



ASC NOTICE 21-705
REQUEST FOR COMMENT
APPLICATION BY CREDITEX
SECURITIES CORPORATION FOR
EXEMPTION FROM MARKETPLACE RULES

April 8, 2020

Background

Creditex Securities Corporation (**Creditex**) has applied for an exemption from National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), National Instrument 23-101 *Trading Rules* (**NI 23-101**), and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in their entirety (together, the **Marketplace Rules**).

Creditex is a wholly-owned subsidiary of Intercontinental Exchange, Inc. and is regulated as a U.S. broker-dealer registered with the Securities and Exchange Commission (**SEC**) pursuant to section 15 of the Securities Exchange Act of 1934, as amended. Creditex is also a member of the Financial Industry Regulatory Authority (**FINRA**), the Municipal Securities Rulemaking Board and the National Futures Association. Creditex operates two fixed income alternative trading systems (**ATSS**) that are regulated by the SEC and FINRA pursuant to *Regulation ATS* (17 C.F.R. § 242.300 et seq.).

Requested Relief

Creditex proposes to offer direct trading access to its ATSS to prospective participants in Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Quebec, New Brunswick and Nova Scotia (the **Canadian Participants**). As such, Creditex will be carrying on business as an ATS in Canada and is therefore required to comply with the Marketplace Rules. Creditex has applied for an exemption from the Marketplace Rules in their entirety on the basis that it is already subject to a comprehensive regulatory regime in its home jurisdiction by the SEC and FINRA.

Application and Draft Exemption Order

In the application, Creditex has outlined how it meets the criteria for exemption from the Marketplace Rules as set out in CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities*.¹ The application and draft exemption order with terms and conditions are attached as Appendices A and B, respectively, to this Notice.

Comment Process

We are seeking public comment on all aspects of Creditex's application and the draft exemption order.

¹ Available at <https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2020/03/5805988-CSA-Staff-Notice-21-328.ashx>

Please provide your comments in writing, via email, on or before May 25, 2020, to the attention of:

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Fax: 403-297-2210
Email: katrina.prokopy@asc.ca

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

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Katrina Prokopy
Senior Legal Counsel, Market Regulation
Alberta Securities Commission
Email: katrina.prokopy@asc.ca

Heather Cohen
Legal Counsel, Market Regulation
Ontario Securities Commission
Email: hcohen@osc.gov.on.ca

Ruxandra Smith
Senior Accountant, Market Regulation
Ontario Securities Commission
Email: ruxsmith@osc.gov.on.ca

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE



Appendix A

April 8, 2020

Terry Doherty
 Direct Dial: 212.991.2545
 tdoherty@osler.com
 Our Matter Number: 1203123

SENT BY EMAIL AND OSC/BCSC PORTAL

Alberta Securities Commission
 Suite 600, 250–5th St. SW
 Calgary, Alberta T2P 0R4

Ontario Securities Commission
 19th Floor, 20 Queen Street West
 Toronto, Ontario M5H 3S8

British Columbia Securities Commission
 701 West Georgia Street, Pacific Centre
 Vancouver, BC V7Y 1L2

Manitoba Securities Commission
 400 St Mary Ave
 Winnipeg, MB R3C 4K5

Financial and Consumer Affairs Authority
 Suite 601, 1919 Saskatchewan Drive
 Regina, Saskatchewan S4P4H2

Autorité des marchés financiers
 Place de la Cité, tour Cominar
 2640, boulevard Laurier, bureau 400
 Québec, Québec G1V 5C1

Nova Scotia Securities Commission
 Ste. 400, Duke Tower, 5251 Duke St.
 Halifax, NS B3J 1P3

Financial and Consumer Services
 Commission
 85 Charlotte St Suite 300
 Saint John, NB E2L 2J2

Dear Sirs/Mesdames:

RE: Application by Creditex Securities Corporation (“CSC” or the “Applicant”) for an exemption pursuant to Section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (“NI 21-101”) in the Jurisdictions (defined below) other than Ontario and Section 15.1(2) of NI 21-101 in Ontario from NI 21-101 in whole, pursuant to Section 12.1 of National Instrument 23-101 *Trading Rules* (“NI 23-101”) in the Jurisdictions other than Ontario and Section 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole and pursuant to Section 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (“NI 23-103” and, together with NI 21-101 and NI 23-101, the “Marketplace Rules”) in the Jurisdictions other than Ontario and Section 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole, in accordance with the requirements of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (“NP-11-203”)



We are counsel to CSC. This is a coordinated review application (“**Application**”) on behalf of CSC pursuant to Section 3.4 of NP 11-203. We are filing this application on behalf of CSC in each of Alberta, British Columbia, Manitoba, Saskatchewan, Ontario Québec, New Brunswick and Nova Scotia (collectively, the “**Jurisdictions**”).

In accordance with the guidelines set out in Section 3.6 of NP 11-203, the Alberta Securities Commission (“**ASC**”) has been selected as the principal regulator for the purposes of this Application on the basis that CSC has the most significant connection to Alberta. In accordance with Section 5.2(3) of NP 11-203, this Application is being filed with each of the securities regulatory authorities in the Jurisdictions (“**ATS Relief Decision Makers**”) for relief from the securities legislation of each of those Jurisdictions (the “**Legislation**”). In accordance with paragraph 3.4 of NP 11-203, CSC is filing a coordinated review application with, and paying fees to, each of the ATS Relief Decision Makers.

Relief Requested

On behalf of CSC, we hereby request that the ATS Relief Decision Makers grant a decision under the Legislation for the following decisions (collectively, the “**Requested Relief**”):

1. Pursuant to Section 15.1(1) of NI 21-101 in the Jurisdictions other than Ontario and Section 15.1(2) of NI 21-101 in Ontario for an exemption from NI 21-101 in whole;
2. Pursuant to Section 12.1(1) of NI 23-101 in the Jurisdictions other than Ontario and Section 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole; and
3. Pursuant to Section 10(1) of NI 23-103 in the Jurisdictions other than Ontario and Section 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole.

CSC is not in default of securities legislation in any of the Jurisdictions nor in its home jurisdiction, the United States of America (“**US**”). The exemption sought is novel and, to our knowledge, has not been previously granted.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NP 11-203 and NI 21-101 have the same meaning if used in this Application, unless otherwise defined.

