participant with disclosure in substantially the following words:

“The securities traded by or through the marketplace are not listed on an exchange in Canada and may not be securities of a reporting issuer in Canada. As a result, there is no assurance that information concerning the issuer is available or, if the information is available, that it meets Canadian disclosure requirements.”

- (2) Before the first order for a foreign exchange-traded security is entered onto the marketplace by a marketplace participant, the marketplace must obtain an acknowledgement from the marketplace participant that the marketplace participant has received the disclosure required in subsection (1).

5.10 Confidential Treatment of Trading Information

- (1) A marketplace must not release a marketplace participant's order or trade information to a person or company, other than the marketplace participant, a securities regulatory authority or a regulation services provider unless
- (a) the marketplace participant has consented in writing to the release of the information,
 - (b) the release of the information is required by this Instrument or under applicable law, or
 - (c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.
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- (1.1) Despite subsection (1), a marketplace may release a marketplace participant's order or trade information to a person or company if the marketplace
- (a) reasonably believes that the information will be used solely for the purpose of capital markets research,
 - (b) reasonably believes that if information identifying, directly or indirectly, a marketplace participant or a client of the marketplace participant is released,
 - (i) it is required for the purpose of the capital markets research, and
 - (ii) that the research is not intended for the purpose of
 - (A) identifying a particular marketplace participant or a client of the marketplace participant, or
 - (B) identifying a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant,
 - (c) has entered into a written agreement with each person or company that will receive the order and trade information from the marketplace that provides that
 - (i) the person or company must
 - (A) not disclose to or share any information with any person or company if that information could, directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace's consent, other than as provided under subparagraph (ii) below,
 - (B) not publish or otherwise disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or a client of the marketplace participant,
 - (C) not use the order and trade information, or provide it to any other person or company, for any purpose other than capital markets research,
 - (D) keep the order and trade information securely stored at all times,
 - (E) keep the order and trade information for no longer than a reasonable period of time after the completion of the research and publication process, and
 - (F) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided,
 - (ii) the person or company may disclose order or trade information used in connection with research submitted to a publication if
 - (A) the information to be disclosed will be used solely for the purposes of verification of the research carried out by the person or company,
 - (B) the person or company must notify the marketplace prior to disclosing the information for verification purposes, and
 - (C) the person or company must obtain written agreement from the publisher and any other person or company involved in the verification of the research that the publisher or the other person or company will
 - (I) maintain the confidentiality of the information,
 - (II) use the information only for the purposes of verifying the research,
 - (III) keep the information securely stored at all times,
 - (IV) keep the information for no longer than a reasonable period of time after the completion of the verification, and
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- (V) immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided, and
 - (iii) the marketplace has the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.
- (1.2) A marketplace that releases a marketplace participant's order or trade information under subsection (1.1) must
- (a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement, and
 - (b) take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.
- (2) A marketplace must not carry on business unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's order or trade information, including
- (a) limiting access to order or trade information of marketplace participants to
 - (i) employees of the marketplace, or
 - (ii) persons or companies retained by the marketplace to operate the system or to be responsible for compliance by the marketplace with securities legislation; and
 - (b) implementing standards controlling trading by employees of the marketplace for their own accounts.
- (3) A marketplace must not carry on business as a marketplace unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

5.11 Management of Conflicts of Interest

A marketplace must establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides.

5.12 Outsourcing

If a marketplace outsources any of its key services or systems to a service provider, which includes affiliates or associates of the marketplace, the marketplace must

- (a) establish and maintain policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements,
 - (b) identify any conflicts of interest between the marketplace and the service provider to which key services or systems are outsourced, and establish and maintain policies and procedures to mitigate and manage such conflicts of interest,
 - (c) enter into a contract with the service provider to which key services or systems are outsourced that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,
 - (d) maintain access to the books and records of the service providers relating to the outsourced activities,
 - (e) ensure that the securities regulatory authorities have access to all data, information and systems maintained by the service provider on behalf of the marketplace for the purposes of determining the marketplace's compliance with securities legislation,
 - (f) take appropriate measures to determine that service providers to which key services or systems are outsourced establish, maintain and periodically test an appropriate business continuity plan, including a disaster recovery plan,
 - (g) take appropriate measures to ensure that the service providers protect the marketplace participants' proprietary, order, trade or any other confidential information, and
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- (h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.

5.13 Access Arrangements with a Service Provider

If a third party service provider provides a means of access to a marketplace, the marketplace must ensure the third party service provider complies with the written standards for access that the marketplace has established pursuant to paragraph 5.1(2)(a) when providing the access services.

PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSs

6.1 Registration – An ATS must not carry on business as an ATS unless

- (a) it is registered as a dealer;
- (b) it is a member of a self-regulatory entity; and
- (c) it complies with the provisions of this Instrument and NI 23-101.

6.2 Registration Exemption Not Available – Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.

6.3 Securities Permitted to be Traded on an ATS – An ATS must not execute trades in securities other than

- (a) exchange-traded securities;
- (b) corporate debt securities;
- (c) government debt securities; or
- (d) foreign exchange-traded securities.

6.4 [repealed]

6.5 [repealed]

6.6 [repealed]

6.7 Notification of Threshold

- (1) An ATS must notify the securities regulatory authority in writing if,
 - (a) during at least two of the preceding three months of operation, the total dollar value of the trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total dollar value of the trading volume for the month in that type of security on all marketplaces in Canada,
 - (b) during at least two of the preceding three months of operation, the total trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total trading volume for the month in that type of security on all marketplaces in Canada, or
 - (c) during at least two of the preceding three months of operation, the number of trades on the ATS for a month in any type of security is equal to or greater than 10 percent of the number of trades for the month in that type of security on all marketplaces in Canada.
- (2) An ATS must provide the notice referred to in subsection (1) within 30 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 [repealed]

6.9 Name – An ATS must not use in its name the word "exchange", the words "stock market", the word "bourse" or any derivations of those terms.

6.10 [repealed]**6.11 Risk Disclosure to Non-Registered Subscribers**

- (1) When opening an account for a subscriber that is not registered as a dealer under securities legislation, an ATS must provide that subscriber with disclosure in substantially the following words:

Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers.

- (2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS must obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

6.12 [repealed]**6.13 [repealed]****PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES****7.1 Pre-Trade Information Transparency – Exchange-Traded Securities**

- (1) A marketplace that displays orders of exchange-traded securities to a person or company must provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

- (3) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.

7.2 Post-Trade Information Transparency – Exchange-Traded Securities

- (1) A marketplace must provide accurate and timely information regarding trades for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

- (2) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.

7.3 Pre-Trade Information Transparency – Foreign Exchange-Traded Securities

- (1) A marketplace that displays orders of foreign exchange-traded securities to a person or company must provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed by the marketplace to an information vendor.

- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

- 7.4 Post-Trade Information Transparency – Foreign Exchange-Traded Securities** – A marketplace must provide accurate and timely information regarding trades for foreign exchange-traded securities executed on the marketplace to an information vendor.

- 7.5 Consolidated Feed – Exchange-Traded Securities** – An information processor must produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 7.1 and 7.2.

7.6 Compliance with Requirements of an Information Processor – A marketplace that is subject to this Part must comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR PERSONS AND COMPANIES DEALING IN UNLISTED DEBT SECURITIES

8.1 Pre-Trade and Post-Trade Information Transparency Requirements – Government Debt Securities

(1) A marketplace that displays orders of government debt securities to a person or company must provide to an information processor accurate and timely information regarding orders for government debt securities displayed by the marketplace as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) [repealed]

(4) An inter-dealer bond broker must provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.

(5) A person or company must provide to an information processor accurate and timely information regarding details of each trade of government debt securities executed by or through the person or company as required by the information processor.

8.2 Pre-Trade and Post-Trade Information Transparency Requirements - Corporate Debt Securities

(1) A marketplace that displays orders of corporate debt securities to a person or company must provide to an information processor accurate and timely information regarding orders for corporate debt securities displayed by the marketplace as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A person or company must provide to an information processor accurate and timely information regarding details of each trade of corporate debt securities executed by or through the person or company as required by the information processor.

(4) [repealed]

(5) [repealed]

8.3 Consolidated Feed – Unlisted Debt Securities - An information processor must produce accurate consolidated information showing the information provided to the information processor under sections 8.1 and 8.2.

8.4 Compliance with Requirements of an Information Processor – A person or company that is subject to this Part must comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

8.5 [repealed]

8.6 Exemption for Government Debt Securities [repealed]

PART 9 [repealed]

PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS

10.1 Disclosure by Marketplaces – A marketplace must publicly disclose, on its website, information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including, but not limited to, information related to

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- (a) all fees, including any listing, trading, data, co-location and routing fees charged by the marketplace, an affiliate or by a party to which services have directly or indirectly been outsourced or which directly or indirectly provides those services,
 - (b) how orders are entered, interact and execute,
 - (c) all order types,
 - (d) access requirements,
 - (e) the policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides,
 - (f) any referral arrangements between the marketplace and service providers,
 - (g) where routing is offered, how routing decisions are made,
 - (h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest,
 - (i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and
 - (j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing, and any policies and procedures relating to a marketplace's use of uniform test symbols for purposes of testing in its production environment.

10.2 [repealed]

10.3 [repealed]

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.1 Business Records – A marketplace must keep such books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form.

11.2 Other Records

- (1) As part of the records required to be maintained under section 11.1, a marketplace must include the following information in electronic form:
 - (a) a record of all marketplace participants who have been granted access to trading in the marketplace;
 - (b) daily trading summaries for the marketplace including
 - (i) a list of securities traded,
 - (ii) transaction volumes
 - (A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and
 - (B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,
 - (c) a record of each order which must include
 - (i) the order identifier assigned to the order by the marketplace,
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- (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
 - (iii) the identifier assigned to the marketplace where the order is received or originated,
 - (iv) each unique client identifier assigned to a client accessing the marketplace using direct electronic access,
 - (v) the type, issuer, class, series and symbol of the security,
 - (vi) the number of securities to which the order applies,
 - (vii) the strike date and strike price, if applicable,
 - (viii) whether the order is a buy or sell order,
 - (ix) whether the order is a short sale order, if applicable,
 - (x) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
 - (xi) the date and time the order is first originated or received by the marketplace,
 - (xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account,
 - (xiii) the date and time the order expires,
 - (xiv) whether the order is an intentional cross,
 - (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
 - (xvi) the currency of the order,
 - (xvii) whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order was routed, and
 - (xviii) whether the order is a directed-action order, and whether the marketplace marked the order as a directed-action order or received the order marked as a directed-action order, and
- (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including
- (i) the identifier assigned to the marketplace where the order was executed,
 - (ii) whether the order was fully or partially executed,
 - (iii) the number of securities bought or sold,
 - (iv) the date and time of the execution of the order,
 - (v) the price at which the order was executed,
 - (vi) the identifier assigned to the marketplace participant on each side of the trade,
 - (vii) whether the transaction was a cross,
 - (viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,
 - (ix) the marketplace trading fee for each trade, and
 - (x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.
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11.2.1 Transmission in Electronic Form – A marketplace must transmit

- (a) to a regulation services provider, if it has entered into an agreement with a regulation services provider in accordance with NI 23-101, the information required by the regulation services provider within ten business days, in electronic form and in the manner requested by the regulation services provider, and
- (b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation within ten business days, in electronic form and in the manner requested by the securities regulatory authority.

11.3 Record Preservation Requirements

- (1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace must keep
 - (a) all records required to be made under sections 11.1 and 11.2;
 - (b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1;
 - (c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1 and 12.4, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;
 - (d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;
 - (e) the acknowledgement obtained under subsection 5.9(2) or 6.11(2);
 - (f) a copy of any agreement referred to in section 8.4 of NI 23-101;
 - (g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3);
 - (h) a copy of any agreement referred to in section 5.10; and
 - (i) a copy of any agreement referred to in paragraph 5.12(c).
- (2) During the period in which a marketplace is in existence, the marketplace must keep
 - (a) all organizational documents, minute books and stock certificate books;
 - (b) copies of all forms filed under Part 3; and
 - (c) in the case of an ATS, copies of all notices given under section 6.7.

11.4 [repealed]**11.5 Synchronization of Clocks**

- (1) A marketplace trading exchange-traded securities or foreign exchange-traded securities, an information processor receiving information about those securities, and a dealer trading those securities must synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101 with the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities.
- (2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, and an inter-dealer bond broker trading those securities must synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.

PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

- 12.1 System Requirements** – For each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace must
- (a) develop and maintain
 - (i) ~~an~~ adequate ~~system of~~ internal controls over those systems, and
 - (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support and system software support,
 - (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,
 - (i) make reasonable current and future capacity estimates,
 - (ii) conduct capacity stress tests to determine the processing capability of those systems to perform process transactions in an accurate, timely and efficient manner, ~~and~~
 - (c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any ~~material~~ systems failure, malfunction, delay or security incident breach that is material and provide timely updates on the status of the failure, malfunction, delay or security incident breach, the resumption of service and the results of the marketplace's internal review of the failure, malfunction, delay or security incident breach, and
 - (d) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the marketplace considered the systems failure, malfunction, delay or security incident not to be material.
- 12.1.1 Auxiliary Systems** – For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must
- (a) develop and maintain ~~an~~ adequate ~~system of~~ information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and
 - (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any ~~material~~ security incident breach that is material and provide timely updates on the status of the incident breach, the resumption of service, ~~where applicable~~, and the results of the marketplace's internal review of the security incident breach, and.
 - (c) keep a record of any such security incident and, if applicable, document the reasons why the marketplace considered that such security incident was not material.
- 12.1.2 Vulnerability Assessments – On a reasonably frequent basis and, in any event, at least annually, a marketplace must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace's compliance with paragraphs 12.1(a) and 12.1.1(a).
- 12.2 System Reviews**
- (1) On a reasonably frequent basis and, in any event, at least annually, a marketplace must ~~annually~~ engage one or more qualified external auditors ~~a qualified party~~ to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices ~~in accordance with established audit standards to ensure~~ that assesses the marketplace's is in compliance with
 - (a) paragraph 12.1(a),
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- (b) section 12.1.1, and
- (c) section 12.4.

- (2) A marketplace must provide the report resulting from the review conducted under subsection (1) to
- (a) its board of directors, or audit committee, promptly upon the report's completion, and
 - (b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

12.3 Marketplace Technology Requirements and Testing Facilities

- (1) A marketplace must make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,
- (a) if operations have not begun, for at least three months immediately before operations begin; or and
 - (b) if operations have begun, for at least three months before implementing a material change to its technology requirements.
- (2) After complying with subsection (1), a marketplace must make available testing facilities for interfacing with or accessing the marketplace,
- (a) if operations have not begun, for at least two months immediately before operations begin; or and
 - (b) if operations have begun, for at least two months before implementing a material change to its technology requirements.
- (3) A marketplace must not begin operations before
- (a) it has complied with paragraphs (1)(a) and (2)(a),
 - (b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and
 - (c) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.
- (3.1) A marketplace must not implement a material change to the systems referred to in section 12.1 before
- (a) it has complied with paragraphs (1)(b) and (2)(ba), and
 - (b) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.
- (4) Subsection (3.1) does not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if
- (a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and
 - (b) the marketplace publishes the changed technology requirements as soon as practicable.

12.3.1 Uniform Test Symbols

A marketplace must use uniform test symbols, as set by a regulator, or in Québec, the securities regulatory authority, for the purpose of performing testing in its production environment.

12.4 Business Continuity Planning

- (1) A marketplace must
 - (a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and
 - (b) test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing, can resume operations within two hours following the declaration of a disaster by the marketplace.
- (3) A recognized exchange or quotation and trade reporting system, that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the [recognized exchange or quotation and trade reporting system](#) marketplace, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system.
- (4) A regulation services provider, that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider.

12.4.1 Industry-Wide Business Continuity Tests

A marketplace, recognized clearing agency, information processor, and participant dealer must participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority.

PART 13 CLEARING AND SETTLEMENT**13.1 Clearing and Settlement**

- (1) All trades executed on a marketplace must be reported to and settled through a clearing agency.
- (2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber must enter into an agreement that specifies whether the trade must be reported to a clearing agency by
 - (a) the ATS;
 - (b) the subscriber; or
 - (c) an agent for the subscriber that is a clearing member of a clearing agency.
- (3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber must enter into an agreement that specifies whether the trade must be reported to a clearing agency by
 - (a) the ATS; or
 - (b) an agent for the subscriber that is a clearing member of a clearing agency.

13.2 Access to Clearing Agency of Choice

- (1) A marketplace must report a trade in a security to a clearing agency designated by a marketplace participant.

- (2) Subsection (1) does not apply to a trade in a security that is a standardized derivative or an exchange-traded security that is an option.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR

14.1 Filing Requirements for an Information Processor

- (1) A person or company that intends to carry on business as an information processor must file Form 21-101F5 at least 90 days before the information processor begins to carry on business as an information processor.

- (2) [repealed]

14.2 Change in Information

- (1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor must file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

- (2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor must, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

- (1) If an information processor intends to cease carrying on business as an information processor, the information processor must file a report on Form 21-101F6 at least 30 days before ceasing to carry on that business.

- (2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor must file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

- (1) An information processor **for exchange-traded securities** must enter into an agreement with each marketplace that is required to provide information to the information processor that the marketplace will

- (a) provide information to the information processor in accordance with Part 7; and
- (b) comply with any other reasonable requirements set by the information processor.

- (2) An information processor must provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.

- (3) An information processor must keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

- (4) An information processor must establish in a timely manner an electronic connection or changes to an electronic connection to a **person or company** that is required to provide information to the information processor.

- (5) An information processor must provide prompt and accurate order and trade information and must not unreasonably restrict fair access to such information.

- (6) An information processor must file annual audited financial statements within 90 days after the end of its financial year that

- (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,
- (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and
- (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor's report.

- (6.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the income statement and the statement of cash flow of the information processor and any other information necessary to demonstrate the financial condition of the information processor within 90 days after the end of the financial year of the person or company.
- (7) An information processor must file its financial budget within 30 days after the start of a financial year.
- (7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days of the start of the financial year of the person or company.

(8) **[repealed]**

(9) **[repealed]**

14.5 System Requirements

- (1) An information processor must,
- (a) develop and maintain
- (i) ~~an~~ adequate ~~system of~~ internal controls over its critical systems, and
- (ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support, and system software support,
- (b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,
- (i) make reasonable current and future capacity estimates for each of its systems, and
- (ii) conduct capacity stress tests of its critical systems to determine the processing capability~~ability~~ of those systems to perform~~process information~~ in an accurate, timely and efficient manner,
- (c) on a reasonably frequent basis and, in any event, at least annually engage one or more qualified external auditors~~a qualified party~~ to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices that assesses the information processor's~~to ensure that it is in~~ compliance with paragraph (a) and section 14.6,
- (d) provide the report resulting from the review conducted under paragraph (c) to
- (i) its board of directors or the audit committee promptly upon the report's completion, and
- (ii) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the information processor's fiscal year end,
- (e) promptly notify the following of any systems failure, malfunction,~~or material~~ delay or security incident that is material of its systems or equipment and provide timely updates on the status of the failure, malfunction, delay or security incident, the resumption of service and the results of the information processor's internal review of the failure, malfunction, delay or security incident:
- (i) the regulator or, in Québec, the securities regulatory authority, and
- (ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor, and
- (f) keep a record of any systems failure, malfunction, delay or security incident and, if applicable, document the reasons why the information processor considered the systems failure, malfunction, delay or security incident not to be material.

- (2) An information processor must provide the regulator or, in Québec, the securities regulatory authority with a report by the 30th day after the end of the calendar quarter, containing a log and summary description of each systems failure, malfunction, delay or security incident referred to in paragraph (1)(f).

14.5.1 Vulnerability Assessments

On a reasonably frequent basis and, in any event, at least annually, an information processor must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the information processor's compliance with paragraph 14.5(1)(a).

14.6 Business Continuity Planning

An information processor must

- (a) develop and maintain reasonable business continuity plans, including disaster recovery plans,
- (b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and
- (c) establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.