Historically, a foreign alternative trading system trading fixed income securities (“**foreign ATS**”) has been permitted to conduct business in Canada by creating a Canadian subsidiary that is registered as an investment dealer, becoming a member of the Investment Industry Regulatory Organization of Canada (“**IIROC**”) and being subject to the Marketplace Rules. In CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading*

Fixed Income Securities (“**Staff Notice 21-328**”), the Canadian Securities Administrators (the “CSA”) provides a regulatory framework that describes the approach to evaluate requests for, and determine whether to recommend, the granting of exemptions from the Marketplace Rules to foreign ATSS that request to carry on business in Canada. In the CSA’s proposed exemption model, foreign ATSS may be permitted to offer direct access to Canadian participants without having to establish a Canada-based affiliate, provided they meet certain terms and conditions, including a requirement that they comply with the applicable regulations in their home jurisdiction. In Staff Notice 21-328, CSA staff have provided a rationale for granting relief from the Marketplace Rules to an ATS that seeks to offer direct access to Canadian participants. Staff Notice 21-328 suggests that if a foreign ATS is subject to a comparable and comprehensive regulatory regime in its home jurisdiction, which meets certain criteria and can be relied on for investor protection and the promotion of a fair and efficient market, such home jurisdiction regulatory regime may provide a substitute compliance regime for the foreign ATS carrying on activities with Canadian participants, provided that the foreign ATS complies with relevant terms and conditions imposed upon the operations of the foreign ATS within Canada by the Canadian securities regulatory authorities. Further, it may be duplicative to impose Marketplace Rules on foreign ATSS that are already subject to an existing comparable regulatory regime in their home jurisdiction that is similar to the regulatory regime applicable to ATSS in Canada. Staff Notice 21-328 states that the ultimate aims of the proposed foreign ATS exemption regime are to avoid market fragmentation and reduce regulatory duplication and burden while facilitating investor protection and promoting a fair and efficient market.

Staff Notice 21-328 provides details on the application process, exemption criteria, and sample terms and conditions that may be included in a foreign ATS's exemption order. A foreign ATS seeking an exemption must file an application for exemption from the Marketplace Rules outlining certain information, including how the foreign ATS is regulated in its home jurisdiction and what authority and procedures the home regulator has in place for oversight of the foreign ATS. CSA staff will review applications for exemption and will work with foreign ATSS on the appropriate terms and conditions that may be included in a foreign ATS exemption order. The specific terms and conditions applicable to the foreign ATS may vary depending on its operations, the information in its application, the regulatory regime in its home jurisdiction and any other matters relevant to the foreign ATS’s application. The terms and conditions for the regulatory framework focus on the foreign ATS maintaining regulatory compliance in its home jurisdiction, providing the CSA with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model.

The Applicant submits that it has provided in this Application for an exemption from the Marketplace Rules the information requested by CSA staff in Staff Notice 21-328 to assist staff in the Jurisdictions with evaluating whether it is appropriate for CSC to be granted the Requested Relief. The Applicant further submits that it should be permitted to offer

direct access to Canadian participants without having to establish a Canada-based affiliate as it is able to substantially meet or otherwise address the criteria set out in Staff Notice 21-328 and address the regulatory framework in Staff Notice 21-328, including the proposed terms and conditions for granting an exemption from the Marketplace Rules. In particular, the Applicant submits that it is subject to a regulatory regime in its home jurisdiction that is substantially similar to that applied to an ATS in the Jurisdictions.

In addition, the Applicant submits that the Application demonstrates that the Applicant satisfies the criteria provided in the CSA's regulatory framework and proposed exemption model. Further, the Applicant submits that the balance between avoiding market fragmentation and reducing regulatory duplication and burden, and facilitating investor protection and promoting a fair and efficient market is met. For these reasons and the reasons provided in the Application, the Applicant submits that granting the Requested Relief is warranted.

The Application was prepared to address criteria in Staff Notice 21-328.

For convenience, this Application is divided into the following Parts:

PART 1 BACKGROUND

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

- 1. Regulation of CSC**
- 2. Governance**
- 3. Regulation of Products**
- 4. Access**
- 5. Regulation of Participants on the Alternative Trading Systems**
- 6. Clearing and Settlement**
- 7. Systems and Technology**
- 8. Financial Viability and Reporting**
- 9. Recordkeeping**
- 10. Outsourcing**
- 11. Fees**
- 12. Information Sharing and Oversight Arrangements**

Part III Submissions by CSC

- 13. Submissions Concerning the ATS Relief**

Part IV Fees

- 14. Fees**

Part V Other Matters**15. Other Matters****Appendix A – Draft Decision****Appendix B – Authorization and Verification Statement****PART I BACKGROUND****Description of CSC and its business**

1. CSC is a private corporation incorporated under the laws of Delaware (corporate identification number: 3516208) whose registered office is at 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, Delaware, US, and whose head office is located at 55 East 52nd Street, 40th Floor, New York City, New York, 10055, US.
2. CSC offers fixed income products and is an alternative trading system (“**ATS**”) and a broker-dealer registered with the US Securities Exchange Commission (“**SEC**”) pursuant to Section 15 of the *Securities Exchange Act of 1934*, as amended (“**Exchange Act**”), and is registered as an introducing broker pursuant to the *Commodity Exchange Act* (“**CEA**”). CSC is also a member of the Financial Industry Regulatory Authority (“**FINRA**”), the Municipal Securities Rulemaking Board and the National Futures Association. CSC operates two ATSS that are registered with the SEC.
3. **ATS #1** operates under the name of ICE Credit Trade (“**ICT ATS**”), which is also a doing business name of CSC. The **ICT ATS** is primarily a fixed income session-based auction market located and operated primarily in the US. The **ICT ATS** offers fixed income trading on a riskless principal basis in fixed income securities denominated in either US dollars or other foreign currencies, and settles on a fully-disclosed basis through its clearing broker.
4. **ATS #2** operates under the name of ICE BondPoint (“**ICE BondPoint ATS**”), which is also a doing business name of CSC. In connection with CSC’s fixed income securities related business that occurs on the **ICE BondPoint ATS**, CSC may act in either (i) a riskless principal capacity, whereby CSC is the counterparty to both the buyer and seller of a respective transaction, or (ii) in an agency capacity, whereby CSC introduces the transaction counterparties to one another after the execution of a transaction on the **ICE BondPoint ATS**. When acting in an agency capacity, the counterparties to the transaction will clear and settle such transaction directly with one another, as opposed to CSC acting as the counterparty intermediary (i.e. riskless