14.7 Confidential Treatment of Trading Information

An information processor must not release order and trade information to a **person or company** other than the person or company that provided this information in accordance with this Instrument or a securities regulatory authority, unless

- (a) the release of that information is required by this Instrument or under applicable law, or
- (b) the information processor received prior approval from the securities regulatory authority.

14.8 Transparency of Operations of an Information Processor

An information processor must publicly disclose on its website information reasonably necessary to enable a person or company to understand the information processor's operations or services it provides including, but not limited to

- (a) all fees charged by the information processor for the consolidated data,
- (b) in the case of an information processor for government debt securities or corporate debt securities,
 - (i) the marketplaces that are required to report details of orders for government debt securities or corporate debt securities to the information processor, as applicable;
 - (ii) the inter-dealer bond brokers that are required to report details of orders for government debt securities to the information processor;
 - (iii) the classes of persons and companies that are required to report details of trades of government debt securities or corporate debt securities to the information processor, as applicable,
 - (iv) when details of trades in each government debt security or corporate debt security, as applicable, must be reported to the information processor by a person or company,
 - (v) when the information provided to the information processor will be publicly disseminated by the information processor, and
 - (vi) the cap on the displayed volume of trades for each government debt security or corporate debt security, as applicable,
- (c) access requirements, and
- (d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor.

PART 15 EXEMPTION**15.1 Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
 - (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
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10. Market Regulation is being conducted by:
- the exchange
 - the quotation and trade reporting system
 - regulation services provider other than the filer (see Exhibit M)

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the exchange or quotation and trade reporting system, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect must be furnished instead of such Exhibit.

Except as provided below, if the filer, recognized exchange or recognized quotation and trade reporting system files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer, recognized exchange or recognized quotation and trade reporting system, must, in order to comply with subsections 3.2(1), 3.2(2) or 3.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and a blacklined version showing changes from the previous filing.

If the filer, recognized exchange or recognized quotation and trade reporting system has otherwise filed the information required by the previous paragraph pursuant to section 5.5 of National Instrument 21-101, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:
 - Corporation
 - Partnership
 - Sole Proprietorship
 - Other (specify):
2. Except where the exchange or quotation and trade reporting system is a sole proprietorship, indicate the following:
 1. Date (DD/MM/YYYY) of formation.
 2. Place of formation.
 3. Statute under which exchange or quotation and trade reporting system was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.
4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the marketplace or the services it provides, including those related to the commercial interest of the marketplace, the interests of its owners and its operators, the responsibilities and sound functioning of the marketplace, and those between the operations of the marketplace and its regulatory responsibilities.

Exhibit B – Ownership

For an exchange or quotation and trade reporting system that is a corporation, provide a list of the ~~registered or~~ beneficial holders of five percent or more of any class of securities of ~~partnership interests in, or other ownership interests in~~ the exchange or quotation and trade reporting system. For each ~~of the listed security holder, persons listed in the Exhibit~~ please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest, including the total number of securities held, the percentage of the exchange or quotation and trade reporting system's issued and outstanding securities held, and the class or type of security held.
- ~~4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.~~
45. Whether the security holder~~person~~ has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

In the case of an exchange or quotation and trade reporting system that is a partnership, sole proprietorship, or other form of organization, publicly traded, if the exchange or quotation and trade reporting system is a corporation, please only provide a list of the registered or beneficial holders of the partnership interests or other ownership interests~~each shareholder that directly owns five percent or more of a class of a voting security of-~~ in the exchange or quotation and trade reporting system. For each person or company listed, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.
4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation).

Exhibit C – Organization

1. A list of partners, directors, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:
 1. Name.
 2. Principal business or occupation and title.
 3. Dates of commencement and expiry of present term of office or position.
 4. Type of business in which each is primarily engaged and current employer.
 5. ~~[repealed] Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.~~
 6. Whether the person is considered to be an independent director.
2. A list of the committees of the board, including their mandates and the Board mandate.

Exhibit D – Affiliates

1. For each affiliated entity of the exchange or quotation and trade reporting system provide the name, head office address and describe the principal business of the affiliate.
2. For each affiliated entity of the exchange or quotation and trade reporting system
 - (i) to which the exchange or quotation and trade reporting system has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace*, including order entry, trading, execution, routing and data, or
 - (ii) with which the exchange or quotation and trade reporting system has any other material business relationship, including loans, cross-guarantees, etc.

provide the following information:

1. Name and address of the affiliate.
2. ~~[repealed] The name and title of the directors and officers, or persons performing similar functions, of the affiliate.~~
3. A description of the nature and extent of the contractual and other agreements with the exchange and quotation and trade reporting system, and the roles and responsibilities of the affiliate under the arrangement.
4. A copy of each material contract relating to any outsourced functions or other material relationships.
5. ~~[repealed] Copies of constating documents (including corporate by laws), shareholder agreements, partnership agreements and other similar documents.~~
6. ~~[repealed] For the latest financial year of the affiliated entity, financial statements, which may be unaudited, prepared in accordance with~~
~~Canadian GAAP applicable to publicly accountable enterprises or~~
~~Canadian GAAP applicable to private enterprises, or~~
~~IFRS.~~
~~Where the affiliated entity is incorporated or organized under the laws of a foreign jurisdiction, such financial statements may also be prepared in accordance with~~
~~a. U.S. GAAP or~~
~~b. accounting principles of a designated foreign jurisdiction as defined under National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.~~

Exhibit E – Operations of the Marketplace

Describe in detail the manner of operation of the market or facility and its associated functions. This must include, but is not limited to, a description of the following:

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.
3. The hours of operation.
4. A description of the services offered by the marketplace, including, but not limited to, order entry, co-location, trading, execution, routing and data.
5. A list of the types of orders offered, including, but not limited to, a description of the features and characteristics of orders.
6. Procedures regarding the entry, display and execution of orders. If indications of interest are used, please describe the information they include and list the types of recipients.
7. A description of how orders interact, including, but not limited to, the priority of execution for all order types.
8. A description of order routing procedures.
9. A description of order and trade reporting procedures.
10. A description of procedures for clearance and settlement of transactions.

11. The safeguards and procedures of the marketplace to protect trading information of marketplace participants.
12. Training provided to participants and a copy of any materials provided both with respect to systems of the marketplace, the requirements of the marketplace, and the rules of the regulation services providers, if applicable.
13. Steps taken to ensure that marketplace participants have knowledge of and comply with the requirements of the marketplace.

The filer must provide all policies, procedures and trading manuals related to the operation of the marketplace and, if applicable, the order router.

The filer must provide all material contracts related to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing.

Exhibit F – Outsourcing

Where the exchange or quotation and trade reporting system has outsourced the operation of key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace* to an arms-length third party, including any function associated with the routing, trading, execution, data, clearing and settlement and, if applicable, surveillance, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the exchange or quotation and trade reporting system and the roles and responsibilities of the arms-length party under the arrangement.
3. A copy of each material contract relating to any outsourced function.
4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.
5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

Exhibit G – Systems and Contingency Planning

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
 2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
 3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
 4. The message protocols supported by the marketplace's systems.
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5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
2. How the impact of risks ~~are~~^{is} measured according to qualitative and quantitative criteria.
3. The documentation process for acceptable residual risks with related offsets.
4. The development of management's action plan to implement a risk response to a risk that has not been accepted.

Exhibit H – Custody of Assets

1. If the exchange or quotation and trade reporting system proposes to hold funds or securities of a marketplace participant on a regular basis, a description of the controls that will be implemented to ensure the safety of the funds or securities.
2. If any other person or company, other than the exchange or quotation and trade reporting system, will hold or safeguard funds or securities of a marketplace participant on a regular basis, provide the name of the person or company and a description of the controls that will be implemented to ensure the safety of the funds or securities.

Exhibit I – Securities

1. List the types of securities listed on the exchange or quoted on the quotation and trade reporting system. If this is an initial filing, list the types of securities the filer expects to list or quote.
2. List the types of any other securities that are traded on the marketplace or quoted on the quotation and trade reporting system, indicating the exchange(s) on which such securities are listed. If this is an initial filing, list the types of securities the filer expects to trade.

Exhibit J – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the marketplace described in Exhibit E item 4, including trading on the exchange or quotation and trade reporting system.
2. Describe the classes of marketplace participants.
3. Describe the exchange or quotation and trade reporting service's criteria for access to the services of the marketplace.
4. Describe any differences in access to the services offered by the marketplace to different groups or classes of marketplace participants.
5. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the services of the exchange or quotation and trade reporting system.
6. Describe any procedures that will be involved in the suspension or termination of a marketplace participant.
7. Describe the exchange or quotation and trade reporting system's arrangements for permitting clients of marketplace participants to have access to the marketplace. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit K – Marketplace Participants

Provide an alphabetical list of all marketplace participants, including the following information:

1. Name.
 2. Date of becoming a marketplace participant.
-
-

3. Describe the type of trading activities primarily engaged in by the marketplace participant (e.g., agency trading, proprietary trading, registered trading, market making).
4. The class of participation or other access. Please identify if the marketplace participant accesses the marketplace through co-location.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each
 - (i) whether they were denied or limited access,
 - (ii) the date the marketplace took such action,
 - (iii) the effective date of such action, and
 - (iv) the nature and reason for any denial or limitation of access.

Exhibit L – Fees

A description of the fee model and all fees charged by the marketplace, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

Exhibit M – Regulation

Market Regulation is being conducted by:

the exchange or QTRS

1. Provide a description of the regulation performed by the exchange or QTRS, including the structure of the department performing regulation, how the department is funded, policies and procedures in place to ensure confidentiality and the management of conflicts of interest, and policies and procedures relating to conducting an investigation.
2. If more than one entity is performing regulation services for a type of security and the filer is conducting market regulation for itself and its members, provide a copy of the contract between the filer and the regulation services provider providing for co-ordinated monitoring and enforcement under section 7.5 of National Instrument 23-101 *Trading Rules*.

a regulation services provider other than the filer (provide a copy of the contract between the filer and the regulation services provider)

Exhibit N – Acknowledgement

The form of acknowledgement required by subsection 5.9(2) of National Instrument 21-101 *Marketplace Operation*.

CERTIFICATE OF EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this ____ day of _____, 20 ____

(Name of exchange or quotation and trade reporting system)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

**FORM 21-101F2
INFORMATION STATEMENT
ALTERNATIVE TRADING SYSTEM**

TYPE OF FILING:

INITIAL OPERATION REPORT **AMENDMENT; AMENDMENT No. _____**

Identification:

1. Full name of alternative trading system:
2. Name(s) under which business is conducted, if different from item 1:
3. If this filing makes a name change on behalf of the alternative trading system in respect of the name set out in Item 1 or Item 2, enter the previous name and the new name.

Previous name:

New name:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):

6. Other offices

Address:

Telephone:

Facsimile:

7. Website address:

8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:

9. Counsel

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

INCLUDES COMMENT LETTERS

-
-
10. The ATS is
 - a member of _____ (name of the recognized self-regulatory entity)
 - a registered dealer
 11. If this is an initial operation report, the date the alternative trading system expects to commence operation:
 12. The ATS has contracted with [name of regulation services provider] to perform market regulation for the ATS and its subscribers.

EXHIBITS

File all Exhibits with the Initial Operation Report. For each Exhibit, include the name of the ATS, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect must be furnished instead of such Exhibit.

If the ATS files an amendment to the information provided in its Initial Operation Report and the information relates to an Exhibit filed with the Initial Operation Report or a subsequent amendment, the ATS must, in order to comply with subsection 3.2(1), 3.2(2) or 3.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The ATS must provide a clean and blacklined version showing changes from the previous filing.

Exhibit A – Corporate Governance

1. Legal status:
 - Corporation
 - Partnership
 - Sole Proprietorship
 - Other (specify):
2. Except where the ATS is a sole proprietorship, indicate the following:
 1. Date (DD/MM/YYYY) of formation.
 2. Place of formation.
 3. Statute under which the ATS was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.
4. Provide the policies and procedures to address conflicts of interest arising from the operation of the marketplace or the services it provides, including those related to the commercial interest of the marketplace, the interests of its owners and its operators, and the responsibilities and sound functioning of the marketplace.

Exhibit B – Ownership

For an ATS that is a corporation, provide a list of the ~~registered or~~ beneficial holders of five percent or more of any class of securities of, partnership interests in, or other ownership interests in the ATS. For each listed security holder, of the persons listed in the Exhibit, please provide the following:

1. Name.
 2. Principal business or occupation and title.
 3. Ownership interest, including the total number of securities held, the percentage of the ATS's issued and outstanding securities held, and the class or type of security held.
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~~4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.~~

~~4.5. Whether the security holder ~~person~~ has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).~~

~~In the case of an ATS that is a partnership, sole proprietorship, or other form of organization, publicly traded, if the ATS is a corporation, please only provide a list of the registered or beneficial holders of the partnership interests or other ownership interests in each shareholder that directly owns five percent or more of a class of a voting security of the ATS. For each person or company listed, please provide the following:~~

~~1. Name.~~

~~2. Principal business or occupation and title.~~

~~3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.~~

~~4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).~~

Exhibit C – Organization

1. A list of partners, directors, officers, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

1. Name.

2. Principal business or occupation and title.

3. Dates of commencement and expiry of present term of office or position.

4. Type of business in which each is primarily engaged and current employer.

5. ~~[repealed] Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.~~

6. Whether the person is considered to be an independent director.

2. A list of the committees of the board, including their mandates.

Exhibit D – Affiliates

1. For each affiliated entity of the ATS provide the name, head office address and describe the principal business of the affiliate.

2. For each affiliated entity of the ATS

(i) to which the ATS has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace*, including order entry, trading, execution, routing and data, or

(ii) with which the ATS has any other material business relationship, including loans, cross-guarantees, etc.

provide the following information:

1. Name and address of the affiliate.

2. ~~[repealed] The name and title of the directors and officers, or persons performing similar functions, of the affiliate.~~

3. A description of the nature and extent of the contractual and other agreement with the ATS, and the roles and responsibilities of the affiliate under the arrangement.
4. A copy of each material contract relating to any outsourced functions or other material relationship.
5. ~~Copies of constating documents (including corporate by laws), shareholder agreements, partnership agreements and other similar documents.~~

Exhibit E – Operations of the Marketplace

Describe in detail the manner of operation of the market and its associated functions. This must include, but is not-limited to, a description of the following:

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.
3. The hours of operation.
4. A description of the services offered by the marketplace including, but not limited to, order entry, co-location, trading, execution, routing and data.
5. A list of the types of orders offered, including, but not limited to, a description of the features and characteristics of orders.
6. Procedures regarding the entry, display and execution of orders. If indications of interest are used, please describe the information they include and list the types of recipients.
7. A description of how orders interact, including, but not limited to, the priority of execution for all order types.
8. A description of order routing procedures.
9. A description of order and trade reporting procedures.
10. A description of procedures for clearance and settlement of transactions.
11. The safeguards and procedures of the marketplace to protect trading information of marketplace participants.
12. Training provided to participants and a copy of any materials provided both with respect to systems of the marketplace, the requirements of the marketplace, and the rules of the regulation services providers, if applicable.
13. Steps taken to ensure that marketplace participants have knowledge of and comply with the requirements of the marketplace.

The filer must provide all policies, procedures and trading manuals related to the operation of the marketplace and, if applicable, the order router.

The filer must provide all material contracts relating to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing.

Exhibit F – Outsourcing

Where the ATS has outsourced the operation of key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace* to an arms-length third party, including any function associated with routing, trading, execution, clearing and settlement, data and co-location, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the ATS and the roles and responsibilities of the arms-length party under the arrangement.

3. A copy of each material contract relating to any outsourced function.
4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.
5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

Exhibit G – Systems and Contingency Planning

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.

10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
2. How the impact of risks [are](#) measured according to qualitative and quantitative criteria.
3. The documentation process for acceptable residual risks with related offsets.
4. The development of management's action plan to implement a risk response to a risk that has not been accepted.

Exhibit H – Custody of Assets

1. If the ATS proposes to hold funds or securities of a marketplace participant on a regular basis, a description of the controls that will be implemented to ensure the safety of the funds or securities.
2. If any other person or company, other than the ATS, will hold or safeguard funds or securities of a marketplace participant on a regular basis, provide the name of the person or company and a description of the controls that will be implemented to ensure the safety of the funds or securities.

Exhibit I – Securities

List the types of securities that are traded on the ATS, indicating the exchange(s) on which such securities are listed. If this is an initial filing, list the types of securities the ATS expects to trade.

Exhibit J – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the marketplace described in Exhibit E item 4, including trading on the ATS.
2. Describe the classes of marketplace participants (i.e. dealer, institution or retail).
3. Describe the ATS's criteria for access to the services of the marketplace.
4. Describe any differences in access to the services offered by the marketplace to different groups or classes of marketplace participants.
5. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the services of the ATS.
6. Describe any procedures that will be involved in the suspension or termination of a marketplace participant.
7. Describe the ATS's arrangements for permitting clients of marketplace participants to have access to the marketplace. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit K – Marketplace Participants

Provide an alphabetical list of all marketplace participants, including the following information:

1. Name.
2. Date of becoming a marketplace participant.
3. Describe the type of trading activities primarily engaged in by the marketplace participant (e.g., agency trading, proprietary trading, registered trading, market making).
4. The class of participation or other access. Please identify if the marketplace participant accesses the marketplace through co-location.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each
 - (i) whether they were denied or limited access,
 - (ii) the date the marketplace took such action,
 - (iii) the effective date of such action, and
 - (iv) the nature and reason for any denial or limitation of access.

Exhibit L – Fees

A description of the fee model and all fees charged by the marketplace, or by a party to whom services have been directly or indirectly outsourced, including, but not limited to, fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, how such fees are set and any fee rebates or discounts and how the rebates or discounts are set.

Exhibit M – Regulation

The ATS has contracted with regulation services provider to perform market regulation for ATS and its subscribers. Provide a copy of the contract between the filer and the regulation services provider.

Exhibit N – Acknowledgement

The form of acknowledgement required by subsections 5.9(2) and 6.11(2) of National Instrument 21-101 *Marketplace Operation*.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 ____

(Name of alternative trading system)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

**FORM 21-101F3
QUARTERLY REPORT OF MARKETPLACE ACTIVITIES**

A – General Marketplace Information

1. Marketplace Name:
2. Period covered by this report:
3. Identification
 - A. Full name of marketplace (if sole proprietor, last, first and middle name):
 - B. Name(s) under which business is conducted, if different from item A:
 - C. Marketplace main street address:
4. A list of all amendments in the information in Form 21-101F1 or 21-101F2 that were filed with the Canadian securities regulatory authorities and implemented during the period covered by the report. The list must include a brief description of each amendment, the date filed and the date implemented.
5. A list of all amendments in the information in Form 21-101F1 or 21-101F2 that have been filed with the Canadian securities regulatory authorities but not implemented as of the end of the period covered by the report. The list must include a brief description of each amendment, the date filed and the reason why it was not implemented.
6. **Systems** – A log and summary description of systems failures, malfunctions, delays or security incidents during the quarter in respect of any systems, operated by or on behalf of the marketplace, that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing and a log and summary description of each security incident during the quarter for any system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing that, if breached, would pose a security threat to one or more of the previously mentioned systems. ~~If any outages occurred at any time during the period for any system relating to trading activity, including trading, routing or data, provide the date, duration, reason for the outage and its resolution.~~
7. **Systems Changes** – A brief description of any significant changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing that were planned, under development, or implemented during the quarter. Please provide the current status of the changes that are under development.

B – Marketplace Activity Information

Section 1 – Equity Marketplaces Trading Exchange-Listed Securities

1. **General trading activity** – For each type of security traded on the marketplace, provide the details (where appropriate) requested in the form set out in **Chart 1**. The information must be provided for transactions executed at the opening of the market, during regular trading hours, and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 1 – General trading activity for equity marketplaces trading exchange-listed securities

Category of Securities	Volume		Value		Number of Trades	
	Transparent	Non-transparent	Transparent	Non-transparent	Transparent	Non-transparent
Exchange-Traded Securities						
1. [repealed] Equity (includes preferred shares)						
2. [repealed] Exchange-traded funds (ETFs)						

3. Debt securities						
4. Options						
Foreign Exchange-Traded Securities						
1. Equity (includes preferred shares)						
2. ETFs						
3. Debt securities						
4. Options						

2. **Crosses** – Provide the details (where appropriate) requested in the form set out in **Chart 2** below for each type of cross executed on the marketplace for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 2 – Crosses

Types of Crosses	Volume	Value	Number of Trades
1. Intentional Crosses ¹			
2. Internal crosses			
3. Other crosses			

3. **Order information** – Provide the details (where appropriate) requested in the form set out in **Chart 3** below for each type of order in exchange traded securities executed on the marketplace for orders entered at the opening of the market, during regular trading and after hours during the quarter. Enter “none”, “N/A”, or “0” where appropriate.

Chart 3 – Order information

Types of Orders	Number of Orders	Orders Executed	Orders Cancelled ²
1. Anonymous ³			
2. Fully transparent			
3. Pegged Orders			
4. Fully hidden			
5. Separate dark facility of a transparent market			
6. Partially hidden (reserve)			
7. Total number of order entered during the quarter			

4. **Trading by security** – Provide the details requested in the form set out in **Chart 4** below for the 10 most traded securities on the marketplace (based on the volume of securities traded) for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

¹ See definition of an Internal and Intentional Cross in Section 1.1 of the Universal Market Integrity Rules.

² By cancellations, we mean “pure” cancellations, i.e. cancellations that do not result in a new and amended order.

³ Orders executed under ID 001.

INCLUDES COMMENT LETTERS

Chart 4 – Most traded securities

Category of Securities	Volume	Value	Number of Trades
Exchange-Traded Securities			
1. Equity (includes preferred shares) [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
2. ETFs [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
3. Debt [Enter issuer, maturity and coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
Foreign Exchange-Traded Securities			
1. Equity (includes preferred shares) [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
2. ETFs [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9.			

10.			
3. Debt [Name of Securities]			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

5. Trading by marketplace participant – ~~[repealed]~~ Provide the details requested in the form set out in **Chart 5** below for the top 10 marketplace participants (based on the volume of securities traded). The information must be provided for the total trading volume, including for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter "None", "N/A", or "0" where appropriate. Where a marketplace's marketplace participants are dealers and non-dealers, the marketplace must complete a separate chart for each.

Chart 5 – Concentration of trading by marketplace participant

Marketplace Participant Name	Total Active Volume	Total Passive Volume
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

6. Routing activities – Indicate the percentage of marketplace participants that used marketplace-owned or third party or affiliated routing services during the reporting period. In addition, provide the information in **Chart 6** below.

Chart 6 – Routing of marketplace orders

Number of orders executed on the reporting marketplace	
Number of orders routed to away marketplaces (list all marketplaces where orders were routed)	
Number of orders that are marked and treated as Directed Action Orders (DAO)	

Section 2 – Fixed Income Marketplaces

1. General trading activity – Provide the details (where appropriate) requested in the form set out in **Chart 7** below for each type of fixed income security traded on the marketplace for transactions executed during regular trading hours during the quarter. Enter "None", "N/A", or "0" where appropriate.

Chart 7 – Fixed income activity

Category of Securities	Value Traded	Number of Trades
Domestic Unlisted Debt Securities – Government		
1. Federal		
2. Federal Agency		

3. Provincial and Municipal		
Domestic Unlisted Debt Securities – Corporate		
Domestic Unlisted Debt Securities – Other		
Foreign Unlisted Debt Securities – Government		
Foreign Unlisted Debt Securities – Corporate		
Foreign Unlisted Debt Securities – Other		

2. Trading by security – Provide the details requested in the form set out in **Chart 8** below for each fixed income security traded on the marketplace during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 8 – Traded fixed income securities

Category of Securities	Value Traded	Number of Trades
Domestic Unlisted Debt Securities – Government		
1. Federal [Enter issuer, maturity, coupon]		
2. Federal Agency [Enter issuer, maturity, coupon]		
3. Provincial and Municipal [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities – Other [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Government [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Other [Enter issuer, maturity, coupon]		

3. Trading by marketplace participant – Provide the details requested in the form set out in **Chart 9** below for the top 10 marketplace participants for trades executed during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate. If marketplace participants are dealers and non-dealer institutions, the marketplace must complete a separate chart for each.

Chart 9 – Concentration of trading by marketplace participant

Marketplace Participant Name	Value Traded
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Section 3 – Securities Lending Marketplaces

1. **General lending activity** – Please provide details (where appropriate) requested in the form set out in **Chart 10** below for each type of securities loaned on the marketplace. Enter “None”, “N/A” or “0” where appropriate.

Chart 10 – Lending activity

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
Domestic		
1. Corporate Equity Securities		
1.1. Common Shares		
1.2. Preferred Shares		
2. Non-Corporate Equity Securities (e.g. trust units, partnership units, etc.) (please specify)		
3. Government Debt Securities		
4. Corporate Debt Securities		
5. Other Fixed Income Securities (please specify)		
Foreign		
1. Corporate Equity Securities		
1.1. Common Shares		
1.2. Preferred Shares		
2. Non-Corporate Equity Securities (e.g. trust units, partnership units, etc.) (Please specify)		
3. Government Debt Securities		
4. Corporate Debt Securities		
5. Other Fixed Income Securities (please specify)		

2. **Trading by marketplace participant** – Provide the details requested in the form set out in **Chart 11** and **Chart 12** below for the top 10 borrowers and lenders based on their aggregate value of securities borrowed or loaned, respectively, during the quarter.

Chart 11 – Concentration of activity by borrower

Borrower Name	Aggregate Value of Securities Borrowed During the Quarter
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Chart 12 – Concentration of activity by lender

Lender Name	Aggregate Value of Securities Loaned During the Quarter
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

3. Lending activity by security – Provide the details requested in the form set out in **Chart 13** below for the 10 most loaned securities on the marketplace (based on the quantity of securities loaned during the quarter). Enter “None”, “N/A” or “0” where appropriate.

Chart 13 – Most loaned securities

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
Domestic		
1. Common Shares [Name of Security]		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
2. Preferred Shares [Name of Security]		
1.		
2.		
3.		
4.		

INCLUDES COMMENT LETTERS

5. 6. 7. 8. 9. 10.		
3. Non-Corporate Equity Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
4. Government Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
5. Corporate Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
6. Other Fixed Income Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign		
1. Common Shares [Name of Security] 1.		

INCLUDES COMMENT LETTERS

2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Preferred Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
3. Non-Corporate Equity Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
4. Government Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
5. Corporate Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
6. Other Fixed Income Securities [Name of Security]		

1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Section 4 – Derivatives Marketplaces in Quebec

1. **General trading activity** – For each category of product traded on the marketplace, provide the details (where appropriate) requested in the form set out in **Chart 14** below. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for transactions executed in the early session, during the regular session, and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 14 – General trading activity

Category of Product	Volume	Number of Trades	Open Interest (Number/End of Quarter)
Futures Products			
1(a) Interest rate – short term			
1(b) Interest rate – long term			
2. Index			
3. ETF			
4. Equity			
5. Currency			
6. Energy			
7. Others, please specify			
Options Products			
1(a) Interest rate -short term			
1(b) Interest rate – long term			
2. Index			
3. ETF			
4. Equity			
5. Currency			
6. Energy			
7. Others, please specify			

2. **Trades resulting from pre-negotiation discussions** – Provide the details (where appropriate) requested in the form set out in **Chart 15** below by product and for each type of trade resulting from pre-negotiation discussions. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 15 – Trades resulting from pre-negotiation discussions

Type of Trade	Volume	Number of Trades
Futures Products		
A. Cross		
B. Pre-arranged		
C. Block		
D. Exchange for physical		
E. Exchange for risk		
F. Riskless basis cross		
G. Others, please specify		
Options Products		
A. Cross		
B. Pre-arranged		
C. Block		
D. Others, please specify		

3. Order information – Provide the details (where appropriate) requested in the form set out in **Chart 16** below by product and for each type of order in exchange traded contracts executed on the marketplace. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for orders entered in the early session, during the regular session and in the extended session during the quarter. Enter “none”, “N/A”, or “0” where appropriate.

Chart 16 – Order Information

Type of Orders	Volume	Number of Trades
1. Anonymous		
2. Fully transparent		
3. Pegged orders		
4. Fully hidden		
5. Separate dark facility of a transparent market		
6. Partially hidden (reserve, for example, iceberg orders)		

4. Trading by product – Provide the details requested in the form set out in **Chart 17** below. For each product other than options on ETFs and equity options, list the most actively-traded contracts (by volume) on the marketplace that in the aggregate constitute at least 75% of the total volume for each product during the quarter. The list must include at least 3 contracts. For options on ETFs and equity options, list the 10 most actively traded classes by volume. Details for options on ETFs and equity options must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 17 – Most traded contracts

Category of Product	Volume	Number of Trades	Open Interest (Number/End of Quarter)
Futures Products			
1. Name of products – 3 most-traded contracts (or more as applicable) 1. 2. 3.			
Options Products			
2. ETF [Classes] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
3. Equity [Classes] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
4. Other listed options (specify for each) – 3 most traded contracts (or more as applicable) 1. 2. 3.			

5. Concentration of trading by marketplace participant – Provide the details requested in the form set out in **Chart 18** below. For each product other than options on ETFs and equity options, list the top marketplace participants whose aggregate trading (by volume) constituted at least 75% of the total volume traded. The list must include at least 3 marketplace participants. For options on ETFs and equity options, provide the top 10 most active marketplace participants (by volume). The information must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 18 – Concentration of trading by marketplace participant

Product Name	Marketplace Participant Name	Volume
Futures		
Product Name (specify for each)	1. 2. 3. (more if necessary)	
Options		
ETF	1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	
Equity	1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	
Other options (specify for each)	1. 2. 3. (more if necessary)	

C – Certificate of Marketplace

The undersigned certifies that the information given in this report relating to the marketplace is true and correct.

DATED at _____ this _____ day of _____ 20____

(Name of Marketplace)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

FORM 21-101F4
CESSATION OF OPERATIONS REPORT FOR ALTERNATIVE TRADING SYSTEM

1. Identification:
- A. Full name of alternative trading system (if sole proprietor, last, first and middle name):
- B. Name(s) under which business is conducted, if different from item 1A:
2. Date alternative trading system proposes to cease carrying on business as an ATS:
3. If cessation of business was involuntary, date alternative trading system has ceased to carry on business as an ATS:
4. Please check the appropriate box:
- the ATS intends to carry on business as an exchange and has filed Form 21-101F1.
- the ATS intends to cease to carry on business.
- the ATS intends to become a member of an exchange.

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the ATS, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect must be furnished instead of such Exhibit.

Exhibit A

The reasons for the alternative trading system ceasing to carry on business as an ATS.

Exhibit B

A list of each of the securities the alternative trading system trades.

Exhibit C

The amount of funds and securities, if any, held for subscribers by the alternative trading system, or another person or company retained by the alternative trading system to hold funds and securities for subscribers and the procedures in place to transfer or to return all funds and securities to subscribers.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

(Name of alternative trading system)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

**FORM 21-101F5
INFORMATION STATEMENT
INFORMATION PROCESSOR**

TYPE OF FILING:

INITIAL FORM AMENDMENT ; AMENDMENT No. _____

GENERAL INFORMATION

1. Full name of information processor:
 2. Name(s) under which business is conducted, if different from item 1:
 3. If this filing makes a name change on behalf of the information processor in respect of the name set out in item 1 or item 2, enter the previous name and the new name:
 - Previous name:
 - New name:
 4. Head office
 - Address:
 - Telephone:
 - Facsimile:
 5. Mailing address (if different):
 6. Other offices
 - Address:
 - Telephone:
 - Facsimile:
 7. Website address:
 8. Contact employee
 - Name and title:
 - Telephone number:
 - Facsimile:
 - E-mail address:
 9. Counsel
 - Firm name:
 - Contact name:
 - Telephone number:
 - Facsimile:
 - E-mail address:
-
-

-
-
10. List of all marketplaces, dealers or other parties for which the information processor is acting or for which it proposes to act as an information processor. For each marketplace, dealer or other party, provide a description of the function(s) which the information processor performs or proposes to perform.
 11. List all types of securities for which information will be collected, processed, distributed or published by the information processor. For each such marketplace, dealer or other party, provide a list of all securities for which information with respect to quotations for, or transactions in, is or is proposed to be collected, processed, distributed or published.

Exhibits

File all Exhibits with the Initial Form. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect must be furnished instead of such Exhibit.

If the information processor files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the information processor must, in order to comply with sections 14.1 and 14.2 of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The information processor must provide a clean and a blacklined version showing changes from the previous filing.

Exhibit A – Corporate Governance

1. Legal status:
 - Corporation
 - Partnership
 - Other (specify):
2. Except where the information processor is a sole proprietorship, indicate the date and place where the information processor obtained its legal status (e.g., place of incorporation, place where partnership agreement was filed or where information processor was formed):
 - a) Date (DD/MM/YYYY) of formation.
 - b) Place of formation.
 - c) Statute under which the information processor was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent documents.
4. Provide the policies and procedures which promote independence of the information processor from the marketplaces, inter-dealer bond brokers and dealers that provide data.
5. Provide the policies and procedures which address the potential conflicts of interest between the interests of the information processor and its owners, partners, directors and officers.

Exhibit B – Ownership

List any person or company who owns 10 percent or more of the information processor's outstanding shares or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the information processor. Provide the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis through which such person exercises or may exercise such control or direction.

Exhibit C – Organization

1. A list of the partners, directors, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, identifying those individuals with overall responsibility for the integrity and timeliness of data reported to and displayed by the system (the "System") of the information processor, indicating the following for each:
-
-

1. Name.
2. Principal business or occupation and title.
3. Dates of commencement and expiry of present term of office or position.
4. Type of business in which each is primarily engaged and current employer.
5. ~~Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.~~
6. Whether the person is considered to be an independent director.
7. A list of the committees of the board, including their mandates.
8. A narrative or graphic description of the organizational structure of the information processor.

Exhibit D – Staffing

A description of the personnel qualifications for each category of professional, non-professional and supervisory employee employed by the information processor. Detail whether the personnel are employed by the information processor or a third party, identifying the employees responsible for monitoring the timeliness and integrity of data reported to and displayed by the System.

Exhibit E – Affiliates

For each affiliated entity of the information processor, and for any person or company with whom the information processor has a contractual or other agreement relating to the operations of the information processor, including loans or cross-guarantees, provide the following information:

1. Name and address of person or company.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Name of location and statute citation under which organized.
4. Date of incorporation in present form.
5. Description of nature and extent of affiliation and/or contractual or other agreement with the information processor.
6. Description of business or functions of the affiliates.
7. If a person or company has ceased to be an affiliated entity of the information processor during the previous year or ceased to have a contractual or other agreement relating to the operation of the information processor during the previous year, provide a brief statement of the reasons for termination of the relationship.

Exhibit F – Services

A description in narrative form of each service or function performed by the information processor. Include a description of all procedures utilized for the collection, processing, distribution, validation and publication of information with respect to orders and trades in securities.

Exhibit G – System and Operations

1. Describe the manner of operation of the System of the information processor that collects, processes, distributes and publishes information in accordance with National Instruments 21-101 and 23-101. This description must include the following:
 1. The means of access to the System.
 2. Procedures governing entry and display of quotations and orders in the System including data validation processes.
 3. A description of any measures used to verify the timeliness and accuracy of information received and disseminated by the System, including the processes to resolve data integrity issues identified.

-
4. The hours of operation of the System.
 5. A description of the training provided to users of the System and any materials provided to the users.
 2. Include a list of all computer hardware utilized by the information processor to perform the services or functions listed in Exhibit F, indicating:
 1. Manufacturer, and manufacturer's equipment and identification number.
 2. Whether purchased or leased (if leased, duration of lease and any provisions for purchase or renewal).
 3. Where such equipment (exclusive of terminals and other access devices) is physically located.
 3. Provide a description of the measures or procedures implemented by the information processor to provide for the security of any system employed to perform the functions of an information processor. This must include a general description of any physical and operational safeguards designed to prevent unauthorized access to the system.
 4. Provide a description of all backup systems which are designed to prevent interruptions in the performance of any information providing functions as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection or as a result of any independent source.
 5. Describe the business continuity and disaster recovery plans of the information processor, and provide any relevant documentation.
 6. List each type of interruption which has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause and duration. Provide the total number of interruptions which have lasted two minutes or less.
 7. Describe the procedures for reviewing system capacity, and indicate current and future capacity estimates.
 8. Quantify in appropriate units of measure the limits on the information processor's capacity to receive, collect, process, store or display the data elements included within each function.
 9. Identify the factors (mechanical, electronic or other) which account for the current limitations on the capacity to receive, collect, process, store or display the data elements included within each function described in section 8 above.
 10. Describe the procedures for conducting stress tests.

Exhibit H – Outsourcing

Where the information processor has outsourced the operation of any aspect of the services listed in Exhibit F to an arms-length third party, including any function related to the collection, consolidation, and dissemination of data, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the information processor, and the roles and responsibilities of the arms-length third party under the arrangement.
3. A copy of each material contract relating to any outsourced function.

Exhibit I – Financial Viability

1. Provide a business plan with pro forma financial statements and estimates of revenue.
2. Discuss the financial viability of the information processor in the context of having sufficient financial resources to properly perform its functions.

Exhibit J – Fees and Revenue Sharing

1. Provide a complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the information processor for its information services. This would include all fees to provide data and fees to receive the data from the information processor.
-

2. Where arrangements exist to share revenue from the sale of data disseminated by the information processor with marketplaces, inter-dealer bond brokers and dealers that provide data to the information processor in accordance with National Instrument 21-101, provide a complete description of the arrangements and the basis for these arrangements.

Exhibit K – Reporting to the Information Processor

1. List all persons and entities that provide data to the information processor in accordance with the requirements of National Instrument 21-101.
2. Provide a complete set of all forms, agreements and other materials pertaining to the provision of data to the information processor.
3. A description of any specifications or criteria required of marketplaces, inter-dealer bond brokers or dealers that provide securities information to the information processor for collection, processing for distribution or publication. Identify those specifications or criteria which limit, are interpreted to limit or have the effect of limiting access to or use of any services provided by the information processor and state the reasons for imposing such specifications or criteria.
4. For each instance during the past year in which any person or entity has been prohibited or limited to provide data by the information processor, indicate the name of each such person or entity and the reason for the prohibition or limitation.

Exhibit L – Access to the Services of the Information Processor

1. A list of all persons and entities who presently subscribe or who have notified the information processor of their intention to subscribe to the services of the information processor.
2. The form of contract governing the terms by which persons may subscribe to the services of an information processor.
3. A description of any specifications or criteria which limit, are interpreted to limit or have the effect of limiting access to or use of any services provided by the information processor and state the reasons for imposing such specifications or criteria. This applies to limits relating to providing information to the information processor and the limits relating to accessing the consolidated feed distributed by the information processor.
4. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the information processor, indicate the name of each such person and the reason for the prohibition or limitation.

Exhibit M – Selection of Securities for which Information Must Be Reported to the Information Processor

Where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with National Instrument 21-101, describe the manner of selection and communication of these securities. This description must include the following:

1. The criteria used to determine the securities for which information must be reported and the data which must be reported to the information processor.
2. The process for selection of the securities, including a description of the parties consulted in the process and the frequency of the selection process.
3. The process to communicate the securities selected and data to be reported to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by National Instrument 21-101. The description must include where this information is located.

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this ____ day of _____, 20 ____

(Name of information processor)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

FORM 21-101F6
CESSATION OF OPERATIONS REPORT FOR INFORMATION PROCESSOR

1. Identification:
 - A. Full name of information processor:
 - B. Name(s) under which business is conducted, if different from item 1A:
2. Date information processor proposes to cease carrying on business:
3. If cessation of business was involuntary, date information processor ceased to carry on business:

Exhibits

File all Exhibits with the Cessation of Operations Report. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect must be furnished instead of such Exhibit.

Exhibit A

The reasons for the information processor ceasing to carry on business.

Exhibit B

A list of each of the securities the information processor displays.