- principal). When acting in a riskless principal capacity, transactions effected on the ICE BondPoint ATS settle on a fully-disclosed basis through CSC's clearing broker.
5. CSC does not have any offices or maintain other physical installations in Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia or any other Canadian province or territory.
 6. CSC is a Trade Reporting and Compliance Engine ("**TRACE**") and Municipal Securities Rulemaking Board ("**MSRB**") Real-Time Transaction Reporting ("**RTRS**") reporting firm and as such, with the exception of transactions in municipal securities arranged on an agency basis on the ICT ATS or the ICE BondPoint ATS (which are not required to be reported by CSC), CSC will report all other securities transactions executed on the ATS Platforms by Canadian Subscribers to TRACE and RTRS either within the required 15 minute time frame or at month end as required under FINRA Rule 6732. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that a "customer" traded with CSC. With the exception of the FINRA Rule 6732 month end reporting obligation, CSC does not directly report to TRACE/RTRS either for itself or for its subscribers. While CSC is responsible for ensuring the reporting of transactions occurs, CSC is permitted to and has outsourced the required reporting to its clearing brokers through contract. CSC's market participant identifier is CSCA and VABD.
 7. A subscriber means an institution that is authorized to transact in mortgage-backed securities, asset-backed securities, certificates of deposit and bonds or debentures, including those issued by corporations, municipalities, governments, governmental or semi-governmental agencies and such other related products that CSC may add from time to time (collectively, "**Fixed Income Products**") pursuant to all applicable federal, state, provincial and local laws, statutes, rules and regulations, judicial orders or decisions, and the rules, regulations, interpretations and protocols of or by any national, supra-national, federal, state, municipal or other governmental entity, agency, commission, court or instrumentality (or other sub-division thereof) exercising executive, legislative, judicial, regulatory or administrative functions, including the SEC, FINRA, MSRB and including any governmental or non-governmental self-regulatory organization, agency or authority, or any arbitrator or arbitral tribunal ("**US Regulatory Authority**") or clearing organization, as amended from time to time and satisfies CSC's subscriber criteria as described in the Operating Procedures, as defined below.
 8. The primary functions of ICT ATS and the ICE BondPoint ATS (collectively the "**ATS Platforms**", or individually an "**ATS Platform**") are to provide a market place where subscribers have the opportunity to trade Fixed Income Products, including non-SEC registered fixed income securities (i.e. securities of issuers that are non-US domestic and not registered with the SEC as foreign private issuers).

9. All orders, matching and executions arranged by CSC on the ATS Platforms are governed by the respective ATS Platform subscriber agreements and by the ICE BondPoint execution protocols (“**BondPoint Execution Protocols**”) or the ICE Credit Trade User Guidelines Procedures (“**User Guidelines**”) and together with the BondPoint Execution Protocols, the “**Operating Procedures**”).
10. CSC proposes to offer direct access to its ATS Platforms to prospective subscribers in the Jurisdictions (“**Canadian Subscribers**”) to facilitate trades in Non-Canadian Fixed Income Securities (as defined below). In order to obtain direct access to the ATS Platforms, a Canadian Subscriber would be required to execute certain agreements as detailed below. Canadian Subscribers who would in the future be admitted by CSC may access CSC from the Jurisdictions. The CSC agreements and Operating Procedures provide clear and transparent access criteria and requirements for all CSC subscribers, as well as minimum financial requirements.

Canadian Subscribers’ eligibility requirements and documentation

11. CSC intends to provide Canadian Subscribers with direct access to the ATS Platforms. CSC is seeking the Requested Relief in order to be able to carry on business as an ATS in the Jurisdictions by allowing Canadian Subscribers access to trading on the ATS Platforms directly, without CSC having to comply with the provisions of NI 21-101, NI 23-101 and NI 23-103. CSC is currently subject to an adequate regulatory regime in a foreign jurisdiction.
12. Access to the ATS Platforms will be limited to Canadian Subscribers who must meet CSC’s eligibility criteria. Subscribers generally fall into the following categories: large multi-national bank; insurance company; US registered investment company; derivatives dealer; and/or any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million. Before being provided direct access to the ATS Platforms, CSC will confirm that each Canadian Subscriber is a “permitted client” as that term is defined in *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”). Retail customers will not be provided access to the ATS Platforms.
13. Once a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must:
 - a. execute a Fixed Income Master Subscriber Agreement and Platform Provider Schedule in which the prospective Canadian Subscriber agrees to abide by the Operating Procedures;



- b. be and remain at all times either an (x) “institutional account” as defined in FINRA Rule 4512¹, or (y) a broker-dealer registered pursuant to Section 15 of the Exchange Act; and
- c. be and remain at all times a “permitted client” as defined in NI 31-103.

A Canadian Subscriber must then appoint a “Subscriber User Administrator”, who will be the individual appointed by the Canadian Subscriber with the authority to appoint a list of users that are permitted to access the ATS Platforms and enter into transactions on the Canadian Subscriber’s behalf.

An individual who has been identified in writing to CSC by a Subscriber User Administrator as possessing the authority to access and use the ATS Platform(s), other services/trading services and to access to the ATS Platforms for the purpose of executing transactions (“**Transactions**”) on subscriber’s behalf (a “**User**”) must also satisfy the following criteria:

- a. Hold and maintain any required regulatory licenses necessary to enter into transactions on the Canadian Subscriber’s behalf; and
 - b. Understand that by accessing the ATS Platforms and entering into transactions on the Canadian Subscriber’s behalf, the Subscriber User Administrator is bound by the terms of the Operating Procedures of a respective ATS Platform.
14. Upon written request of a Subscriber User Administrator, CSC may also provide members of a Canadian Subscriber’s middle or back office staff with non-trading access as necessary to facilitate/support the Canadian Subscriber’s business requirements.
15. A Canadian Subscriber will be required to confirm that it continues to satisfy the eligibility criteria for access to the ATS Platforms on an ongoing basis. Specifically, CSC will reach out at least every two years to a Canadian Subscriber to confirm that a Canadian Subscriber continues to satisfy the eligibility requirements for access to the ATS Platforms. A Canadian Subscriber will be required to provide prompt notification to CSC if it no longer qualifies as a “permitted client”.
16. It is proposed that CSC will maintain a current list of all Canadian Subscribers, specifically identifying for each Canadian Subscriber the basis upon which it

¹ An “institutional account” means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

represented to CSC that it is eligible to be provided with direct access to the ATS Platforms.