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

(Name of information processor)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

COMPANION POLICY 21-101 CP
MARKETPLACE OPERATION**PART 1 INTRODUCTION**

- 1.1 Introduction** – Exchanges, quotation and trade reporting systems and ATs are marketplaces that provide a market facility or venue on which securities can be traded. The areas of interest from a regulatory perspective are in many ways similar for each of these marketplaces since they may have similar trading activities. The regulatory regime for exchanges and quotation and trade reporting systems arises from the securities legislation of the various jurisdictions. Exchanges and quotation and trade reporting systems are recognized under orders from the Canadian securities regulatory authorities, with various terms and conditions of recognition. ATs, which are not recognized as exchanges or quotation and trade reporting systems, are regulated under National Instrument 21-101 Marketplace Operation (the Instrument) and National Instrument 23-101 Trading Rules (NI 23-101). The Instrument and NI 23-101, which were adopted at a time when new types of markets were emerging, provide the regulatory framework that allows and regulates the operation of multiple marketplaces.

The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to the Instrument, including:

- (a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and
- (b) the interpretation of various terms and provisions in the Instrument.

- 1.2 Definition of Exchange-Traded Security** – Section 1.1 of the Instrument defines an "exchange-traded security" as a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of the Instrument and NI 23-101.

If a security trades on a recognized exchange or recognized quotation and trade reporting system on a "when issued" basis, as defined in IROC's Universal Market Integrity Rules, the security would be considered to be listed on that recognized exchange or quoted on that recognized quotation and trade reporting system and would therefore be an exchange-traded security.

If no "when issued" market has been posted by a recognized exchange or recognized quotation and trade reporting system for a security, an ATS may not allow this security to be traded on a "when issued" basis on its marketplace.

A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed on a foreign exchange or quoted on a foreign quotation and trade reporting system, but is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of "foreign exchange-traded security".

- 1.3 Definition of Foreign Exchange-Traded Security** – The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at www.iosco.org.
- 1.4 Definition of Regulation Services Provider** – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace.

PART 2 MARKETPLACE**2.1 Marketplace**

- (1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Subparagraphs (a)(iii) and (a)(iv) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATs. A dealer that internalizes its orders for exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.
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- (2) Two of the characteristics of a "marketplace" are
- (a) that it brings together orders for securities of multiple buyers and sellers; and
 - (b) that it uses established, non-discretionary methods under which the orders interact with each other.
- (3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it
- (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or
 - (b) receives orders centrally for processing and execution (regardless of the level of automation used).
- (4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."
- (5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:
- (a) A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.
 - (b) A system that merely routes orders for execution to a facility where the orders are executed.
 - (c) A system that posts information about trading interests, without facilities for execution.

In the first two cases, the criteria of multiple buyers and sellers would not be met. In the last two cases, routing systems and bulletin boards do not establish non-discretionary methods under which parties entering orders interact with each other.

- (6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is required to be registered as a dealer under securities legislation.
- (7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IIROC Rule 36 and IIROC Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to Rule 36 or IIROC Rule 2100, but will be subject to all other IIROC requirements applicable to a dealer.
- (8) Section 1.2 of the Instrument contains an interpretation of the definition of "marketplace". The Canadian securities regulatory authorities do not consider a system that only routes unmatched orders to a marketplace for execution to be a marketplace. If a dealer uses a system to match buy and sell orders or pair orders with contra-side orders outside of a marketplace and route the matched or paired orders to a marketplace as a cross, the Canadian securities regulatory authorities may consider the dealer to be operating a marketplace under subparagraph (a)(iii) of the definition of "marketplace". The Canadian securities regulatory authorities encourage dealers that operate or plan to operate such a system to meet with the applicable securities regulatory authority to discuss the operation of the system and whether the dealer's system falls within the definition of "marketplace".

PART 3 CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSs

3.1 Exchange

- (1) Securities legislation of most jurisdictions does not define the term "exchange".
- (2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace
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- (a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;
 - (b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;
 - (c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or
 - (d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.
- (3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.
- (4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

- (1) Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.
- (2) A quotation and trade reporting system is considered to have "quoted" a security if
- (a) the security has been subject to a listing or quoting process, and
 - (b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

3.3 Definition of an ATS

- (1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as
- (a) requiring listing agreements,
 - (b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,
 - (c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and
 - (d) disciplining subscribers.

A marketplace, other than a quotation and trade reporting system, that engages in any of these activities or meets these criteria would, in the view of the Canadian securities regulatory authorities, be an exchange and would have to be recognized as such in order to carry on business, unless exempted from this requirement by the Canadian securities regulatory authorities.

- (2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be "requirements governing the conduct of subscribers".

- (3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

3.4 Requirements Applicable to ATSs

- (1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.
- (2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.
- (3) Under paragraph 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.
- (4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under paragraph 6.1(a) and all other requirements in the Instrument and in NI 23-101 and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.
- (5) Paragraph 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IROC is the only entity that would come within the definition.
- (6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.
- (7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS and its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, debt securities or options.
- (8) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

PART 4 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

- (1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.
- (2) In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities will look at a number of factors, including
- (a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;

- (b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;
- (c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions;
- (d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors;
- (e) whether the exchange or quotation and trade reporting system has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;
- (f) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and
- (g) whether the exchange or quotation and trade reporting system's process for setting fees is fair, transparent and appropriate, and whether the fees are equitably allocated among the participants, issuers and other users of services, do not have the effect of creating barriers to access and at the same time ensure that the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions.

4.2 Process

Although the basic requirements or criteria for recognition of an exchange or quotation and trade reporting system may be similar in various jurisdictions, the precise requirements and the process for seeking a recognition or an exemption from recognition in each jurisdiction is determined by that jurisdiction.

PART 5 ORDERS

5.1 Orders

- (1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders". However, if those prices or quantities are implied and determinable, for example, by knowing the features of the marketplace, the indications of interest may be considered an order.
- (2) The terminology used is not determinative of whether an indication of interest constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty (i.e. the indication is "actionable"). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated or an implied price, based on understandings or past dealings, will be viewed as an order.
- (3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.
- (4) The securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of the Instrument to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties provided that

- (a) order details are shown only to the negotiating parties,
- (b) other than as provided by paragraph (a), no actionable indication of interest or order is displayed by either party or the marketplace, and
- (c) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Instrument.

- (5) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

PART 6 MARKETPLACE INFORMATION AND FINANCIAL STATEMENTS

6.1 Forms Filed by Marketplaces

- (1) The definition of marketplace includes exchanges, quotation and trade reporting systems and ATSS. The legal entity that is recognized as an exchange or quotation and trade reporting system, or registered as a dealer in the case of an ATS, owns and operates the market or trading facility. In some cases, the entity may own and operate more than one trading facility. In such cases the marketplace may file separate forms in respect of each trading facility, or it may choose to file one form covering all of the different trading facilities. If the latter alternative is chosen, the marketplace must clearly identify the facility to which the information or changes apply.
- (2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain proprietary financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.
- (3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and industry participants to be better informed as to how securities trade on the marketplace.
- (4) Under subsection 3.2(1) of the Instrument, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets.

A change would be considered to significantly impact the marketplace if it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or result in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the regulation services provider.

The following types of changes are considered to be significant changes as they would always have a significant impact:

- (a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;
- (b) new or changes to order types, and
- (c) changes in the fees and the fee model of the marketplace.

The following may be considered by the Canadian securities regulatory authorities as significant changes, depending on whether they have a significant impact:

- (d) new or changes to the services provided by the marketplace, including the hours of operation;
- (e) new or changes to the means of access to the market or facility and its services;
- (f) new or changes to types of securities traded on the marketplace;

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- (g) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;
 - (h) new or changes to types of marketplace participants;
 - (i) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;
 - (j) changes to the corporate governance of the marketplace, including changes to the composition requirements for the board of directors or any board committees and changes to the mandates of the board of directors or any board committees;
 - (k) changes in control over marketplaces;
 - (l) changes in affiliates that provide services to or on behalf of the marketplace;
 - (m) new or changes in outsourcing arrangements for key marketplace services or systems; and
 - (n) new or changes in custody arrangements.
- (5) Changes to information in Form 21-101F1 or Form 21-101F2 that
- (a) do not have a significant impact on the marketplace, its market structure, marketplace participants, investors, issuers or the Canadian capital markets, or
 - (b) are housekeeping or administrative changes such as
 - (i) changes in the routine processes, policies, practices, or administration of the marketplace,
 - (ii) changes due to standardization of terminology,
 - (iii) corrections of spelling or typographical errors,
 - (iv) necessary changes to conform to applicable regulatory or other legal requirements,
 - (v) minor system or technology changes that would not significantly impact the system or its capacity, and
 - (vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace,
- would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument.
- (6) As indicated in subsection (4) above, the Canadian securities regulatory authorities consider a change in a marketplace's fees or fee model to be a significant change. However, the Canadian securities regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee model of marketplaces, marketplaces may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3.2(2) of the Instrument provides that marketplaces may provide information describing the change in fees or fee structure in a shorter timeframe, at least 15 ~~seven~~ business days before the expected implementation date of the change in fees or fee structure.
- (7) For the changes referred to in subsection 3.2(3) of the Instrument, the Canadian securities regulatory authorities may review these filings to ascertain the appropriateness of the categorization of such filings. The marketplace will be notified in writing if there is disagreement with respect to the categorization of the filing.
- (8) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Instrument. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.
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- (8.1) In order to ensure records regarding the information in a marketplace's Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify, within 30 days after the end of each calendar year, that the information contained in the marketplace's Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and the marketplace is operating as described in the applicable form. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be filed pursuant to subsection 3.2(5) of the Instrument. The certification under subsection 3.2(4) is also separate and apart from the form of certification in Form 21-101F1 and Form 21-101F2.
- (8.2) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument.
- (9) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the calendar quarter ending March 31), July 30 (for the calendar quarter ending June 30), October 30 (for the calendar quarter ending September 30) and January 30 (for the calendar quarter ending December 31).

6.2 Filing of Financial Statements

Part 4 of the Instrument sets out the financial reporting requirements applicable to marketplaces. Subsections 4.1(2) and 4.2(2) respectively require an ATS to file audited financial statements initially, together with Form 21-101F2, and on an annual basis thereafter. These financial statements may be in the same form as those filed with IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

Section 4.3 requires recognized exchanges and recognized quotation and trade reporting systems to file interim financial reports within 45 days after the end of each interim period. In the view of the Canadian securities regulatory authorities, the ~~These financial statements may be filed on an unaudited, consolidated basis without notes. The term interim period means a period commencing on the first day of the recognized exchange's or quotation and trade reporting system's financial year and ending nine, six or three months before the end of the same financial year.~~

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The Canadian securities regulatory authorities expect that financial ~~Financial statements and reports filed under subsections 4.2 and 4.3 should must~~ disclose the accounting principles used to prepare them. For clarity, financial statements and reports should include:

- (a) _____ in the case of annual financial statements, an unreserved statement of compliance with IFRS;
- (b) _____ in the case of an interim financial report ~~statements~~, an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*.

~~These financial statements may be in the same form as those filed with IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.~~

PART 7 MARKETPLACE REQUIREMENTS

7.1 Access Requirements

- (1) Section 5.1 of the Instrument sets out access requirements that apply to a marketplace. The Canadian securities regulatory authorities note that the requirements regarding access for marketplace participants do not restrict the marketplace from maintaining reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace.
- (2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a marketplace should permit fair and efficient access to
- a marketplace participant that directly accesses the marketplace,
 - a person or company that is indirectly accessing the marketplace through a marketplace participant, or
 - another marketplace routing an order to the marketplace.

The reference to “a person or company” in paragraph (b) includes a system or facility that is operated by a person or company.

- (3) The reference to “services” in section 5.1 of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing, data and includes co-location.
- (4) Marketplaces that send indications of interest to a selected smart order router or other system should send the information to other smart order routers or systems to meet the fair access requirements of the Instrument.
- (5) Marketplaces are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a marketplace should consider a number of factors, including
- (a) the value of the security traded,
 - (b) the amount of the fee relative to the value of the security traded,
 - (c) the amount of fees charged by other marketplaces to execute trades in the market,
 - (d) with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace, and,
 - (e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a marketplace unreasonably condition or limit access to its services. With respect to trading fees, it is the view of the Canadian securities regulatory authorities that a trading fee equal to or greater than the minimum trading increment as defined in IIROC’s Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a marketplace’s services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a marketplace’s services when taking into account factors including those listed above.

7.2 Public Interest Rules – Section 5.3 of the Instrument sets out the requirements applicable to the rules, policies and similar instruments adopted by recognized exchanges and recognized quotation and trade reporting systems. These requirements acknowledge that recognized exchanges and quotation and trade reporting systems perform regulatory functions. The Instrument does not require the application of these requirements to an ATS’s trading requirements. This is because, unlike exchanges, ATSs are not permitted to perform regulatory functions, other than setting requirements regarding conduct in respect of the trading by subscribers on the marketplace, i.e. requirements related to the method of trading or algorithms used by their subscribers to execute trades in the system. However, it is the expectation of the Canadian securities regulatory authority that the requirement in section 5.7 of the Instrument that marketplaces take reasonable steps to ensure they operate in a manner that does not interfere with the maintenance of fair and orderly markets, applies to an ATS’s requirements. Such requirements may include those that deal with subscriber qualification, access to the marketplace, how orders are entered, interact, execute, clear and settle.

7.3 Compliance Rules – Section 5.4 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to have appropriate procedures to deal with violations of rules, policies or other similar instruments of the exchange or quotation and trade reporting system. This section does not preclude enforcement action by any other person or company, including the Canadian securities regulatory authorities or the regulation services provider.

7.4 Filing of Rules – Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file all rules, policies and other similar instruments and amendments as required by the securities regulatory authority. Initially, all rules, policies and other similar instruments will be reviewed before implementation by the exchange or quotation and trade reporting system. Subsequent to recognition, the securities regulatory authority may develop and implement a protocol that will set out the procedures to be followed with respect to the review and approval of rules, policies and other similar instruments and amendments.

7.5 Review of Rules – The Canadian securities regulatory authorities review the rules, policies and similar instruments of a recognized exchange or recognized quotation and trade reporting system in accordance with the recognition order and rule protocol issued by the jurisdiction in which the exchange or quotation and trade reporting system is recognized. The rules of recognized exchanges and quotation and trade reporting systems are included in their rulebooks, and the principles and requirements applicable to these rules are set out in section 5.3 of the Instrument.

For an ATS, whose trading requirements, including any trading rules, policies or practices, are incorporated in Form 21-101F2, any changes would be filed in accordance with the filing requirements applicable to changes to information in Form 21-101F2 set out in subsections 3.2(1) and 3.2(3) of the Instrument and reviewed by the Canadian securities regulatory authorities in accordance with staff practices in each jurisdiction.

7.6 Fair and Orderly Markets

- (1) Section 5.7 of the Instrument establishes the requirement that a marketplace take reasonable steps to ensure it operates in a way that does not interfere with the maintenance of fair and orderly markets. This applies both to the operation of the marketplace itself and to the impact of the marketplace's operations on the Canadian market as a whole.
- (2) This section does not impose a responsibility on the marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or quotation and trade reporting system that has assumed responsibility for monitoring the conduct of its marketplace participants directly rather than through a regulation services provider. However, marketplaces are expected in the normal course to monitor order entry and trading activity for compliance with the marketplace's own operational policies and procedures. They should also alert the regulation services provider if they become aware that disorderly or disruptive order entry or trading may be occurring, or of possible violations of applicable regulatory requirements.
- (3) Part of taking reasonable steps to ensure that a marketplace's operations do not interfere with fair and orderly markets necessitates ensuring that its operations support compliance with regulatory requirements including applicable rules of a regulation services provider. This does not mean that a marketplace must system-enforce all regulatory requirements. However, it should not operate in a manner that to the best of its knowledge would cause marketplace participants to breach regulatory requirements when trading on the marketplace.

7.7 Confidential Treatment of Trading Information

- (0.1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used solely for capital markets research and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. However, if the marketplace decides to disclose this information, it must ensure that certain terms and conditions are met to ensure that the marketplace participant's information is not misused.
- (0.2) In order for a marketplace to disclose a marketplace participant's order or trade information, subparagraphs 5.10(1.1)(a)-(b) of the Instrument require a marketplace to reasonably believe that the information will be used by the recipient solely for the purposes of capital markets research and to reasonably believe that if information identifying, directly or indirectly, a marketplace participant, or a client of the marketplace participant is released, the information is necessary for the research and that the purpose of the research is not intended to identify the marketplace participant or client or to identify a trading strategy, transactions, or market positions of the marketplace participant or client. The Canadian securities regulatory authorities expect that a marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, the Canadian securities regulatory authorities also expect the marketplace to make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or a client of the marketplace participant or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.
- (0.3) In considering releasing order or trade information, the Canadian securities regulatory authorities expect a marketplace to exercise caution regarding information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.
- (0.4) Subparagraph 5.10(1.1)(c) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that the

person or company agrees to use the order and trade information only for capital markets research purposes. In the view of the Canadian securities regulatory authorities, commercialization of the information by the recipient, for example by using the information for the purposes of trading, advising others to trade or for reverse engineering a trading strategy, would not constitute use of the information for capital markets research purposes.

- (0.5) Subparagraph 5.10(1.1)(c)(i) of the Instrument provides that the agreement must also prohibit the recipient from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data.
- (0.6) To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that recipients will not publish or disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times and that the data is kept for no longer than a reasonable period of time following the completion of the research and publication process.
- (0.7) The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and have the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the agreement or of the confidentiality of the information provided. In the view of the Canadian securities regulatory authorities, reasonable steps in the event of an actual or apparent breach of the agreement or of the confidentiality of the information may include the marketplace seeking an injunction preventing any unauthorized use or disclosure of the information by a recipient.
- (0.8) Subparagraph 5.10(1.1)(c)(ii) of the Instrument provides for a limited carve-out from the restraints on the use and disclosure of the information by a recipient for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the research prior to the publication of the results of the research. In particular, clause 5.10(1.1)(c)(ii)(C) requires a marketplace to enter into a written agreement with a person or company receiving order or trade information from the marketplace that provides that the person or company may disclose information used in connection with research submitted to a publication so long as the person or company obtains a written agreement from the publisher and anyone involved in the verification of the research that provides for certain restrictions on the use and disclosure of the information by the publisher or the other person or company. A marketplace may consider requiring a person or company that proposes to disclose order or trade information pursuant to subparagraph 5.10(1.1)(c)(ii) to acknowledge that it has obtained the agreement required by clause 5.10(1.1)(c)(ii)(C) at the time that it notifies the marketplace prior to disclosing the information for verification purposes, as required by clause 5.10(1.1)(c)(ii)(B).
- (1) Subsection 5.10 (2) of the Instrument provides that a marketplace must not carry on business as a marketplace unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's trading information. These include
- (a) limiting access to the trading information of marketplace participants, such as the identity of marketplace participants and their orders, to those employees of, or persons or companies retained by, the marketplace to operate the system or to be responsible for its compliance with securities legislation; and
 - (b) having in place procedures to ensure that employees of the marketplace cannot use such information for trading in their own accounts.
- (2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the marketplace, whether or not they have direct responsibility for the operation of the marketplace.
- (3) Nothing in section 5.10 of the Instrument prohibits a marketplace from complying with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. This statement is necessary because an investment dealer that operates a marketplace may be an intermediary for the purposes of National Instrument 54-101, and may be required to disclose information under that Instrument.

7.8 Management of Conflicts of Interest

- (1) Marketplaces are required under section 5.11 of the Instrument to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it

provides. These may include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.

- (2) The marketplace's policies should also take into account conflicts for owners that are marketplace participants. These may include inducements to send order flow to the marketplace to obtain a larger ownership position or to use the marketplace to trade against their clients' order flow. These policies should be disclosed as provided in paragraph 10.1(e) of the Instrument.

7.9 Outsourcing – Section 5.12 of the Instrument sets out the requirements that marketplaces that outsource any of their key services or systems to a service provider, which may include affiliates or associates of the marketplace, must meet. Generally, marketplaces are required to establish policies and procedures to evaluate and approve these outsourcing agreements. Such policies and procedures would include assessing the suitability of potential service providers and the ability of the marketplace to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facilities. The requirements under section 5.12 of the Instrument apply regardless of whether the outsourcing arrangements are with third- party service providers, or with affiliates of the marketplaces.