17. It is proposed that CSC will provide to its Canadian Subscribers disclosure that states that:
- a. rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
 - b. the rules applicable to trading on ATS Platforms may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
 - c. CSC is regulated by the regulator in the home jurisdiction, rather than the securities regulators in Canada.

Hours of operation

18. The hours of operation for the ATS Platforms are 8:00 a.m. to 6:00 p.m. EST (“**Market Hours**”), Monday through Friday, excluding the Securities Industry and Financial Markets Association's recommended full and early holiday closings.

Training provided to subscribers

19. The ATS Platforms are only made available to sophisticated subscribers. The Canadian Subscriber will be expected to have a working knowledge of the fixed income market place generally.
20. CSC intends to make available training for each person who has access to trade on the ATS Platforms.

Steps taken to ensure Canadian Subscribers have knowledge of and comply with marketplace requirements

21. Prior to accessing the ATS Platforms, subscribers are required to agree to the terms and conditions applicable to each of the respective ATS Platforms, which includes the Operating Procedures applicable to each of the respective ATS Platforms. As an SEC registered broker-dealer and operator of registered alternative trading systems in the US, CSC is required to comply with applicable law with respect to the operation of its marketplaces and “observe high standards of commercial honor and just and equitable principles” in the conduct of its business (see FINRA Rule 2010), which includes ensuring that subscribers have the capacity and the ability to meet their commitments when trading on the ATS Platforms.

22. CSC seeks to ensure that trading on the ATS Platform is consistent with the requirements of US law by monitoring the trading activity occurring on its market place. CSC has the right by contract with a subscriber (as well as a regulatory obligation) to remove information that CSC deems to be unlawful, inappropriate or otherwise breaches the terms and conditions applicable to the respective ATS Platform. Subscribers are required to agree that they shall not place orders with the purpose of frustrating the orderly operation of the ATS Platforms or with the intent to cause market disruption and only orders that represent bona fide trading interest may be submitted to the ATS Platforms. Employees of CSC continually monitor orders/quotations entered on the ATS Platforms and CSC reserves the right to immediately remove any order/quotation that it considers to be in breach of the Operating Procedures or otherwise may lead to market disruption. In addition, CSC is staffed with professional compliance personnel that support the orderly functioning of the ATS Platforms and seek to ensure that such platforms are operated in compliance with applicable law.
23. Suspected material breaches of rules promulgated by applicable regulatory authorities related to fair and orderly trading on the ATS Platforms will be reviewed by CSC. If necessary, the information from such review may be reported to the regulatory authorities and other appropriate organizations in a timely manner. CSC is committed to fully cooperating with its regulators in investigating any suspected breach or suspected market abuse.
24. In addition, CSC may immediately deny the access privileges of any subscriber or any individual User who, at any time, fails to comply with the respective ATS Platform's Operating Procedures, undertakes activity that causes market disruption or whose conduct is inconsistent with fair dealing and not in the best interests of the functioning of the ATS Platforms.

Location

25. CSC is based in New York City, New York.

Size

26. It is proposed that CSC will maintain the following information for each product traded on the ATS Platforms: the total trading volume and value originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis, and the proportion of worldwide trading volume and value on the ATS Platforms conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers.

Ownership and corporate structure



27. CSC is an indirectly wholly owned subsidiary of Intercontinental Exchange, Inc. (“ICE”, NYSE ticker: ICE). ICE is a Fortune 500 company that operates a global network of futures, equity and equity options exchanges, as well as global clearing and data services across financial and commodity markets. ICE currently operates 12 exchanges and 6 clearing houses, and offers trade execution, central clearing, and data services. As part of its global network, ICE owns and operates SEC registered and SEC regulated entities, including ICE Clear Credit, a registered clearing agency and the New York Stock Exchange. ICE is also the owner of multiple FINRA-member broker-dealers, including CSC and TMC Bonds, L.L.C.

Products traded on the ATS Platforms

28. It is proposed that Canadian Subscribers would be able to trade any debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in NI 31-103, including:
- a. Debt securities issued by US government (including agencies and/or instrumentalities thereof);
 - b. Debt securities issued by a foreign government;
 - c. Debt securities issued by corporate or other non-governmental issuers (US and foreign); and/or
 - d. Asset-backed securities (including mortgage-backed securities), denominated in either US or foreign currencies
- (together, the “**Non-Canadian Fixed Income Securities**”).

29. Non-Canadian Fixed Income Securities include certain securities that may not be registered pursuant to Section 12(b) of the Exchange Act, and may not be listed on one or more national securities exchanges which are registered pursuant to Section 6 of the Exchange Act.

List of order types available on the ATS Platforms

30. The ATS Platforms offer certain trading protocols as described in the Operating Procedures and summarized herein. There are no affiliates of CSC that trade as principal on the ATS Platforms.

ICE CREDIT TRADE ATS

Structure of the market

31. The ICT ATS is primarily a fixed income session-based auction market located and operated in the US by CSC. When operating the ICT ATS, CSC does so under the doing business name as ICE Credit Trade (“ICT”). The ICT ATS offers fixed income trading on a riskless principal basis in fixed income (i.e. non-equity) securities denominated in either US Dollars or other foreign currencies, and settles on a fully-disclosed basis through its clearing agent.

Means of access to the ICT ATS

32. In addition to the eligibility and documentation requirements described at *Canadian Subscribers eligibility requirements and documentation* that must be met above, access is provided via a trading application that may be accessed via the Internet or private network. Subscribers have the option to utilize the graphical user interface, an application programming interface or an independent software vendor. Access to the ICT ATS requires both a user name/login and password, and is only available to subscribers who have initiated or established a relationship with CSC in accordance with applicable regulatory requirements, and who have satisfied pre-determined criteria and standards to access the ICT ATS (e.g., creditworthiness requirements, capital requirements, ability to abide by its rules, and/or disciplinary history).
33. In order to access the ICT ATS, a potential subscriber must (i) supply the requested information, and (ii) agree to ICT ATS’s User Guidelines. Upon submission of such information, CSC will review the submission for approval. The potential subscriber must be approved by CSC in order to be provided with access to the ICT ATS. CSC will request evidence of authorization from the Users’ respective subscriber to access the ICT ATS. An approved User will be provided with a unique user name/login and password. The ICT ATS software should be installed on a User’s computer by the subscriber’s technology staff.
34. All infrastructure including networks, communication circuits and servers that support subscribers directly will be physically isolated from other back office systems. Back office systems are physically held on site at CSC, and production systems are held at the Chicago Data Center.

Types of orders and how orders interact on the ICT ATS

35. The ICT ATS is a session-based platform that generally supports the following three types of auctions: (i) Portfolio Auctions; (ii) Risk Match Auctions; and (iii) Volume Clearing Auctions.

Portfolio Auctions (“PA”).

36. PAs allow a subscriber the ability to auction a portfolio of bonds on an “all-or-nothing” basis to one more other platform participants in a discrete, pre-determined period of

time. Portfolios may consist of any number of individual bonds and may be all buys or all sells or a combination of both. The Portfolio Auction offers two distinct trading session formats, “At the Market” or “At the Close”.

37. During the course of a PA, buy and sell orders are submitted to the ICT ATS either via excel spreadsheet, manually through the user interface or through the use of a third party order management system. The PA is run for a pre-determined period of time and upon the conclusion of that time period, the trades are executed between the investment manager that initiated the PA and with the subscriber that has submitted the best market value for the given portfolio. All orders entered into the ICT ATS during a PA are live and actionable until either the auction time expires or the orders are removed from the ICT ATS by the submitting subscriber.

Risk Matching Auctions (“RMA”)

38. A RMA is an auction intended to assist subscribers in efficiently collapsing risk in their portfolios. There can be any number of subscribers participating in an RMA. A RMA may be launched in a single sector of the market place or across multiple sectors and order are entered either via a spreadsheet or manually through ICT ATS graphical user interface. RMA’s are run for a pre-determined window of time and can either be run as a spread-based auction with a US Treasury security cross or a price-based auction. At the outset of a RMA, subscribers submit a list of bonds they want to trade (CUSIP and amount) and when the auction is launched the ICT ATS finds all of the potential buyers and sellers of each CUSIP and provides each subscriber with a list of trade proposals. The ICT ATS uses either a third party evaluated price or a price originating from the ICE BondPoint ATS to price each individual bond within the subscriber’s submitted list. Once a trade proposal is sent to a respective subscriber, that subscriber must then affirm the proposals in the event they wish to execute. Once the buyer and seller affirm the proposal, the trades are automatically executed.

Volume Clearing Auctions (“VCA”)

39. A VCA consists of a static list of bonds selected by CSC and priced using a third party evaluated price. There is no ability for the subscriber to change the pre-populated price and subscribers may enter buy and/or sell orders at that pre-determined price. To the extent there is a match between a buy and sell order for a respective bond, the trade is executed. There can be any number of participating subscribers in a VCA.

ICE BONDPOINT ATS

Structure of the market

40. The ICE BondPoint ATS is primarily a fixed income execution platform offering multiple trading protocols, such as click to trade and request for quote.

Means of access to ICE BondPoint ATS

41. In addition to the eligibility and documentation requirements described at *Canadian Subscribers eligibility requirements and documentation* above, subscribers can access the ICE BondPoint ATS via several methods of connections. Some subscribers may use either frame relay or dedicated circuits when connecting to the ICE BondPoint ATS through their own proprietary front-end system using a FIX (Financial Information Exchange) Order Management System. Each subscriber is responsible for programming its proprietary systems to be compatible with the ICE BondPoint ATS's specifications. In addition, some subscribers may utilize third party order management systems or service providers for offering data, quotation-wanted responses and trade executions; these third party vendors may or may not support all of the ICE BondPoint ATS functionality. ICE BondPoint ATS will provide subscribers with technical specifications necessary to integrate access to ICE BondPoint ATS into their proprietary trading systems or build custom front-end systems. Subscribers may access ICE BondPoint ATS directly on the Internet with a standard web-browser. In addition, orders may also be entered into the ICE BondPoint ATS using CSC's trading desk during regular business hours.

Types of orders and how orders interact

42. When entering quotations into the ICE BondPoint ATS, subscribers acting as liquidity providers can enter orders with certain characteristics as described in the BondPoint Execution Protocols and as summarized herein.
43. The ICE BondPoint ATS offers subscribers the ability to enter, execute, or cancel orders in the platform. Subscribers can also view all orders in the platform, subject to any blocking that the subscriber may have in place or that another subscriber may have placed on it. With respect to the ICE BondPoint ATS, subscribers generally fall into two categories, a (1) "Liquidity Provider", and (2) "Liquidity Taker".

Liquidity Providers

44. Quotations or offerings sent by a Liquidity Provider can be on either, or both, sides of the market and will be displayed on the ICE BondPoint ATS until the quotation or offering is either executed or cancelled. Liquidity Providers may change or cancel their bid/offering at any time prior to execution. Offerings may be established either as a "Good Til Cancelled", "Auto Execution", "Subject" (requiring the Liquidity Provider to confirm the Liquidity Takers response prior to execution), or "All or None".

Liquidity Takers

45. Liquidity Takers can elect to limit orders on the ICE BondPoint ATS. Orders can be changed or cancelled at any time prior to execution and can be submitted as either a



- “Good Til Cancelled”, “Day Order”, “Use Established Expiry Time”, or “Interact and Post”.
46. Offerings on the ICE BondPoint ATS are displayed and eligible for matching based on price, execution preference, and time priority.
 47. The ICE BondPoint ATS also supports “Bid-Wanted-Auctions” and “Request-for-Quote Auctions”.
 48. In a Bid-Wanted-Auction subscribers have the ability to define the parameters for the bid wanted auctions they conduct, such as determining the time allotted for responses to be received.
 49. Once the Bid-Wanted-Auction is initiated, all bids submitted by other subscribers are viewable by the initiator of the bid wanted auction, a notification is then sent to the subscriber with the winning bid after the bid initiator takes action, who must either accept or decline the proposed transaction by the bid expiry time. If accepted, the transaction is confirmed and the subscribers are provided with an electronic trade execution report.
 50. The Request-for-Quote Auction (“**RFQ**”) workflow supports lists for both “Bid-Wanted” in competition and “Offer-Wanted” in competition. It also provides subscribers with the ability to choose a price type (e.g. dollar or spread) for the RFQ and whether the subscriber wants to disclose its identity on a pre-trade basis. Additionally, the RFQ functionality consists of a standardized workflow that includes due-in time and firm time.
 51. Subscribers may limit their interaction with other subscribers on the ICE BondPoint ATS through subscriber imposed limitations on interaction or order restrictions. However, absent these restrictions, offerings/orders are otherwise generally available to all other subscribers, subject to certain eligibility criteria required under US securities law (e.g. resales of certain securities to Qualified Institutional Buyers pursuant to Rule 144A).