7.10 Access Arrangements with a Service Provider – If a third party service provider provides a means of access to a marketplace, section 5.13 of the Instrument requires the marketplace to ensure the third party service provider complies with the written standards for access the marketplace has established pursuant to paragraph 5.1(2)(a) of the Instrument when providing access services. A marketplace must establish written standards for granting access to each of its services under paragraph 5.1(2)(a) and the Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that these written standards are complied with when access to its platform is provided by a third party.

PART 8 RISK DISCLOSURE TO MARKETPLACE PARTICIPANTS

8.1 Risk disclosure to marketplace participants – Subsections 5.9(2) and 6.11(2) of the Instrument require a marketplace to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature of the marketplace participant or requesting that the marketplace participant initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the marketplace participant has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that an acknowledgement is obtained from the marketplace participant in a timely manner.

8.2 [repealed]

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

9.1 Information Transparency Requirements for Exchange-Traded Securities

- (1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. The Canadian securities regulatory authorities consider that a marketplace that sends information about orders of exchange-traded securities, including indications of interest that meet the definition of an order, to a smart order router is "displaying" that information. The marketplace would be subject to the transparency requirements of subsection 7.1(1) of the Instrument. The transparency requirements of subsection 7.1(1) of the Instrument do not apply to a marketplace that displays orders of exchange-traded securities to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace, as long as these orders meet a minimum size threshold set by the regulation services provider. In other words, the only orders that are exempt from the transparency requirements are those meeting the minimum size threshold. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities that it executes to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an

information vendor that meets the standards set by that regulation services provider.

- (2) In complying with sections 7.1 and 7.2 of the Instrument, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.
- (2.1) Subsections 7.1(3) and 7.2(2) prohibit a marketplace from making available order and trade information to any person or company before it makes the information available to the information processor or, if there is no information processor, to an information vendor. The Canadian securities regulatory authorities acknowledge that there may be differences between the time at which a marketplace participant that takes in market data directly from a marketplace receives the order and trade information and the time at which a marketplace participant that takes in market data from the information processor receives the information. However, in complying with subsections 7.1(3) and 7.2(2) of the Instrument, the Canadian securities regulatory authorities expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.
- (3) **[repealed]**
- (4) **[repealed]**
- (5) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

9.2 [repealed]

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

- (1) The requirements for pre-trade and post-trade transparency for unlisted debt securities are set out in sections 8.1 and 8.2 of the Instrument. The detailed reporting requirements, such as who must report information, deadlines for reporting, delays in publication of information and caps on displayed volume are determined by the information processor, subject to approval by the Canadian securities regulatory authorities as described below, and may be different for different government debt securities and corporate debt securities. The information processor is also required to make the reporting requirements, deadlines, dissemination delays and volume caps publicly available.
- (2) **[repealed]**
- (3) **[repealed]**
- (4) **[repealed]**
- (5) **[repealed]**
- (6) **[repealed]**
- (7) **[repealed]**
- (8) **[repealed]**
- (9) The information processor may propose changes to its transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. Both the initial transparency requirements and any proposed changes will be subject to consultation with market participants through a notice and comment process, prior to approval by the Canadian securities regulatory authorities.

10.2 [repealed]

10.3 [repealed]

PART 11 MARKET INTEGRATION

11.1 [repealed]

11.2 [repealed]

11.3 [repealed]

11.4 [repealed]

11.5 **Market Integration** – Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.

PART 12 TRANSPARENCY OF MARKETPLACE OPERATIONS

12.1 Transparency of Marketplace Operations

- (1) Section 10.1 of the Instrument requires that marketplaces make publicly available certain information pertaining to their operations and services. While section 10.1 sets out the minimum disclosure requirements, marketplaces may wish to make publicly available other information, as appropriate. Where this information is included in a marketplace's rules, regulations, policies and procedures or practices that are publicly available, the marketplace need not duplicate this disclosure.
- (2) Paragraph 10.1(a) requires marketplaces to disclose publicly all fees, including listing, trading, co-location, data and routing fees charged by the marketplace, an affiliate or by a third party to which services have been directly or indirectly outsourced or which directly or indirectly provides those services. This means that a marketplace is expected to publish and make readily available the schedule(s) of fees charged to any and all users of these services, including the basis for charging each fee (e.g., a per share basis for trading fees, a per subscriber basis for data fees, etc.) and would also include any fee rebate or discount and the basis for earning the rebate or discount. With respect to trading fees, it is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed in this context.
- (3) Paragraph 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of the priority of execution for all order types and the types of crosses that may be executed on the marketplace. A marketplace should also disclose whether it sends information regarding indications of interest or order information to a smart order router.
- (4) Paragraph 10.1(e) requires a marketplace to disclose its conflict of interest policies and procedures. For conflicts arising from the ownership of a marketplace by marketplace participants, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients at least quarterly. This is consistent with the marketplace participant's existing obligations to disclose conflicts of interest under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*. A marketplace should disclose if a marketplace or affiliated entity of a marketplace intends to trade for its own account on the marketplace against or in competition with client orders.
- (5) Paragraph 10.1(f) requires marketplaces to disclose a description of any arrangements where the marketplace refers its participants to the services of a third-party provider where the marketplace receives some benefit (fee rebate, payment, etc.) if the marketplace participant uses the services of the third- party service provider, and has a potential conflict of interest.
- (6) Paragraph 10.1(g) requires marketplaces that offer routing services to disclose a description of how routing decisions are made. The subsection applies whether routing is done by a marketplace-owned smart order router, by an affiliate of a marketplace, or by a third- party to which routing was outsourced.
- (7) Paragraph 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Instrument requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a

marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party vendors.

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

- 13.1 Recordkeeping Requirements for Marketplaces** – Part 11 of the Instrument requires a marketplace to maintain certain records. Generally, under provisions of securities legislation, the securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.
- 13.2 Synchronization of Clocks** – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the trading of the relevant securities on marketplaces, and by, as appropriate, inter-dealer bond brokers or dealers. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system are also required to coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 14 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

- 14.1 Systems Requirements** – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument whether operating in-house or outsourced.
- (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain ~~an~~ adequate internal controls over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants – Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO) or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST). We are of the view that internal controls include controls that support the processing integrity of the models used to quantify, aggregate, and manage the marketplace's risks. ~~'Information Technology Control Guidelines' from the Canadian Institute of Chartered Accountants (CICA) and 'COBIT' @ 5 Management Guidelines, from the IT Governance Institute, © 2012 ISACA, IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management.~~
- (2) Capacity management requires that a marketplace monitor, review, and test (including stress test) the actual capacity and performance of its systems on an ongoing basis. Accordingly, paragraph ~~Paragraph~~ 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, processing capability~~performance~~ and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once every 12 months~~a year~~. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.
- (2.1) Paragraph 12.1(c) of the Instrument requires a marketplace to promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or ~~refers to a material~~ security incident that is material breach. A failure, malfunction, delay or security incident is considered "material" if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the marketplace's operations or on participants. Non-material events may become material if they recur or have a cumulative effect. With respect to the prompt notification requirement, the Canadian securities regulatory authorities expect that a marketplace will provide notification of a systems failure, malfunction, delay or security incident that is material, orally or in writing, upon escalating the matter to its senior management. It is expected that, as part of the required notification, the marketplace will provide updates on the status of the failure, malfunction, delay or incident and the resumption of service. The marketplace should also have comprehensive and well-documented procedures in

place to record, report, analyze, and resolve all incidents. In this regard, the marketplace should undertake a “post-incident” review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the marketplace’s participants. The results of such internal reviews are required to be communicated to the regulator or, in Québec, the securities regulatory authority as soon as practicable. A ~~material security incident~~~~breach~~ is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of any of the systems that support the functions listed in section 12.1 or any system that shares network resources with one or more of these systems or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. Any security incident that requires non-routine measures or resources by the marketplace or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of the Instrument or any system that shares network resources with one or more of these systems. ~~Virtually any security breach~~ would be considered material and thus reportable to the regulator or, in Québec, the securities regulatory authority. The onus would be on the marketplace to document the reasons for any security ~~incident~~~~breach~~ it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security ~~incident~~~~breach~~. The criteria for public disclosure of a security ~~incident~~~~breach~~ should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected.

- (3) ~~-Subsection 12.2(1) of the Instrument requires a marketplace to engage one or more qualified external auditors a qualified party to conduct an annual independent systems review assessment to assess ensure that the marketplace’s is in compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the “Trust Services Criteria” developed by the American Institute of CPAs and CPA Canada. The focus of the assessment of any systems that share network resources with trading-related systems required under paragraph subsection 12.2(1)(b) would be to address potential threats from a security incident breach that could negatively impact a trading-related system. For purposes of subsection 12.2(1), we consider a A-qualified external auditor to be party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified external auditor to conduct the independent systems review party, a marketplace is expected to should discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period.~~
- (3.1) ~~Section 12.1.2 of the Instrument requires a marketplace to engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls. We would expect a marketplace to implement appropriate improvements where necessary. For the purposes of section 12.1.2, we consider a qualified party to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third party information system consultants, as well as employees of the marketplace or an affiliated entity of the marketplace but may not be persons responsible for the development or operation of the systems or capabilities being tested. The regulator or, in Québec, the securities regulatory authority may, in accordance with securities legislation, require the marketplace to provide a copy of any such assessment. The Canadian securities regulatory authorities also note the critical importance of an appropriate system of cyber security controls over the systems described in section 12.1 of the Instrument. We further note that, as a matter of best practices, marketplaces may also conduct a vulnerability assessment of these controls in addition to the independent systems review required by subsection 12.2(1) of the Instrument. To the extent that a marketplace carries out, or engages an independent party to carry out on its behalf, a vulnerability assessment and prepares a report of that assessment as part of the development and maintenance of the controls required by section 12.1 of the Instrument, we expect a marketplace to provide that report to the regulator or, in Québec, the securities regulatory authority in addition to the report required to be provided by subsection 12.2(2) of the Instrument.~~
- (4) ~~[deleted] Paragraph 12.1(c) of the Instrument requires the marketplace to notify the regulator or, in Québec, the securities regulatory authority of any material systems failure. The Canadian securities regulatory authorities consider a failure, malfunction or delay to be “material” if the marketplace would in the normal course of operations escalate the matter to or inform its senior management ultimately accountable for technology. The Canadian securities regulatory authorities also expect that, as part of this notification, the marketplace will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.~~

- (5) Under section 15.1 of the Instrument, ~~the~~ regulator or, in Québec, the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage one or more qualified external auditors ~~qualified party~~ to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or, in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest and the length of the exemption, the regulator or, in Québec, the securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, changes to systems or staff of the marketplace and whether the marketplace has experienced material systems failures, malfunction or delays.

14.2 Marketplace Technology Specifications and Testing Facilities

- (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.

The Canadian securities regulatory authorities consider a material change to a marketplace's technology requirements to include a change that would require a person or company interfacing with or accessing the marketplace to incur a significant amount of systems-related development work or costs in order to accommodate the change or to fully interact with the marketplace as a result of the change. Such material changes could include changes to technology requirements that would significantly impact a marketplace participant's trading activities, such as the introduction of an order type, or significant changes to a regulatory feed that a regulation services provider takes in from the marketplace.

- (2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.
- (2.1) Paragraph 12.3(3)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (2.2) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(3.1) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

14.2.1 Uniform Test Symbols

- (1) Section 12.3.1 of the Instrument requires a marketplace to use uniform test symbols for the purpose of performing testing in its production environment. In the view of the Canadian securities regulatory authorities, the use of uniform test symbols is in furtherance to a marketplace's obligations at section 5.7 of the Instrument to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

- (2) The use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace's production environment; it is not intended to enable stress testing by marketplace participants. The Canadian securities regulatory authorities are of the view that a marketplace may suspend access to a test symbol where its use in a particular circumstance reasonably represents undue risk to the operation or performance of the marketplace's production environment. The Canadian securities regulatory authorities also note that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces.

14.3 Business Continuity Planning

- (1) [Business continuity management is a key component of a marketplace's operational risk-management framework.](#) Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.
- (2) Paragraph 12.4(1)(b) of the Instrument also requires a marketplace to test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (3) Section 12.4 of the Instrument also establishes requirements for marketplaces meeting a minimum threshold of total dollar value of trading volume, recognized exchanges or quotation and trade reporting systems that directly monitor the conduct of their members, and regulation services providers that have entered into a written agreement with a marketplace to conduct market surveillance to establish, implement, and maintain policies and procedures reasonably designed to ensure that critical systems can resume operation within certain time limits following the declaration of a disaster. In fulfilling the requirement to establish, implement and maintain the policies and procedures prescribed by section 12.4, the Canadian securities regulatory authorities expect that these policies and procedures will form part of the entity's business continuity and disaster recovery plans and that the entities subject to the requirements at subsections 12.4(2) to (4) of the Instrument will be guided by their own business continuity plans in terms of what constitutes a disaster for purposes of the requirements.

- 14.4 Industry-Wide Business Continuity Tests** – Section 12.4.1 of the Instrument requires a marketplace, recognized clearing agency, information processor, and participant dealer to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority. The Canadian securities regulatory authorities expect that marketplaces will make their production environments available for purposes of all industry-wide business continuity tests.

PART 15 CLEARING AND SETTLEMENT

- 15.1 Clearing and Settlement** – Subsection 13.1(1) of the Instrument requires all trades executed through a marketplace to be reported and settled through a clearing agency. Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.
- 15.2 Access to Clearing Agency of Choice** – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.

The Canadian securities regulatory authorities are of the view that where a clearing agency performs only clearing services (and not settlement or depository services) for equity or other cash-product marketplaces in Canada, it would need to have access to the existing securities settlement and depository infrastructure on non-discriminatory and reasonable commercial terms.

Subsection 13.2(2) of the Instrument provides that subsection 13.2(1) does not apply to trades in standardized derivatives or exchange-traded securities that are options.

PART 16 INFORMATION PROCESSOR
16.1 Information Processor

- (1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).
- (2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all **persons and companies** that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any **person or company** when collecting, processing, distributing or publishing that information.
- (3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.

16.2 Selection of an Information Processor

- (1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority and in Ontario and Saskatchewan, only if it is designated by the securities regulatory authority. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,
 - (a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;
 - (b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms;
 - (c) personnel qualifications;
 - (d) whether the information processor has sufficient financial resources for the proper performance of its functions;
 - (e) the existence of another entity performing the proposed function for the same type of security;
 - (f) the systems report referred to in paragraph 14.5(c) of the Instrument.
- (2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.
- (3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

16.3 Change in Information – Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. The Canadian securities regulatory authorities would consider significant changes to include:

- (a) changes to the governance of the information processor, including the structure of its board of directors and changes in the board committees and their mandates;
 - (b) changes in control over the information processor;
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- (c) changes affecting the independence of the information processor, including independence from the persons and companies that provide their data to meet the requirements of the Instrument;
 - (d) changes to the services or functions performed by the information processor;
 - (e) changes to the data products offered by the information processor;
 - (f) changes to the fees and fee structure related to the services provided by the information processor;
 - (g) changes to the revenue sharing model for revenues from fees related to services provided by the information processor;
 - (h) changes to the systems and technology used by the information processor, including those affecting its capacity;
 - (i) new arrangements or changes to arrangements to outsource the operation of any aspect of the services of the information processor;
 - (j) changes to the means of access to the services of the information processor; and
 - (k) in the case of an information processor for government debt securities or corporate debt securities, changes to the information transparency requirements referred to in paragraph 14.8(b) of the Instrument.

These would not include housekeeping or administrative changes to the information included in Form 21-101F5, such as changes in the routine processes, practice or administration of the information processor, changes due to standardization of terminology, or minor system or technology changes that do not significantly impact the system of the information processor or its capacity. Such changes would be filed in accordance with the requirements outlined in subsection 14.2(2) of the Instrument.

- 16.3.1 Filing of Financial Statements** – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited.
- 16.4 System Requirements** – The guidance in section 14.1 of this Companion Policy applies to the systems requirements for an information processor.
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ANNEX C

LOCAL MATTERS

There are no local matters for Alberta to consider at this time.

VIA ELECTRONIC MAIL

July 16, 2019

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

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
E-Mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and Proposed Changes to Companion Policy 21-101CP *Marketplace Operation*

MATCHNow (also known as TriAct Canada Marketplace LP) is an Alternative Trading System (“**ATS**”) registered as an investment dealer in the provinces of Ontario and Alberta. We are grateful for this opportunity to comment on certain amendments (the “**Proposed Amendments**”) being proposed by the

MATCHNow
TriAct Canada Marketplace LP

The Exchange Tower
130 King Street West
Suite 1050 P.O. Box 83
Toronto, ON M5X 1B1
T 416.861.1010
www.matchnow.ca

Canadian Securities Administrators (the “**CSA**”) to National Instrument 21-101 *Marketplace Operation* (the “**Instrument**”), certain forms relating to the Instrument, and the Instrument’s Companion Policy 21-101CP *Market Operation* (the “**Companion Policy**”) (collectively, “**NI 21-101**”), recently published for public comment in the OSC Bulletin.¹

A. Streamlining reporting requirements

i. Quarterly reporting of Housekeeping Changes

MATCHNow fully supports the proposal to move from monthly to quarterly filings of non-significant changes to Form 21-101F2 (commonly referred to as “Housekeeping Changes”²). While an ATS would be free to file Housekeeping Changes more frequently where appropriate or desirable, we agree that shifting from a 12-filings-per-year schedule to a 4-filings-per-year schedule will save time and resources for both the ATS and its regulators, by reducing some of the duplicative work that inevitably arises when amendment materials must be filed every month (as opposed to quarterly).

For similar reasons, we also appreciate the new proposed subsection (6) to section 3.2 of the Instrument. This new provision will expressly allow an ATS to incorporate by reference information contained in a previously-filed consolidated Form 21-101F2, where such information has not changed, thereby saving time and resources for both the ATS and its regulators. In fact, on the basis of the same rationale, we would encourage the CSA to go even further and adopt a similar provision, either within the Instrument, the Companion Policy, or elsewhere, expressly allowing incorporation by reference between and among Exhibits to any of the NI 21-101 forms with respect to information that is identical between or among specific Exhibits; this would also save time and resources, as well as avoid unintentional inconsistencies between or among Exhibits—for example, where updates to the text of one Exhibit are unintentionally omitted from the equivalent text of one or more other Exhibits.

ii. Changes to Exhibits C and D

MATCHNow applauds the CSA’s proposal to eliminate the requirement for an ATS to report (and, therefore, continuously update) certain corporate

¹ See *CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 Marketplace Operation and Proposed Changes to Companion Policy 21-101CP Marketplace Operation*, (2019), 42 OSCB 3645 (Apr. 18, 2019).

² See *Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto*, attached as Appendix A to an [order](#) issued by the Ontario Securities Commission on September 29, 2015, s. 2(d).

information, including historical employment information for its partners, directors, and officers and constating documents for its affiliated entities. As the CSA points out, filing this information has been burdensome for marketplaces, including MATCHNow, and it appears to provide little to no benefit in terms of regulatory oversight.

MATCHNow is also supportive of the amendments being proposed for Exhibit B to Form 21-101F2 that clarify the type of information required to be disclosed by ATs that are partnerships, as is the case for MATCHNow. The amendments will make it undeniably clear that the information that MATCHNow has been disclosing in Exhibit B for years is precisely what the form calls for. And although MATCHNow is not a corporation, we support the clarifications proposed for the owner (shareholder) information required to be disclosed by ATs that are corporations in Exhibit B to Form 21-101F2. Overall, the clearer distinction between ATs that are corporations and ATs organized in a different manner is helpful, as are the distinct descriptions for the information to be reported by these different entities, respectively.

iii. Streamlining of reporting in Form 21-101F3

MATCHNow fully supports the Proposed Amendments' simplification of Form 21-101F3, and in particular, the elimination of the requirement for an ATs to report details of trading activity for exchange-listed equity securities and exchange-traded funds ("ETFs"), details of the types of orders for such securities executed on the ATs, and details of the trading activity of the ATs' top-10 participants (based on the volume of securities traded), given that such information is also required to be reported by ATs to the Investment Industry Regulatory Organization of Canada. We agree that such duplicative reporting is unnecessary and inefficient, and the changes being proposed to Form 21-101F3 will eliminate this trading-related duplicative reporting that presently occurs under NI 21-101.