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

1. REGULATION OF CSC

- 1.1 **Regulation of the alternative trading system – The alternative trading systems are regulated in an appropriate manner in another jurisdiction by a foreign regulator (the “Foreign Regulator”)**

- 1.1.1 In the Jurisdictions, an ATS is required by section 6.1 of NI 21-101 to be registered as an investment dealer and be a member of the IIROC in order to operate a business as an ATS in each of the Jurisdictions. In addition, it is subject to registration requirements under applicable Canadian securities law when engaging in the business of trading. Similarly, in the U.S., all broker-dealers and their associated persons must be registered with the SEC (or FINRA in the case of associated persons) pursuant to section 15 of the Exchange Act and are subject to its regulations. They must as well be a member of at least one securities self-regulatory organizations (“SRO”), which is further delegated some regulatory authority. Most broker-dealers in the U.S. are members of FINRA.
- 1.1.2 CSC is subject to a comprehensive regulatory regime in the US both as a registered broker-dealer and as an operator of an alternative trading system. In such capacity, CSC is registered with the SEC, FINRA, and the MSRB in the US, and is also subject to regulation under state securities rules and regulations (collectively, the “US Regulators”). The US Regulators set rules, conduct compliance reviews and perform surveillance and enforcement. The US regulatory structure for broker-dealers such as CSC includes: financial and other fitness criteria for subscribers; reporting and record-keeping requirements; procedures governing the treatment of customer funds and property and business conduct standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse and market manipulation.
- 1.1.3 In the US, broker-dealers are primarily governed by Exchange Act, and the rule and regulations promulgated thereunder. Section 4 of the Exchange Act provides for the creation of the SEC, which was established in 1934. The Exchange Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as US SROs, including FINRA. The Exchange Act also identifies and prohibits certain types of conduct in the markets and provides the SEC with examination and disciplinary powers over regulated entities and persons associated with them. As a SRO, FINRA has significant authority over broker-dealers, delegated to them by the SEC and consented to by their members, to adopt and enforce rules; impose fines and other sanctions; and conduct examinations and investigations.

- 1.1.4 In the US, investors are protected by comprehensive regulation that governs the conduct of broker-dealers, including CSC, and other market participants. These regulatory frameworks include, but are not limited to, the Securities Act of 1933 (the “**Securities Act**”), the Exchange Act (including Regulation ATS, as set forth in greater detail below), the Investment Company Act of 1940, the Investment Advisers Act of 1940, the rules and regulations of the US Commodities Futures Trading Commission, the rules of FINRA, the MSRB, and the National Futures Association (“**NFA**”), the anti-money laundering and know-your-customer rules and regulations of the US Department of the Treasury (“**US Treasury**”) Financial Crimes Enforcement Network (“**FinCEN**”), and state securities rules and regulations.
- 1.1.5 With respect to the agencies and organizations that regulate broker-dealers and ATSS, the SEC, FINRA, and the MSRB share common goals of protecting investors and other market participants, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Of these goals, investor protection is the primary focus.
- 1.2 **Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the ATS. This includes regular, periodic oversight reviews of the alternative trading systems by the Foreign Regulator.**

Scope of authority and authorizing statutes

- 1.2.1 The SEC has delegated certain of its day-to-day regulatory oversight responsibility of broker-dealers to FINRA. FINRA’s rules, which are approved by the SEC, allow for disciplining member firms, including CSC, for improper conduct and for establishing measures to ensure market integrity and investor protection. Further, FINRA conducts surveillance programs that collect and integrate trading data across ATSS to detect abusive activity and conducts an examination program to review how alternative trading systems handle orders, including how they keep order information and other sensitive client information confidential. The program also assesses certain firm’s financial and operational condition.
- 1.2.2 As set forth in greater detail below, broker-dealers in the US are subject to routine and for-cause examinations by the SEC and FINRA. Broker-dealers are also subject to periodic financial and

operational reporting (monthly and annually) through the filing of Financial and Operational Combined Uniform Single (“**FOCUS**”) Reports, which are filed with FINRA. Further, a broker-dealer is subject to a number of self-reporting obligations imposed by the SEC and FINRA, including the requirement to: self-report certain events pursuant to FINRA Rule 4530 (as discussed in greater detail below); file and keep current certain information with respect to the broker-dealer’s business and operations on Form BD; and to file and keep current information with respect to registered representatives employed with, or terminated by, the broker-dealer (including with respect to certain reportable events, such as certain criminal charges or convictions) on Form U4 and Form U5. In addition, Broker-dealers are subject to market surveillance by the SEC and FINRA, which is largely accomplished through various trade-reporting forms and systems, including: Order Audit Trail System (“**OATS**”) (order, quote, and trade information for all National Market System (“**NMS**”) stocks and over-the-counter (“**OTC**”) equity securities); TRACE (mandatory reporting of over-the-counter secondary market transactions in eligible fixed-income securities); Automated Confirmation of Transactions (“**ACT**”) (OTC and NASDAQ securities); Consolidated Audit Trail (“**CAT**”) (NMS stocks, OTC equity securities, and exchange listed options); and SEC Form 13H (large trader reporting). Subject to certain exemptions, broker-dealers are also required to file quarterly reports with the SEC on Form 17-H (Risk Assessment Reports for Brokers and Dealers), which includes information with respect to the broker-dealer and the financial and securities activities of certain affiliates of a broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer.

In addition to the above, broker-dealers that operate an ATS are subject to additional oversight and reporting under Regulation ATS (as discussed in greater detail below), including the requirements to file and keep current Form ATS.

- 1.2.3 In addition, the SEC and the securities regulatory authorities in the Jurisdictions are parties to a memorandum of understanding related to securities market oversight and enforcement, available at https://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf. In addition, the ASC, Autorité des Marchés Financiers (“**AMF**”), British Columbia Securities Commission (“**BCSC**”) and OSC are parties to memoranda of understanding with FINRA related to securities market oversight and enforcement, available at

<https://www.finra.org/sites/default/files/Industry/p141242.pdf>
(ASC),
https://www.finra.org/sites/default/files/MoU_FINRA_QAMF_06_1015.pdf (AMF) of Quebec,
https://www.finra.org/sites/default/files/BCSC%20MoU_Aug_2016.pdf (BCSC)
and <https://www.finra.org/sites/default/files/Industry/p125113.pdf>
(OSC).

US regulation of broker-dealers and alternative trading systems – Source of its authority to supervise the ATS

- 1.2.4 Pursuant to Section 15(a) of the Exchange Act, subject to certain exceptions, all persons that use the mails or any means or instrumentality of interstate commerce to effect securities transactions must register with the SEC and become members of a national securities association, of which there is only one, FINRA. ATS status and registration is a supplement to broker-dealer registration; in other words an ATS can only be operated by a registered broker-dealer. Therefore, as an ATS, CSC is subject to all applicable rules and regulations to which broker-dealers are subject, as well as specific rules and regulations applicable to the operation of an ATS.
- 1.2.5 ATSs are subject to a comprehensive regulatory framework in the US. As an initial matter, subject to certain limited exceptions, all US ATSs must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSs are subject to extensive regulation and oversight by the SEC and FINRA, not only with respect to ATS operation, but also with respect to the broker-dealer's operations as a whole. Further, in becoming a member of FINRA, each broker-dealer must enter into a bespoke membership agreement that sets forth the parameters of the broker-dealer's operations, not only with respect to business lines, but also with respect to minimum net capital requirements, number of offices, and number of client-facing registered representative that the broker-dealer may employ.
- 1.2.6 In addition to the foregoing, to acquire and maintain its status as an ATS, CSC must satisfy several statutorily-prescribed requirements set out in *Regulation ATS* (17 C.F.R. § 242.300 et seq.) ("**Regulation ATS**"), which sets forth additional guidelines and requirements with respect to:

- i. Broker-dealer registration
- ii. Notice
- iii. Order display and execution access
- iv. Fees
- v. Fair access
- vi. Capacity, integrity, and security of automated systems
- vii. Recordkeeping
- viii. Reporting obligations
- ix. Compliance and controls

1.2.7 **Broker-dealer registration.** As noted in Sections 1.2.5 and 1.2.6 above, pursuant to Exchange Act Rule 301(b)(1), an ATS shall be registered as a broker-dealer under Section 15 of the Exchange Act. When the SEC adopted Regulation ATS in 1998 it revised the definition of “exchange”² to clarify that electronic communication networks (“ECNs”) were in fact deemed exchanges. However, the SEC then in turn provided flexibility to these ECNs by permitting them to be regulated as a broker-dealer, rather than as a traditional stock exchange. This means that the operator of an ATS is regulated as a broker-dealer, which this application describes in greater detail.

1.2.8 **Notice.** Pursuant to Rule 301(b)(2), an ATS (through its broker-dealer operator) must file a report with the SEC under five circumstances:

- i. Rule 301(b)(2)(i) requires an initial operations report to be filed on Form ATS with the SEC at least 20 days prior to commencing operation of its ATS.
- ii. CSC currently operates the ATS Platforms that are the subject of this Application and is required to comply with the following ongoing requirements:

² See 63 Fed. Reg. 70,844 (Dec. 22, 1998).



- (a) Form ATS requires CSC to provide the SEC with details relating to the operation of the ATS, including (but not limited to):
 - (i) The type of subscribers (e.g. retail, broker-dealers, institutional clients, etc.) that will be permitted to access the ATS, and any differences in access that will be offered by the ATS to the different groups of subscribers, if applicable.
 - (ii) A list of the types of securities the ATS trades (e.g. debt, equity, etc.) and whether such securities will not be registered under Section 12(a) of the Exchange Act.
 - (iii) A list of the securities (as opposed to the “types”) the ATS trades.
 - (iv) The manner of operation of the ATS, procedures governing orders, means of access, procedures governing execution, reporting, clearing and settlement of securities transactions effected through the ATS.
 - (v) Provide system guidelines to the SEC, and any other manuals or other materials provided to the subscriber relating to the ATS.
 - (vi) Provide the ATS’ procedures for reviewing systems capacity, security and contingency planning.
- iii. Rule 301(b)(2)(ii) requires an amendment to Form ATS be filed with the SEC at least 20 days prior to implementing a material change to the operation of its ATS;
- iv. Rule 301(b)(2)(iii) requires a quarterly filing be made with the SEC in the event that any information previously provided pursuant to Rules 301(b)(2)(i) and (ii) become inaccurate;
- v. Rule 301(b)(2)(iv) requires that a filing be made with the SEC promptly in order to correct information previously

reported on Form ATS pursuant to Rules 301(b)(2)(i) and (ii) become inaccurate; and

- vi. Rule 301(b)(2)(v) requires that a filing be made with SEC promptly in the event that the ATS shall cease operations.

1.2.9 **Order display and execution access.** Section 8.2 of NI 21-101 in the Jurisdictions imposes certain pre-trade and post-trade information transparency requirements on ATSS displaying orders of corporate debt-securities. Section 10.1 of NI 21-101 requires disclosure by a marketplace (including an exchange and an ATS) on its website of certain information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including information related to the system's protocols and rulebook. Further, Staff Notice 21-328 requires that a foreign ATS provide information regarding its transparency of operations, including disclosure relating to order execution, fees and order priority.

1.2.10 Rule 301(b)(3) of the Regulation ATS in the US imposes similar market transparency requirements. The rule requires ATSS with five percent or more of trading volume in any covered security to publicly disseminate their best priced orders in those securities. We note that with respect to the ATS Platforms, the requirements under Exchange Act Rule 301(b)(3) are inapplicable, as the ATS Platforms are not NMS stock ATSS, nor do they make NMS stock's available on the ATSS.

1.2.11 **Fees.** Exchange Act Rule 301(b)(4) is generally inapplicable to the ATS Platforms, however, in practice, CSC is required to comply with the rules or standards of practice governing fees established by FINRA, including FINRA Rule 2010 (Standards of Commercial Honor and Just and Equitable Principles of Trade) and FINRA Rule 2121 (Fair Prices and Commissions (also known as the 5% Rule)). While neither rule proscribes a specific limitation on the amount of fees that may be charged to a client with respect to effecting a securities transaction either as agent or principal, each rule requires that CSC implement its fees in a manner that is fair and reasonable under the circumstances. Fees are imposed based on CSC's standard fee schedule that is provided to all clients at the time of onboarding.