MATCHNow would further advocate for a streamlining of the filing process for all NI 21-101-related forms, including Form 21-101F2 amendment filings and annual consolidated filings. For example, to better manage the process on both sides, it would be desirable for the CSA to eventually adopt an online portal that would allow marketplaces to upload all new filings pursuant to NI 21-101, and allow the CSA to better index and manage the documents filed.

iv. Earlier deadline for Fee Change filings

MATCHNow is not opposed to the proposal to require an ATs to file an amendment to the information contained in Exhibit L (a "Fee Change") to its Form 21-101F2 fifteen business days before the intended implementation

date of the Fee Change, which is a longer notice period than the current seven business days. In our experience, staff of the Ontario Securities Commission generally requires approximately five to ten business days to review and approve Fee Changes, and that period may be even slightly longer during holidays. Thus, it makes sense to require ATSS to file Fee Changes with slightly more lead time than ten business days.

B. Financial reporting

MATCHNow has no comment on proposed new section 4.3 of the Instrument or on any of the corresponding changes to the Companion Policy, as these proposed changes do not affect or pertain to MATCHNow (which is neither a recognized exchange nor a recognized quotation and trade reporting system).

C. Systems requirements

i. New concept of “cyber resilience”

MATCHNow has no objection to the Proposed Amendments to explicitly add “cyber resilience” to subparagraph 12.1(a)(ii) and subparagraph 14.5(1)(a)(ii) of the Instrument, as one of the necessary information technology general controls that an ATS must develop and maintain. MATCHNow has a robust Business Continuity Policy and Disaster Recovery Plan, with extensive procedural controls for addressing the types of considerations that we would expect to be encompassed in this new concept of “cyber resilience,” and we agree that an ATS’s need to ensure its computer systems’ integrity is paramount in the marketplace ecosystem in Canada.

Nevertheless, the term “cyber resilience” is not clearly defined in the Proposed Amendments, nor is it a term with a common or generally accepted definition. As such, MATCHNow requests that the CSA include a clear and measurable definition of “cyber resilience” within NI 21-101, which will enable MATCHNow to ensure that its existing internal controls will achieve the regulatory goal with respect to the new concept of “cyber resilience” and/or assist MATCHNow in designing and implementing new internal controls to achieve that goal.

ii. New concept of “security incident”

MATCHNow has no objection to the expansion of the reporting requirements under paragraphs 12.1(c), 12.1.1(b), and 14.5(1)(e) to include the concept of “security incident”—which, as explained in the Proposed Amendments, is considered broader than the standard of “security breach” currently included in those provisions. We understand why the CSA wants to be apprised of

incidents that do not quite rise to the level of security “breaches,” but which are nevertheless material “incidents,” as such matters may warrant regulatory oversight. We also appreciate the guidance concerning the meaning of “security incidents” being proposed for paragraph 14.1(2.1) of the Companion Policy (which makes reference to the definition of the concept of “security incident” in use by the National Institute of Standards and Technology of the U.S. Department of Commerce). These changes, while theoretically expanding reporting obligations, will nevertheless permit ATs to continue to exercise reasonable business judgment and common sense when determining which security-related matters are “material” in nature and, therefore, required to be reported to regulators, as opposed to matters that are non-material and, therefore, non-reportable.

iii. New record-keeping and external assessment requirements

MATCHNow supports the proposed new requirements for ATs to keep records of any systems failures, malfunctions, delays, or security incidents and, if applicable, to document reasons why such matters were considered not to be material. MATCHNow also appreciates the enhancements made to the guidance in paragraph 14.1(2.1) of the Companion Policy concerning what constitutes a material system failure, malfunction, delay, or security incident; we also value the additional guidance in that same provision concerning the expected timing of the reporting of such occurrences and the requirements for a “post incident” review (or what MATCHNow refers to colloquially as a “post-mortem”). As a matter of course, and consistent with existing policies and procedures, MATCHNow already effectively monitors for systems failures, malfunctions, delays, and security incidents, is equipped to—and does actually—report promptly any such matters to regulators where material, and keeps meaningful records of such matters, which would include the reasons for any determination that a matter was not a material occurrence (and therefore is not required to be reported to regulators). We also conduct a “post-mortem” for each such occurrence, and report each post-mortem to our primary regulator (the Ontario Securities Commission) promptly. Consequently, the new requirements pose no issue for MATCHNow.

Furthermore, we understand why the CSA has decided to explicitly require such record-keeping. In particular, we believe that such records will act as an appropriate safeguard for both regulators and ATs: on the one hand, these records will ensure that information about a given security-related incident or similar matter, as well as information supporting an AT’s decision to report (or not to report) such a matter, is memorialized in a contemporaneous fashion and maintained for reference by regulators conducting routine examinations and other regulatory oversight activities; on the other hand, such records will also be available to marketplace management and

compliance personnel, leading to more well-reasoned and more consistent decision-making by ATs over time with respect to technology, reporting, and other business matters.

MATCHNow also supports the proposed amendment to section 12.1.2 of the Instrument to require every marketplace to periodically engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace's compliance with paragraphs 12.1(a) and 12.1.1(a) of the Instrument. This is something that MATCHNow already does on a bi-annual basis. While the Proposed Amendments require that vulnerability assessments be done annually, in light of industry practice and the cost of these assessments, we would suggest making them a bi-annual requirement (rather than annual). We would also request that this new requirement, especially if it is to be annual, be adopted with an appropriate notice and implementation period, e.g. at least twelve months.

iv. Clarification of expectations regarding "qualified external auditors"

MATCHNow has no objection to the proposed amendments to subsection 12.2(1) and paragraph 14.5(1)(c) of the Instrument clarifying the CSA's expectation that ATs will engage one or more "qualified external auditors" (as opposed to simply a "qualified party") to conduct and report on independent systems reviews. We also welcome the clear and consistent guidance, in subsection 14.1(3) of the Companion Policy, concerning what constitutes a "qualified external auditor" (namely, "a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment"). We also support the clarification in the Companion Policy of the CSA's expectation that, before engaging a qualified external auditor, an AT will discuss with the CSA its choice for qualified external auditor and the scope of the systems review mandate. In fact, these are procedures that MATCHNow already follows.

In the spirit of maintaining a level playing field, MATCHNow would further advocate that, in the event that any AT is granted an exemption from this requirement, this should be made public so that all users are made aware that the marketplace(s) in question is (are) not being reviewed by a qualified external auditor.

D. Non-substantive changes

MATCHNow has no objection to any of the non-substantive changes included in the Proposed Amendments.

Canadian Securities Administrators

July 16, 2019

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Thank you in advance for your consideration of MATCHNow's comments regarding the Proposed Amendments.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. Blake', followed by a period.

Bryan Blake

Chief Executive Officer, MATCHNow

Tel: (416) 874-0919

Email: bryan.blake@matchnow.ca



July 17, 2019

VIA EMAIL

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

The Secretary
Ontario Securities Commission
20 Queen Street West 22 Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal, (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Re: CSA Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and Proposed Changes to Companion Policy 21-101CP *Marketplace Operation* (“Proposed Amendments”)

Dear Sirs/Mesdames:

Nasdaq CXC Limited (“Nasdaq Canada” or “we”) welcomes the opportunity to provide comments on the Canadian Securities Administrator’s (“CSA”) proposed amendments to National Instrument 21-101 *Marketplace Operation* (“NI 21-101” or the “Instrument”) and to Companion Policy 21-101CP *Marketplace Operation* (“21-101CP” or the “Companion Policy”).

We commend the CSA on the Proposed Amendments and taking preliminary action to reduce burden where appropriate. We agree that the volume of breadth of reporting requirements for marketplaces have expanded considerably over time and that existing requirements need to be reconsidered with respect to their contribution to regulatory burden balanced against their contribution to effective oversight. While we recognize many proposed changes will help reduce burden there are several others that will increase it. Where new requirements have been proposed we believe their intended regulatory objectives needs to be weighed against their cost.

With this balance in mind, we have made several recommendations regarding the systems requirements and reporting obligations for marketplaces included in the Proposed Amendments while also including recommendations for other changes we believe will result in further burden reduction.

Systems Requirements

- Limit reporting requirements of security incidents to only *material* securities incidents;
- Leave the current principles based requirement for a qualified party for the purposes of the internal systems reviews so that an Independent Audit Department that can present evidence that it is free of conflicts does not become ineligible;
- Change the independent system review (“ISR”) requirement from an annual requirement to a bi-annual requirement for an operating marketplace that has not experienced a material systems issue in the previous twelve-month period.

Reporting obligations:

- Leave the existing minimum period for fee changes at seven business days to avoid unnecessary delays for proposed fees that do not raise regulatory issues;
- Maintain the existing 60-day reporting requirement for exchanges that are not reporting issuers in new section 4.3;
- Eliminate items 4 through 7 of Part A – General Marketplace Information and Part B – Market Activity Information Elimination for equity marketplaces in the Form 21-101F3 (“Form F3”).

Other Changes

- Introduce an exemption framework for foreign ATSS trading foreign listed and/or traded securities;
- Apply a flexible approach to the marketplace notification requirement in accordance with Staff Notice 21-107.

A. SYSTEMS RELATED REQUIREMENTS

I. Reporting of Non Material Security Incidents

We support the CSA’s increased focus on marketplace capabilities to address cyber-resiliency. The proposed requirement for marketplaces to establish and maintain information technology controls for cyber-resiliency in section 12.1(a)(ii) will codify an existing expectation important to protecting the markets infrastructure and in turn investors. We understand that broadening the definition of “security breach” to “security incident” will capture a material event where a breach may not necessarily have occurred and see potential value in these events being reported to the regulator.

Nonetheless, marketplace reporting requirements for security incidents should be limited to only material security incidents to avoid creating burden disproportionate to the value that reporting of non-material information will provide. The proposed definition of a security incident includes events that actually or **potentially** jeopardizes the confidentiality, integrity or availability of a marketplace system or auxiliary system.¹ Using this definition, any intruder attack that is blocked by a firewall will be defined as a security incident and will need to be reported under the new reporting requirement in subsection 12.1(d). Requiring

¹ Proposed subsection 2.1 of Section 14.1 of 21-101CP.

reporting of all non-material security incidents on a quarterly basis in the Form F3 is over-inclusive, will tend to obscure the most important risks, and will potentially distract regulators from identifying and addressing the most serious risks to the markets and investors.

An over-inclusive reporting requirement will create significant administrative overhead and regulatory burden that is not proportionate to the incremental value this information will add to effective oversight. The number of events that could potentially jeopardize a system is exceeding large. For example, there are over 250 million intruder attacks on Nasdaq systems blocked by firewalls globally. This is true of any large scale organization and will create similar challenges. Although an electronic record of each attack prevented by a firewall is maintained, generating a report or a log of these events will not only require significant technological resources but also presents challenges transferring files. Given the large number of non-material security incidents that will be required to be reported, we question how this information will be analysed in a meaningful way and what value it provides.

Instead, we propose that the CSA rely on the results of the marketplace internal systems reviews required in subsection 12.2(1) for assurance that marketplaces are effectively managing non-material security incidents. With the introduction of the requirement for marketplaces to establish and maintain information technology controls for cyber resiliency, these controls will be reviewed periodically in each marketplace ISR and an opinion will be given whether or not they have been well designed and are operating effectively. Marketplace security policies and procedures, including policies for materiality determinations and record keeping requirements are reviewed as part of an ISR. If a marketplace ISR report includes a comment that raises concern about how the marketplace is managing security incidents or suggests that there could be potential deficiencies in their Information Security Program, the CSA can conduct individual marketplace reviews to address these concerns. Relying on the ISR reflects an appropriate risk based approach where additional burden is only imposed on marketplaces where a risk has been identified.

II. Vulnerability Assessments

Recognizing the increasing importance of cyber-security controls, we support the new requirement in section 12.1.2 where a qualified party will need to perform appropriate assessments and testing to identify vulnerabilities and measure the effectiveness of a marketplace's information security controls.² We want to commend the approach taken by the CSA with regard to who is considered eligible to be a qualified party and permitted to conduct these reviews. Proposed guidance in the Companion Policy allows marketplaces to use either external auditors or third party information system consultants or internal employees of the marketplace or an affiliated entity of the marketplace as long as the qualified party has relevant experience and are not the persons responsible for the development or operation of the system being tested.³ This approach recognizes the relevant experience and expertise of the reviewer as the determining factor for eligibility while also avoiding a potential conflict of interest by restricting a person responsible for the development or operation of the systems being tested from serving as a qualified party irrespective of their credentials. It is a benefit to burden reduction to have both internal and external personnel be able to serve as a qualified party as long as they have the required experience.

² Proposed section 12.1.2 of the Instrument.

³ Proposed subsection 3.1 of Section 14.1 of 21-101CP.

III. Systems Reviews

i. Independent Audit Departments Should be Permitted to Conduct ISRs

The expectation for marketplaces to engage an external auditor to conduct marketplace ISRs has resulted in significant costs and burden. The purpose of the proposed amendment to Part 12.1 which requires a qualified external auditor to perform the review, may be to clarify a current CSA expectation, however this expectation has changed over time. Moving from a principles based qualified party requirement to a prescriptive requirement for an external auditor will eliminate the option of having other qualified parties with relevant experience and expertise without conflicts of interest able to conduct reviews. For example, highly qualified Internal Audit Departments with independent reporting lines designed to avoid conflicts of interest will become ineligible. This in turn will result in unnecessary external costs that otherwise could be avoided without compromising the quality of reviews.

When the ISR requirement was first proposed in 2008 the criteria for a qualified party depended on the relevant expertise and experience of the person or company in two areas; information technology and evaluating internal controls in a complex information technology environment (the same criteria is required today). To ensure that qualified parties selected have adequate experience, marketplaces are required to discuss their choice of qualified party with the regulator prior to conducting the review, serving in practice as a pre-approval requirement. Internal Audit Departments with relevant expertise and experience were permitted to serve as qualified parties when the requirement became effective in 2010. For example Instinet LLC's Internal Audit Department was approved by staff to conduct Chi-X Canada ATS Limited's ISR for the time period between 2010 – 2015.

In 2016 staff communicated a new expectation requiring marketplaces to exclusively engage external auditors to conduct their ISRs. Despite the absence of any known issues around the quality or objectivity of ISRs at that time, this new expectation was based on concern about the potential impact to the objectivity of the reviewer caused by a potential conflict of interests created from the use of an internal auditor of an affiliated entity of the marketplace. Mandating the use of external auditors has had two negative outcomes i) the potential for qualified parties with less experience to be able to perform an ISR and ii) imposing significant costs on marketplaces required to contract external auditors. After 2016 Internal Audit Departments were no longer able to conduct reviews irrespective of their experience and expertise (including knowledge of a specific marketplace system they had previously reviewed or of similar systems based on experience). Instead, external auditors were engaged, often with limited experience of marketplace systems and familiarity of the requirements of Part 12 of the Instrument (there are only a limited number of marketplaces in Canada). The expectation that the use of an external auditor would better ensure marketplace compliance with systems requirements did not prove accurate. In 2018 OMEGA ATS entered into a settlement with the OSC acknowledging several areas of non-compliance with Ontario Securities Law related to the operation of its systems despite having used an external auditor to conduct its ISR for the years under review.⁴

Requiring marketplaces to use external auditors has resulted in a significant cost increase for marketplaces. For example the cost for an external auditor to conduct a System and Organization Control for Services Organizations: Controls Relevant to Security, Availability and Confidentiality ("SOC II") Report, (which

⁴ https://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20180921_omega-securities.pdf.

is the preferred audit report by staff) is over \$100,000. Allowing for differences in commercial arrangements and reporting standards, the aggregate impact across marketplaces conservatively exceeds \$500,000⁵ annually. Given the robust systems requirements in Part 12 of NI 21-101 and the limited number of systems issues that have occurred since the introduction of the requirement, these costs do not seem proportionate to the regulatory objective for requiring an external auditor.

We note that concerns about the use of internal parties impacting the objectivity of a reviewer were considered by the SEC when implementing Regulation Systems Compliance and Integrity (“Reg SCI”) which included a similar requirement for “qualified personnel” to perform an annual review of SCI systems and SCI security systems. Addressing the importance of objectivity, the Commission stated that “given the requirement that such personnel be “objective,” any personnel with conflicts of interest that have not been adequately mitigated to allow for objectivity should be excluded from serving in this role.”⁶ However, when considering how to address potential for conflicts the SEC did not decide that internal parties were restricted from performing reviews. Instead, a more flexibility approach was taken where “SCI reviews can be performed by personnel of the SCI entity or an external firm, provided that such personnel are, in fact, objective and, as required by rule, have the appropriate experience to conduct reviews of SCI systems and indirect SCI systems.”⁷

The Notice says that the requirement for an external auditor is being proposed to provide consistency with recently proposed changes for clearing agencies in proposed amendments to National Instrument 24-102. We submit that different considerations are appropriate for marketplace and clearing agency requirements because of different roles each play in the capital market including how each contributes to systemic risk. For example, CDSX has been designated a systematically important Financial Market Infrastructure and required to comply with additional regulatory requirements that marketplaces are not subject to. We also note that for clearing agencies, exemptions are contemplated from this requirement: “As contemplated by section 6.1 of the Instrument, we may consider applications for exemption from the requirement to engage a qualified external auditor in certain circumstances, subject to such conditions or restrictions as may be imposed in the exemption.”⁸ If the CSA is also open to considering an exemption from the new requirement for a qualified Internal Audit Department, it should be noted that the costs for an exemption are not immaterial (in addition to the resources required to prepare an application, the aggregate of regulatory filing fees across jurisdictions today totals \$13,626). These costs can be avoided by leaving the existing requirement in place. The CSA will still be in a position to approve selected qualified parties and require external auditors where appropriate while avoiding imposing unnecessary burden by excluding qualified internal auditors with relevant experience from being able to perform reviews. We therefore encourage the CSA to return to its original expectation for a qualified party and not to move forward with the proposed amendment.

⁵ Using an estimate of \$75,000 per equity marketplace.

⁶ Regulation Systems Compliance and Integrity Final Rule p. 350.

⁷ Ibid. p. 351.

⁸ CSA Notice and Request for Comment – Proposed Amendments to National Instrument 24-102 Clearing Agency Requirements and Proposed Changes to Companion Policy 24-102 Clearing Agency Requirements (2018), 41 OSCB 8193.

ii. Making the ISR a Bi-Annual Requirement

We propose that the ISR requirement should be changed from an annual requirement to a bi-annual requirement for operating marketplaces that have not experienced a material systems issue in the previous twelve-month period. As previously discussed, the costs of an ISR are significant. These costs extend beyond the cost of external auditors and include internal resources for staff to either perform or facilitate the review. With the ISR requirement in place for eight years, marketplaces operating today have already demonstrated compliance with the requirements of sections 12.1 and 12.1.1, developing and maintaining internal and information technology controls for their systems and have had these controls reviewed by qualified parties annually. The ISR therefore has become more of a check box exercise providing little incremental value that can justify its annual cost. Changing the ISR requirement from an annual requirement to a bi-annual requirement will reduce the regulatory burden of the ISR by half while maintaining regulatory oversight of marketplace systems. New marketplaces that have not had a qualified party assess their compliance with Part 12 should be required to conduct an ISR in their first year of operation as a condition of their approval. In addition, marketplaces that experience a significant systems issue raising questions about the design and effectiveness of their controls can also be required to meet the ISR for that year.

B. REQUIREMENTS FOR MARKETPLACE FORMS**I. Fee Changes**

The proposed amendment to extend the minimum period required before a marketplace can implement a fee change from seven business days to fifteen business days will result in an unnecessary delay that will increase burden. Fee changes are considered significant changes in section 6.1(4) of CP 21-101 and originally were subject to the minimum 45-day period before they could be implemented. The abridged seven business day requirement, originally proposed in 2011 and currently in place today, was introduced because the CSA recognized that competition between marketplaces required the need for marketplaces to implement fee changes quickly. “The Canadian regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee model of marketplaces, marketplaces may need to implement fee changes within tight timelines.”⁹ Fee competition between marketplaces has not diminished since 2011. In fact, it has intensified with the advent of more advanced router technology accessible to participants who now can preference different marketplaces with different fees for different subsets of securities. The need for marketplaces to implement fee changes within tight timelines for competitive reasons is as strong as ever today.

Extending the minimum implementation time for a fee change will introduce an unnecessary delay impacting marketplaces’ ability to make fee changes quickly. The minimum time before a fee change can be implemented does not mean it can happen without regulatory approval. Where a fee change does not raise any regulatory concern (such as a fee decrease or a fee increases that is within the range of fees already approved for other marketplaces) there is no reason for a further delay. Where a fee change does raise concerns and requires more time to review, an extended review period is already provided under the rule

⁹ Subsection 6.1(6) of 21-101CP.

filing protocol.¹⁰ Today it is common practice for a fee proposing to establish a new precedent or employing a novel model to require much longer than seven business days (often weeks) to review and for an approval decision to be made. The proposed amendment therefore will not provide staff any additional review time than is available today. Instead, it will impose an unnecessary restriction on marketplaces when proposing to make trivial fee changes. We therefore urge the CSA not to move forward with the change.

C. FINANCIAL REPORTING

We understand the intention of the new requirement in section 4.3 for recognized exchanges to file interim financial statements within 45 days of the end of the interim period is to remove duplication from similar requirements in exchange recognition orders. However, we note that the new requirement is shorter than the existing requirement today for all exchanges that are not reporting issuers. Nasdaq Canada, Neo Exchange and CSE each currently are required by their recognition orders to provide unconsolidated interim financial statements within 60 days of each quarter. TSX is the only exception, where the requirement is 45 days. Differences in these requirements are based on the TSX being a reporting issuer and needing to comply with the 45-day reporting requirement of Part 4 4.4 of National Instrument 51-102. Given that the policy reasons for requiring public issuers to file interim financial statements (which also must be reported publicly) within 45 days do not apply to private companies we see no reason to hold all exchanges to a more burdensome standard. The existing 60-day requirement should be maintained.

D. CHANGES TO FORM 21-101F3

We believe the CSA can more effectively achieve burden reduction with regard to streamlining the reporting requirements in Form F3 by eliminating additional information currently required in the Form F3. Specifically, the information required in items 4 through 7 of Part A – General Marketplace Information and the requirement for Equity Marketplaces in Part B – Market Activity Information of the Form F3 should be removed as this information is either already available to staff, or does not materially contribute to oversight.

Part A – General Marketplace Information

Items 4: a list of amendments in Marketplace Forms that were filed during the quarter and implemented.

Items 5: a list of amendments in Marketplace Forms that were filed during the quarter but not implemented.

Information about amendments made to Form 21-101F1 and Form 21-101F2 (“Marketplace Forms”) is available to staff responsible for reviewing marketplace amendments as part of their oversight responsibilities. Marketplaces are required to provide staff with the intended implementation date for a change when an amendment is filed and confirm this date when possible. Staff therefore already has the information requested making the reporting requirement duplicable.

¹⁰ 10(a) of the Protocol provides that Staff will use their best efforts to complete their review of a Fee Change within seven business days from the date of filing of the proposed fee Change, but can notify the Exchange if they anticipate that their review of the proposed Fee Change will exceed the seven days.

Item 7 – Systems Changes – a brief description of any significant changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing that were planned, under development, or implemented during the quarter.

Marketplaces are required to file amendments to their Marketplace Forms for significant changes and non-significant changes. Significant changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing will generally require filing a significant change.¹¹ Those that are not significant will be filed as housekeeping changes, again making this information already available.

Part B – Marketplace Activity Information

Section 1 – Equity Marketplace Trading Exchange-Listed Securities

- i. Chart 1 – General Trading Activity for Equity Marketplaces Trading Exchange Listed Securities
- ii. Chart 2 Crosses – market activity statistics for Intentional, Internal, and Other Crosses
- iii. Chart 3 - Order Information
- iv. Chart 4 – Most traded Securities
- v. Chart 5 – Trading by marketplace participant – repealed

Information requested in charts 1 through 5 is available from IIROC.

- vi. Chart 6 – Routing Activities

Information about marketplace routing activity was first introduced when it was common for marketplaces to use a router to route orders to other marketplaces to comply with their Order Protection Rule obligations. Today only two marketplaces offer a routing service and only one uses it for OPR protection purposes. The value of this information is immaterial to effective oversight and should be eliminated.

By removing the requirement for this information to be reported by marketplaces in the Form F3 regulatory burden will be reduced without negatively impacting effective oversight. Should staff believe certain this information or additional information is important, requests can be made on an ad hoc basis consistent with oversight practices today.

¹¹ Part 6 of CP which describes that changes made to the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled and new or changes to order types are always considered significant changes. Changes made to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity are also listed as those that may be considered significant changes.

E. OTHER CHANGES

I. Introduce an Exemption Framework for Foreign ATSS Trading Foreign Listed and/or Traded Securities

The requirements for foreign fixed income ATSS considered to be doing business in Canada results in an unnecessary regulatory burden, regulatory duplication, and alienates Canadian participants from being able to access these marketplaces. Canada is almost unique globally in its interpretation of the business trigger for when a foreign marketplace is considered to be doing business. In the case of the U.S. domiciled Nasdaq Fixed Income (“NFI”) ATSS, which operates in 22 different jurisdictions globally, Canada is the only jurisdiction other than the U.S. where NFI is considered to be doing business, and is required to be regulated like a domestic ATSS.

The process of becoming an approved ATSS and complying with the Instrument is expensive and often creates competitive disadvantages for these marketplaces in their home jurisdiction. The filing requirements in Part 3 of the Instrument stifles innovation and impedes competition, as it results in delays to product implementation, technological enhancements, and competitive price changes. Where a public notice is required for a significant change, information about the new product or technological enhancement is made available to competitors, creating a significant competitive disadvantage. The Internal System Review is also expensive, and while exemption have recently been granted from this requirement, applications for exemption are expensive in their own right. Finally, the requirement to standardize fees across all Canadian participants does not follow international practice (particularly in the non-equities markets) and what we understand is common practice for Inter Dealer Bond Brokers (“IDBB”) in Canada today. This places Canadian participants at a competitive disadvantage to other participants, as they are not able to avail themselves of certain other fee structures available to non-Canadian participants. Taken together, these regulatory limitations represent a substantial obstacle, and a disincentive for foreign ATSS’s to make their services available to Canadian participants.

The current rules also specifically promote an un-level playing field in the fixed income markets, particularly for foreign ATSS that trade Canadian fixed income securities over foreign fixed income securities. The IDBB designation which exempts an IDBB from the requirements of NI 21-101 (with the exception of the transparency requirements of Part 8) is only available to a marketplace that trades Canadian fixed income securities. This results in greater regulatory requirements and an increased burden for a foreign ATSS that trades Canadian fixed income securities as opposed to foreign fixed income securities.

If we are to recognize that these foreign marketplaces are already heavily regulated in their home jurisdictions, requiring compliance with the Instrument creates unnecessary regulatory duplication and inefficiency. In the United States for example, an ATSS is required to be an SEC registered broker-dealer and to comply with Regulation ATSS. Depending on the asset class in question, there may be further oversight from other regulatory bodies also. We believe that the CSA should exempt foreign marketplaces from domestic regulatory requirements by relying on the regulatory regime of their home jurisdiction, an approach which has already been taken successfully for foreign exchanges, clearing agencies and Swap Execution Facilities. We strongly encourage the CSA to consider these steps for foreign ATSS, and help facilitate access for Canadian participants to these marketplaces.

II. Application of Staff Notice 21-101

A more flexible approach needs to be taken by the OSC in its interpretation of OSC Staff Notice 21-706 (“SN 21-706”). SN 21-706 provides guidance around the timing for notifications that must be made before a marketplace implements a material change to its systems. Despite 21-706 providing flexibility for Staff to decide what period of time is considered reasonable on a case-by-case basis (generally three months after Commission approval) in practice, SN 21-706 has served to mandate a minimum 90-day period before a marketplace can make any change to its systems (“90-Day Requirement”). Applying the 90-Day Requirement has resulted in an unnecessary delay in product development and deployment by marketplaces creating a minimum 135-day period (45-day requirement to implement a significant change plus the 90-Day Requirement) before a marketplace can introduce a change. This in turn has delayed the ability for participants to use new features to achieve trading objectives and more effectively manage risk, disadvantaged investor protection and created capital market inefficiencies.

The 90-Day Requirement has been applied for all systems changes without consideration about the downstream impact of a change including whether the new feature is optional or necessary for regulatory purposes (requiring all vendors and participants to make changes to their systems to accommodate the change). The interpretation of the SN 21-706 should provide for different requirements for different types of changes. We recommend that the 90-Day Requirement only be applied to new marketplaces when they begin operations and for mandatory changes while a 30-day notification requirement be introduced for non-mandatory changes. Taking this approach will significantly shorten the time for marketplaces to deliver new features to participants to assist achieving their trading objectives.

We thank the CSA for its consideration of these comments and would welcome the opportunity to discuss further our views with staff.

Sincerely,

Nasdaq Canada

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

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Re: **CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101
Marketplace Operation and Proposed Changes to Companion Policy 21-101CP *Marketplace Operation***

Dear CSA Members:

CNSX Markets Inc. (“CSE”) is responding to the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and Proposed Changes to Companion Policy 21-101CP *Marketplace Operation* (collectively “21-101”) published on April 18, 2019. The CSE commends the initiative taken by the Canadian Securities Administrators (“CSA”) to reduce regulatory burden through proposed amendments to 21-101. The CSE encourages the CSA to maintain a focus on reducing regulatory burden generally. This will facilitate the achievement of one of the pillars of regulatory oversight of the Canadian capital markets, namely efficiency.

[STREAMLINING REPORTING REQUIREMENTS](#)

Fee Filing – s. 3.2(2)

The CSA has proposed increasing the length of time for the implementation of fee changes from at least 7 days to at least 15 days. While not a streamlining or burden reduction action, it does provide the CSA with more

time to review proposed fee changes. The CSE supports the increase in time provided that there is a decision made by the applicable securities regulatory authority within the 15 day period that the proposed fee change may either be implemented immediately, be subject to a public comment process, or be resubmitted with revisions for a new 15 day review period. This will provide clarity to the marketplaces in terms of timelines and provide closure on a filing. With this in mind, the marketplaces' recognition orders would need to be amended to reflect this process.

It should also be considered that a fee decrease may be implemented immediately as opposed being subjected to a 15 day review period.

Filing of non-significant changes to Form 21-101F1 (other than fees) – s. 3.2(3)

The CSE supports the CSA proposed revised filing period for changes from 10 days after a month in it occurred to 10 days after a calendar quarter month (unless publicly disclosed earlier).

Exhibit C – Organization to Form 21-101F1

The CSE supports the CSA proposal to eliminate the requirement to report historical employment information for partners, directors and officers of a marketplace (item 5 in part 1 of Exhibit C).

The CSE recommends the elimination of item 4 in part 1 of Exhibit C, specifically "*Type of business in which each is primarily engaged and current employer*". This information for the most part is already captured in item 1 in part 1 of Exhibit C i.e. "*Principal business or occupation and title*". It is also suggested that the first line in part 1 of Exhibit C be modified to move the first instance of directors as it is already captured subsequently in the sentence: "*A list of partners, ~~directors~~, officers, governors, and members of the board of directors...*" (emphasis added).

Re-filing of Form 21-101F1 each year – s. 3.2(5) and (6)

The filing of documents should be required only when changes have occurred (as indicated by the title of s. 3.2 "*Change in Information*"). Currently, s. 3.2(5) requires the re-filing of a complete Form 21-101F1 every year - even though filings for changes have been made throughout the year.

As filings are triggered by changes, Form 21-101F1 should be current and up-to-date at any point in time. Filing a year-end version is duplicative.

It is proposed by the CSA [in new s. 3.2(6)] that a marketplace may incorporate by reference a previously filed year-end version of its Form 21-101F1 where no changes have occurred since such previous filing. As above, it is recommended that the year-end filing in s. 3.2(5) requirement be eliminated and thus new s. 3.2(6) would not be necessary.

Chief executive officer certification – s. 3.2(4)

Currently, the chief executive officer of a marketplace is required to certify in at year-end that the information contained in the marketplace's current Form 21-101F1, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the Form 21-101F1.

It is recommended that this requirement be eliminated. Form 21-101F1 itself already contains a certification requirement from a director, officer or partner of the exchange upon filing an initial or amended form: “[t]he undersigned certifies that the information given in this report is true and correct”. This could be modified to include “complete” which is currently part of the chief executive officer certification i.e. “[t]he undersigned certifies that the information given in this report is true, ~~and correct,~~ and complete”. (emphasis added)

Form 21-101F1 Exhibits preamble

It is recommended that the actual date be included for the implementation of a change as the change may have already occurred which makes the expected date problematic i.e. in the second paragraph “...the actual or expected date of the implementation of the change...”. (emphasis added)

Additionally, it is recommended for amended Form 21-101F1s that only the blacklined versions are filed. The blacklining would then be removed on a subsequent filing if that change reflected an implemented change (prior to the subsequent filing). The inclusion of clean versions every filing creates tracking challenges.

Exhibit B – Ownership to Form 21-101F1

The CSA has proposed a 5% floor for reporting an exchange’s security holders (where the exchange is a corporation). The CSE is in favour of establishing a floor but believes that 10% would be more appropriate in order to align with the approval requirements for ownership under the exchange recognition orders. Additionally, calculating the 10% floor on beneficial ownership or control or direction would likewise align with recognition order requirements. Suggested drafting:

“For an exchange or quotation and trade reporting system that is a corporation, provide ~~a~~ list of the ~~registered or~~ persons (including those acting in concert) that exercise control or direction or beneficially hold ~~beneficial holders of five~~ ten percent or more of any class of securities...” (emphasis added)

The addition of guidance in Companion Policy 21-101CP *Marketplace Operation* (“Companion Policy”) as to the calculation of acting in concert and exercising control or direction or beneficially holding securities would be helpful. For instance, where holders are limited partnerships, investments funds, pooled funds, trusts, etc.

The CSE suggests that the requirement to report the occupation and title of a security holder in item 2 of Exhibit B be deleted. Item 2 requires the reporting of the security holder’s principal business – it is not clear as to the relevance of also requiring the occupation and title.

Exhibit E – Operations of the Marketplace to Form 21-101F1

There appears to be a duplication in item 2 and item 4 of Exhibit E regarding co-location.

Item 7 appears to be captured by item 6. As such, it is suggested that item 7 be deleted.

Form 21-101F3

The CSE recommends various changes to Form 21-101F3.

In Part A – General Marketplace Information, item 4 should be eliminated. This item requires a listing of amendments that have been made to Form 21-101F1 (including a description of the amendment, the date filed and date implemented). The description of the amendment and date filed are part of the process for filing amendments for Form 21-101F1 – it is unnecessary to repeat this information in Form 21-101F3. To the extent that the implementation date is a required data point, this should be incorporated into the Form 21-101F1 requirements (for example, the removal of blacklining to reflect implementation of a change in Form 21-101F1 could be footnoted to indicate the date of implementation). Likewise, item 5 should be eliminated. Item 5 requires a list of non-implemented changes – these items are already blacklined in the Form 21-101F1 as non-implemented changes.

Item 6 regarding a log and summary description of various systems events is too broad as drafted. Only material systems issues should be logged. Materiality may be evaluated on a severity level scale. This scale should be defined in 21-101. It is suggested that only Severity 1 or 2 events would be considered material and would need to be logged (Severity 3 events would not need to be logged as they would not be material). Suggested drafting for the severity levels:

Severity 1 incident - characterized by a service outage impacting a majority of users, widespread performance issues, or widespread significant deviations in operation from the documented specifications; and redundancy mechanisms have failed to provide an immediate recovery.

Severity 2 incident - characterized by a service outage impacting many users, primary service functionality being impacted, significant functionality degradation being experienced by many users, or latencies or response times are significantly above peak levels as per documented specifications; and redundancy mechanisms have failed to provide an immediate recovery.

Severity 3 incident - service is operational, but with minor degradation to some or all users further characterized by one or more of the following: (i) occasional, isolated service usability problems; (ii) service performance issue causing minor impact to business operations; (iii) minor bug or erroneous service operation leading to non-critical loss of functionality of some service components; (iv) side-effects of designed service failover behavior, such as temporary interruption of data flow during switching, or sequence number discontinuities; or (v) data errors in individual records or a small proportion of records, or in non-critical data that were directly caused by marketplace's system.

Item 7 regarding systems significant changes should be eliminated. Significant changes require regulatory approval. There is no need to repeat the information in Form 21-101F3.

For Part B and onwards in Form 21-110F3, where the required information is available from the regulation services provider (i.e. IROC), the marketplace should not need to file such duplicate information.

FINANCIAL REPORTING

The CSA has proposed that exchanges file interim financial reports within 45 days after the end of each interim period. The CSE suggests that this requirement should align with recognition order requires and be a 60 day window. Changing from a 60 day window will cause board scheduling conflicts as well as reducing the time to prepare such interim financial reports.

SYSTEMS REQUIREMENTS

The CSA has proposed various amendments to Part 12 regarding systems. As discussed in the Form 21-101F3 section of this letter, it is recommended that materiality of a systems event be determined according to a defined severity level scale.

In s. 12.1.2, it is noted that there is no reporting obligation associated with this provision.

In s. 12.2, the CES recommends that “best industry practices” be removed from the proposed amendments. If the review is conducted in accordance with established audit standards, that should be sufficient. Applying a “best industry practices” overlay is a subjective measure (notwithstanding the one suggested best practices reference in the Companion Policy). Additionally, it is recommended that the independent systems review (“ISR”) be conducted on a bi-annual basis rather than annually. The CSA proposes that the ISR must be conducted by an external auditor – this will increase expense for the marketplaces. By shifting to a bi-annual period, this new additional cost can be spread out over the two years.

The CSA has proposed amendments in s. 14.1(3) of the Companion Policy regarding ISRs. If a chosen auditor is qualified to perform the ISR, it is unclear as to why a marketplace is expected to discuss its choice with the regulator/securities regulatory authority. If the intent is for the regulator/securities regulatory authority to approve the selection of the external auditor, then that should be made explicit. Otherwise, without a prior approval being required, this should be removed from the Companion Policy. If the discussion of auditor choice is not removed from the proposed amendments, then the discussion with the regulator/securities regulatory authority should only be required for an initial selection or change from an existing auditor.

OTHER ITEMS

It is recommended that s. 5.4(a) be deleted as it is already covered by s. 5.3(i). S. 5.4(b) can be moved to s. 5.3 which would then permit the repeal of s. 5.4 in totality.

Suggested drafting:

5.3 Public Interest Rules

(1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system **must**

(a) ~~must~~ not be contrary to the public interest;

(b) **provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system; and**

(bc) ~~must~~ be designed to

(i) ~~ensure~~ **require** compliance with securities legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade, and

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

~~**5.4 Compliance Rules – A recognized exchange or a recognized quotation and trade reporting system must have rules or**~~

~~other similar instruments that~~

~~(a) require compliance with securities legislation; and~~

~~(b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.~~

(emphasis added)

GENERALLY

As noted in the CSE letter to the Ontario Securities Commission regarding the OSC's Burden Reduction programme, and repeated by other marketplaces at the OSC's Roundtable on Burden Reduction, there is a tension between rules-based and principles-based approaches in the rules and instruments to which market participants are subject. While presumably flexible in concept, more often than not a principles-based approach to regulation results in unpleasant surprises when a "should" is interpreted to be a "must". Even an "expectation" is uncertain – i.e. is it required? If an expectation is actually a requirement, then it is much better to state it as such i.e. "must" or "shall". In doing so, the intent is clear and transparent, whether from a legal perspective or a plain English interpretation. With this in mind, the CSE encourages and suggests that passive language not be used in drafting provisions. There may be a view that such a rules-based approach is rigid – however, a marketplace participant may always seek an exemption from a requirement. Furthermore, from a compliance perspective, a marketplace participant inevitably is put into a worse position when a passive "should" is actually meant to be a "must".

Conclusion

The CSE appreciates the opportunity afforded by the CSA to comment on the proposed amendments to 21-101. The CSE is encouraged by the will of the CSA to reduce regulatory burden and looks forward to continuing a dialogue on this and further regulatory burden reduction initiatives.

Sincerely,



Jamie Anderson

General Counsel & Corporate Secretary

cc. Richard Carleton – Chief Executive Officer, CSE



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155 University Avenue, Suite 400
Toronto, Ontario M5H 3B7
T. 416.933.5900

BY EMAIL

July 17, 2019

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

c/o
The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
E-Mail: comments@osc.gov.on.ca

-and-

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-Mail: consultation-en-cours@lautorite.qc.ca

Dear Mesdames and Sirs:

Re: Proposed Amendments to National Instrument 21-101 Marketplace Operation and Proposed Changes to Companion Policy 21-101CP (the “Proposed Amendments”)

We thank the CSA for its continued work on streamlining regulatory requirements. Many of the marketplace reporting requirements that are the subject of these changes made sense when they were

implemented but it has become clear that the information is available in other ways or is not required on a regular basis.

We are pleased to provide our comments on the Proposed Amendments as well as further amendments for consideration. We also have some feedback on the proposed enhancements to the systems-related requirements. One general observation is that this set of amendments provides an opportunity to move to more flexible, risk-based requirements, whereby changes or concerns drive the degree of reporting (e.g., too many incidents occur or there are issues detected in an oversight or other review). A good example, which we discuss later on, is the annual independent systems review requirement.

1. Streamlining reporting requirements

(a) Quarterly Housekeeping Filings

We have not found the monthly filings to be unduly burdensome, but agree with the proposal to change to quarterly filings.

(b) Exhibits to Forms 21-101F1 and 21-101F2

Exhibits C and D

The parts of the Proposed Amendments relating to eliminating certain organizational information for the marketplace and its affiliates will be very helpful. Please consider an alternative to filing the applicable exhibit if the marketplace posts on its website the information about its officers, directors, etc.

Other Exhibits

We also note that we support the changes to Exhibit B to limit reporting to 5%+ security holders. We ask that this level of materiality be incorporated into recognition order provisions relating to shareholder obligations. Also, as a suggestion, the second item regarding “Principal business or occupation and title” could be amended to include “..., if any”, as shareholders may be individuals who do not have an occupation and title.

Please consider including streamlining of Exhibit E. The list of items that must be described contains some duplicative and/or interrelated requirements with respect to order entry and execution (see 4, 6 and 7) and routing (see 4 and 8) that make the exhibit unnecessarily repetitive.

(c) Form 21-101F3

We applaud the proposed elimination of the specified duplicative requirements in this quarterly form. We request that the following requirements also be removed as part of the Proposed Amendments:

Part A – General Marketplace Information

- There is no need to provide any information in section 3 beyond the name of the marketplace (currently, name(s) under which business is conducted and main street address are required). This is all in the Form 21-101F1 and it doesn’t seem likely that there will be any confusion as

to which marketplace is which for the foreseeable future.

- It would be a significant burden reduction if section 4 and 5 relating to lists of amendments to the information provided in Form 21-101F1 or F2¹ were combined into one section that lists any amendments filed and approved but not implemented. It is not reasonable to ask marketplaces to send summaries of previously filed information (sometimes over multiple quarters), especially in cases where the amendment is outstanding because it remains under review by the regulator(s). The only information that is not already in the hands of staff relates to approved changes that have not been implemented and that should be the only quarterly filing requirement.
- In respect of Systems, we do not believe that a cost-benefit analysis would support providing the log and summary description of the systems failure, malfunctions, delays or security incidents during the quarter. Marketplaces are required to report anything material and CSA members have the ability to verify the process and accuracy of the information that is retained during oversight reviews. If a marketplace is found to have not reported any of the above appropriately, quarterly summaries could be imposed.
- We suggest that changes to section 7, in respect of Systems Changes, be considered. Any significant changes to the systems and technology used by the marketplace to support the listed items would be filed in the Form 21-101F1. We acknowledge, however, that it would likely be of value to CSA oversight staff to retain the element relating to status of changes that are under development.

Part B – Marketplace Activity Information

We appreciate the significant deletions that have been made to this Part of the Form 21-101F3, but question why the rest of the items relating to exchange-traded equity and debt – other than the options trading information and section 6 regarding routing activities – could not also be sourced from IIROC.

(d) Timing for Fee Amendments

It is often the case that the review of fee change proposals takes longer than the current seven day period, so it is understandable why the CSA would propose to lengthen it to 15; however, there are isolated cases where a change is non-controversial and only mirrors existing fees of other marketplaces. In those cases it would be helpful to have a mechanism for requesting the shorter period, without having to prepare an exemption application. We also would like to suggest that a clear schedule be defined for market data fee changes that are submitted by marketplaces and/or imposed by the OSC/other lead regulators, so that all marketplaces are subject to similar timing and are required to proceed with fee changes on the same date to avoid unnecessary additional, albeit temporary, burden on other industry stakeholders.

¹ Section 4: A list of all amendments in the information in Form 21-101F1 or 21-101F2 that were filed with the Canadian securities regulatory authorities and implemented during the period covered by the report. The list must include a brief description of each amendment, the date filed and the date implemented.

Section 5: A list of all amendments in the information in Form 21-101F1 or 21-101F2 that have been filed with the Canadian securities regulatory authorities but not implemented as of the end of the period covered by the report. The list must include a brief description of each amendment, the date filed and the reason why it was not implemented.

2. Financial Reporting

The Proposed Amendments relating to financial reporting would have the effect of removing several key differences between public and private company reporting. We ask that the CSA reconsider the addition of the requirement that recognized exchanges file interim financial statements within 45 days of the end of the interim period. We do not, in fact, have that requirement in our recognition order; we currently have 60 days to file. Forty-five days may be appropriate for the TMX Group, as it is a public company, but it should not be imposed on private exchanges. We also ask that the period for filing audited financial statements be extended to 120 days from year end, unless the exchange is a public company, as it would allow us to schedule our board meetings in a more efficient way.

Further, based on our understanding, the Proposed Amendment regarding disclosure of the accounting principles used to prepare statements and the statement of compliance with IFRS would add considerable work for exchanges that are not public companies and would, to some degree, conflict with the terms of NEO's recognition order.

3. Systems requirements

The addition of "cyber resilience" as an information technology general control and the shift to "security incident" instead of "security breach" are understandable adjustments to reflect current areas of concern with respect to technology. The proposed revisions to paragraph 12.1(a), however, make the distinction between clauses (i) and (ii) unclear, i.e. what is the difference between "adequate internal controls over those systems" and "adequate information technology general controls"?

With the broadening of the reportable items, especially things that may, but have not yet happened, it becomes even more important to have a clear definition of what is material. The current test of "if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology" is not of assistance to smaller organizations such as ours. Our COO may be informed of many items that we do not consider "material" in the normal course. Please consider a test relating to significant impact on the operation of the exchange or on its users or vendors, such as an actual or potential interruption of core services (trading and market data), or that the marketplace should establish in its policies and procedures what it considers material.

Vulnerability Assessments

Based on previous experience with independent systems reviews, we suggest that there be clarification of the CSA's view on what would constitute a "qualified party" for performing an assessment.

More importantly, this is an expensive undertaking and NEO made the decision not to perform such assessments unless we have experienced a new risk or changed our technology. Please consider removing the annual requirement and building in such triggers instead (which could include a catch-all item for "when requested by the marketplace's regulator(s)").

System Reviews

Please consider whether this requirement can be moved to every second year, with the contingency that it be annual if the previous report has significant findings or the entity has made significant technology changes over the year. Independent systems reviews are very expensive and marketplace

technology has come a long way, generally experiencing far fewer issues than when the system review requirement was originally put in place. We also request that there be flexibility in the due date. We receive certain reports early each year for the previous calendar year from our vendors (“subservice organizations” under the ISR), which our auditor cannot properly include in the ISR as it is due no later than 60 days after the calendar year end.

Again, we appreciate both the continuing work by the CSA to reduce burden on regulated entities and this opportunity to provide feedback on the Proposed Amendments.

Thank you for your consideration.

Yours truly,

“Cindy Petlock”

Chief Legal Officer
Neo Exchange Inc.

cc: Market Regulation, OSC
Jos Schmitt, CEO, Neo Exchange
Joacim Wiklander, COO, Neo Exchange



Deanna Dobrowsky
 Vice President, Regulatory
 TMX Group
 100 Adelaide Street West, Suite 300
 Toronto, Ontario M5H 1S3
 T (416) 365-8130
 deanna.dobrowsky@tmx.com

July 17, 2019

VIA EMAIL: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

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

The Secretary
 Ontario Securities Commission
 20 Queen Street West, 22nd Floor
 Toronto, ON M5H 3S8

Me Philippe Lebel
 Secrétaire général et directeur général des affaires juridiques
 Autorité des marchés financiers
 Place de la Cité, tour Cominar
 2640, boulevard Laurier, bureau 400
 Québec (Québec) G1V 5C1

Dear Sirs/Madams,

RE: Proposed Amendments to National Instrument 21-101 and Companion Policy 21-101

TMX Group Limited (“**TMX Group**”) appreciates the opportunity to comment on proposed amendments to National Instrument 21-101 (“**NI 21-101**”) and Companion Policy 21-101 (“**21-101CP**”) published by the Canadian Securities Administrators (the “**CSA**”) for public comment on April 18, 2019 (collectively, the “**Proposed Amendments**”). TMX Group owns four marketplaces that are subject to NI 21-101: Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, and the Bourse de Montreal. TMX Group is also required to make filings under NI 21-101 although it does not directly perform exchange activities.

In general, we support the Proposed Amendments that are focused on burden reduction. We are concerned, however, with certain Proposed Amendments that could increase the burden on marketplaces without commensurate benefit to the CSA.

Proposed Amendments to Reduce Regulatory Burden:

1) Amendments to Form 21-101F1 and Form 21-101F3

We commend the CSA for reducing the frequency for the requirement to file Form 21-101F1 from monthly to quarterly. We also commend the new option to incorporate information by reference in the annual updated and consolidated filings. Combined with the reduced frequency of reporting, this option will significantly reduce the size and complexity of the filed Form 21-101F1s, while ensuring that regulators maintain access to pertinent information. To achieve further efficiency, we urge the CSA to consider removing the requirement to file an annual consolidated Form 21-101F1. The annual filing is burdensome as it takes effort to consolidate periodic filings into one aggregate filing, and the annual filing does not provide any information that is not already filed during the periodic filings. As all filings are electronic, the value of consolidating the regular filings on an annual basis seems reduced as regulators already have access to all the information that an annual filing would contain.

We note that changing the reporting timeframe for non-significant changes from monthly to quarterly for Form 21-101F1 may result in unintended duplication in the contents of Form 21-101F3. As Form 21-101F1 will now be filed within 10 days of the quarter end and Form 21-101F3 is filed within 30 days of the same quarter end, both forms will cover the same filing period. Therefore, certain sections of the forms will now include very similar content. For example, in respect of information filed in the Form 21-101F1 during the reporting period, section A4 of Form 21-101F3 ask for a list of amendments filed and implemented, and section A5 of Form 21-101F3 ask for a list of amendments filed and not implemented. The changes caught by these sections A4 and A5 of Form 21-101F3 will also be filed and described in greater detail in the proposed quarterly Form 21-101F1. Though Form 21-101F3 will be filed after Form 21-101F1 during each quarterly filing month, the information contained in Form 21-101F1 will be substantially similar, as the reporting period for the forms will be identical. We believe that these Form 21-101F3 sections will be highly duplicative of the Form 21-101F1 filings made earlier during each filing month and we urge the CSA to consider removing these sections from the Form 21-101F3.

We also commend the CSA for removing certain reporting requirements from Form 21-101F3 that duplicate information that is already collected and made available to the CSA by the Investment Industry Regulatory Organization of Canada (“IIROC”). We believe that the CSA could also remove these reporting requirements, as the information is also available from IIROC:

- i. Chart 3: Order information
- ii. Chart 4: Most traded securities
- iii. Chart 9: Concentration of trading by marketplace participant

2) Provisions related to the requirement to report 5% shareholders in Form 21-101F1

The revisions to Exhibit B of Form 21-101F1 include a requirement to report beneficial holders of 5 percent or more of any class of securities for an exchange that is a corporation and to include disclosure of the class of securities held. We note that as a publicly traded corporation, it is not practical to obtain ownership information for 5 percent shareholders given that specific ownership percentages can change quickly as a result of shares being publicly traded, and that the identity of beneficial owners may be difficult (if not impossible) to obtain. For example, if the beneficial owner is an individual, this person may hold the shares in the name of his or her broker and may be an Objecting Beneficial Owner (“OBO”), in which case TMX Group would be unable to ascertain ownership. Similarly, the current requirement for publicly traded exchanges to disclose information regarding their registered owners is not practical. For registered owners, shares are typically registered in the name of CDS (this is the case for TMX Group, where the majority of our outstanding shares are registered in CDS’s name), thus TMX Group would be unable to readily ascertain ownership. Given that we would only be able to provide disclosure of 5 percent shareholders if

the shareholder is not an OBO and has the shares registered specifically in their own name, we submit that the proposed requirement would likely not produce any information for regulators.

We would also note that securities law already imposes a disclosure obligation on shareholders who beneficially own 10 percent or more of a public company, and the TMX Group recognition order issued by the OSC prohibits ownership of more than 10 percent of the TMX Group shares without OSC approval. We question the requirement to collect and report information of holders below levels that are considered reportable under securities law and would like to obtain clarification on the intended purpose of the information being collected. An alternative could be to create a carve-out for a marketplace that is a public company.

Proposed Amendments that bring New Requirements:

1) Provisions Related to Notification of “Security Incidents” and New Reporting Obligations

The Proposed Amendments include changes to certain notification and reporting obligations for “**Systems**” and “**Auxiliary Systems**” as described below. We are concerned that the Proposed Amendments may have unintended consequences in that they: (i) impose a quarterly reporting requirement of non-material events that, combined with the new definition of “security incident” will result in over-reporting that will be burdensome for marketplaces and not useful for regulators; and (ii) introduce in 21-101CP a broad definition of “security incident” and references to materiality that raise confusion rather than clarity for marketplaces, and may result in a notification regime that is unwieldy and uncertain for marketplaces. We believe that through changes to the Proposed Amendments, particularly in 21-101CP, the CSA could introduce clearer language that would confirm that it should be the impact of the event on key business processes of the marketplaces that should determine the regulatory notification process and any subsequent reporting.

New Notification and Reporting Requirements

Currently, section 12.1(c) of NI 21-1021 requires marketplaces to notify regulators of “any material systems failure, malfunction, delay or security breach.” The CSA proposes to change this notification requirement to capture “any systems failure, malfunction, delay or security incident that is material”. At the centre of this change is the concept of “security breach”, which is proposed to be broadened to “security incident”. The main challenge related to this proposed change is the proposed language in section 14.1(2.1) of 21-101CP, which creates confusion rather than clarity. The 21-101CP drafting challenges include: (i) a description of “material” based on internal marketplace reporting activities rather than the impact of the event; (ii) a statement that non-material events may become material events if they reoccur or have a cumulative effect; and (iii) new language which captures events that “potentially” jeopardize the confidentiality, integrity or availability of an information system, and are material. While we believe that the purpose of the Proposed Amendments in 21-101CP is to provide clarity, we are concerned that the Proposed Amendments will, in fact, have the unintended consequences of adding confusion and will result in marketplaces focussing inappropriately on events that are not impactful.

The CSA also proposes to add a new requirement to section 6 of Form 21-101F3, which will require marketplaces to provide a log and summary description of system failures, malfunctions, delays or security incidents. A similar requirement for information processors is being added to section 14.5(2) of NI 21-101. The Proposed Amendments, if enacted, would impose a new mandatory regulatory reporting obligation related to all events regardless of materiality, even where there is no impact to external stakeholders and no impact to marketplace business processes. These new requirements have the effect of adding a new obligation on marketplaces and information processors to classify each security incident, which will divert important technology staff resources from functional work to administrative tasks, solely for the purposes of regulatory notifications. They will also divert resources to the administrative task of documenting non-material system failures, malfunctions, and delays. In our view, creating logs of non-material events solely for regulators is a burden on marketplaces and information processors without a commensurate benefit to our stakeholders.

TMX Concern

The proposed requirement for reporting security incidents that are material is, as per our understanding, referring to any security incident that is critical enough to be escalated to senior management but not necessarily causing a material breach, unauthorized access or compromise of any information assets. TMX Group's cybersecurity incident response standard ("**IR Standard**") has been designed based on the computer security incident handling guide prepared by the National Institute of Standards and Technology ("**NIST**") and also incorporates additional industry best practices and standards. The IR Standard classifies a security incident based on multiple factors with a priority assessment that is represented by severity levels. The priority assessment takes into account confidentiality, integrity, and availability impact assessments to determine the severity level of a security incident in addition to the assessment of the potential and current impact of the occurrence and impact to the business unit or service.

The escalation of a security incident, therefore, is driven by the severity level of the "incident" as per the IR Standard. The IR Standard outlines the severity level at which a security incident would be considered critical and be escalated to senior management as well as to a crisis management team. The new requirement in the Proposed Amendments is not consistent with the current and widely accepted NIST guidelines, which we utilize for our IR Standard. We would note that these NIST guidelines do not currently define "material" "security incidents" and there is no generally accepted definition for a "material" "security incident" that we are aware of. As there is no such concept, there is no severity or impact assessment guidelines currently in place for assessing whether a security incident is "material". If a security incident were to reach a certain level of criticality and impact, it is then handled as per the IR Standards, which drive progressive escalation as required. It is our opinion that notification to regulators for security incidents that would not be reportable events under generally accepted information security standards, will be an inappropriate use of our key resources within the cyber security, information security, risk, and operational teams. In the case of a potential adverse cyber event, resources should be allocated quickly to identify pre and post severity levels, mobilize required internal and external teams and start response and recovery efforts rather than spending time on non-critical security incidents which do not impact stakeholders.

In terms of the new reporting requirements for logs of security incidents found in the aforementioned amendments to Form 21-101F3 and NI 21-101, we would like to confirm that, as per our Security Incident Framework, every incident regardless of severity level, is already documented and kept in the appropriate repository for forensics, audit and regulatory requirements. Additional reports are also created as per the framework and distributed to stakeholders. These are high level summaries of incidents that are automatically generated by our monitoring system and include even the most insignificant false-positive security incident events such as log-in errors or inappropriate website visits. The monitoring systems also attach severity assessments to these incidents, flagging certain events for further investigation and subsequent escalation of security assessments as required. Converting these records into formats easily accessible to regulators would be excessively costly, given the relatively low value of the information such records could convey, and the requirement to perform this conversion on a quarterly basis would divert valuable resources away from more significant tasks. We believe that an unintended consequence of the Proposed Amendments therefore will be the over-reporting of low-level severity incidents that do not impact key business processes. Imposing additional burden on regulated entities without commensurate benefit to regulators and to the industry is a poor outcome, and is inconsistent with work being done by a number of CSA members to reduce unnecessary regulatory burden.

We would be pleased to work with the CSA to revise the wording in the Proposed Amendments related to "security incident" and the definition of "material", to ensure that marketplaces' focus for incident management can continue to be appropriately directed at the incidents that could have a material impact on key business processes. We would like to discuss with the CSA the use by marketplaces of an impact-driven incident reporting methodology that we believe would provide our regulators with the most relevant information in the most efficient manner for both regulators and marketplaces. If we were to agree on the components of the impact-driven incident reporting methodology, we could then collaboratively review with the CSA the Proposed Amendments, and remove any language that causes confusion or that could have the unintended consequence of importing unnecessary regulatory burden into the marketplace oversight regime.

2) Provisions related to annual system reviews – vulnerability assessments

We understand that the new obligation to perform vulnerability assessments would allow for qualified TMX Group staff to perform the assessment and that regular regulatory reporting is not required. As such, we support the provision.

We would also ask that the CSA provide additional clarification on the meaning of the word “models” as used in section 14.1(1) of 21-101CP where the Proposed Amendments include the following statement:

“We are of the view that internal controls include controls that support the processing integrity of the models used to quantify, aggregate and manage the marketplace’s risk”.

Final Remarks

Given that the Proposed Amendments, and in particular, the proposed changes in section 12 of NI 21-101 would impact areas of our enterprise that are highly technical in nature, we would be pleased to discuss these comments with CSA staff.

Sincerely,



Deanna Dobrowsky
Vice President, Regulatory