1.2.12 **Fair access.** While the ATS Platforms are not currently required to comply with the "Fair Access" requirements of Exchange Act Rule

301(b)(5), CSC monitors on an ongoing basis the level of trading activity that occurs on its ATS' to ensure that it complies with the relevant rules relating to "Fair Access". More specifically, Exchange Act Rule 301(b)(5) requires an ATS that meets the trading volume thresholds to establish written standards for granting access to its system and apply those standards fair and non-discriminatory manner. With respect to the ATS Platforms, the "Fair Access" requirements will be triggered if during at least 4 of the preceding 6 calendar months, an ATS had with respect to municipal securities, 5 percent or more of the average daily trading volume traded in the US, or with respect to corporate debt securities, 5 percent or more of the average daily volume traded in the US. Once the volume thresholds are met, the ATS, pursuant to Exchange Act Rule 301(b)(5)(C), is required to make and keep records of all grants and denials of access, including for all subscribers, the reason for granting or denying such access to the ATS. Such information is required to be filed with the SEC on a quarterly basis on Form ATS-R (See subsection (1.2.15) below). CSC would maintain updated information, regarding Canadian Subscribers who were provided with direct access and Canadian applicants for status as a Canadian Subscriber who were denied such status, and submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis (See section (4) below).

- 1.2.13 **Capacity, integrity, and security of automated systems.** Exchange Act Rule 301(b)(6) is triggered by a trading volume threshold that is currently not satisfied by the ATS Platforms. However, CSC monitors on an ongoing basis the level of trading activity that occurs on its ATSs to ensure that it complies with the relevant requirements of Exchange Act Rule 301(b)(6). More specifically, Exchange Act Rule 301(b)(6) requires an ATS that meets the trading thresholds to establish reasonable capacity estimates (both current and future), develop and implement procedures to review system development and testing methodology, review system vulnerability from external and internal threats, physical hazards and natural disasters and establish adequate contingency and disaster recovery plans. With respect to the last two items, CSC, as a broker-dealer, is separately subject to such requirements; please see Section 7 of this Application for further information. As previously stated, the ATS Platforms do not currently satisfy the trading volume thresholds that would trigger the Rule 301(b)(6) requirements, which are satisfied if during at least 4 of the preceding 6 calendar months, an ATS had with respect to

municipal securities, 20 percent or more of the average daily trading volume traded in the US, or with respect to corporate debt securities, 20 percent or more of the average daily volume traded in the US.

- 1.2.14 **Recordkeeping.** Pursuant to Exchange Act Rule 301(b)(8) as an ATS, CSC shall make, keep and preserve certain records relating to the operation of its ATSs, including those records required to be maintained pursuant to Exchange Act Rule 302 and in the manner provided in Exchange Rule 303. For further detail, please see “Recordkeeping” at Section 9 below. Further, as a registered broker-dealer, CSC is required pursuant to Section 17(a)(1) to make, keep, furnish and disseminate records and reports as prescribed by the SEC. The SEC’s books and records rules applicable to broker-dealers, Exchange Act Rules 17a-3 and 17a-4, specify minimum requirements with respect to the records that broker-dealers must make, how long those records and other documents relating to a broker-dealer’s business must be kept and in what format they may be kept. The SEC requires that broker-dealers create and maintain certain records so that, among other things, the SEC and self-regulatory organizations can use such records in the conduct of their examinations.
- 1.2.15 **Reporting.** Pursuant to Exchange Act Rule 301(b)(9), an ATS is required to file with the SEC on a quarterly basis the information required by Form ATS-R.
- 1.2.16 Form ATS-R (Quarterly Report of Alternative Trading System Activities) requires the submitter to provide the SEC with details relating to the operation of the ATS during the previous calendar quarter, including (but not limited to):
- i. The total unit and dollar volume of transaction in various categories of securities.
 - ii. A list of all persons granted, denied, or limited access to the ATS during the period covered by the report. Note, this information is only required to be provided by an ATS subject to the fair access obligations under Exchange Act Rule 301(b)(5), as further described above in the “Fair Access” section.
- 1.2.17 **Written procedures to protect confidential trading information.** Pursuant to Exchange Act Rule 301(b)(10) as an ATS, CSC is required to establish adequate written safeguards and written



procedures to protect subscribers' confidential trading information. Such written safeguards and written procedures must include:

- i. Limiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any other applicable rules;
- ii. Implementing standards controlling employees of the alternative trading system trading for their own accounts; and
- iii. The alternative trading system shall adopt and implement adequate written oversight procedures to ensure that the written safeguards and procedures established are followed.

1.2.18 Finally, broker-dealers and ATSs that provide market access, including CSC, are subject to an additional layer of regulatory oversight under Exchange Act Rule 15c3-5 (17 C.F.R. 240.15c3-5) (the “**Market Access Rule**”), which imposes additional financial and regulatory risk management controls and supervisory procedure requirements on the ATS or broker-dealer. This includes the requirement for CSC to establish, maintain and ensure compliance with risk management and supervisory controls, policies, and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with market access or providing clients with market access. These risk management and supervisory controls, policies and procedures are required to be reasonably designed to ensure that all orders are monitored and include pre-trade controls and regular post-trade review. Under the Market Access Rule, a broker-dealer must preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records obligations under SEC Rule 17a-4.

1.2.19 Additionally, the risk management controls and supervisory procedures required pursuant to the Market Access Rule must be reasonably designed to systematically limit the financial exposure of the broker-dealer (e.g., preventing the entry of one or more orders that exceed pre-determined price or size parameters); ensure compliance with the broker-dealer’s regulatory obligations (e.g., restricting access to trading systems and technology that provide

market access to persons and accounts pre-approved and authorized by the broker-dealer); and ensure that the entry of orders does not interfere with fair and orderly markets.

1.2.20 A broker-dealer's risk management controls and supervisory procedures should be reasonably designed to:

- (a) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and
- (b) Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

1.2.21 Under the Market Access Rule, a broker-dealer must (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and (b) document any material deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy the these deficiencies.

1.2.22 Broker-dealers are also subject to the general supervision and monitoring requirements of FINRA Rule 3110, which requires broker-dealers to establish and maintain a system to supervise the broker-dealer's business and the activities of each associated person employed by the broker-dealer that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

1.2.23 CSC must continue to fulfil these obligations to maintain its registration and ability to operate the ATS Platforms. Among other things, CSC is required to:

- (a) have systems and controls in place to monitor transactions on the ATS Platforms;
- (b) retain sufficient financial resources for the performance of its functions as ATS operator;

- (c) operate its alternative trading systems with due heed to the protection of investors;
- (d) ensure that trading is conducted in an orderly and fair manner;
- (e) maintain suitable arrangements for trade reporting;
- (f) maintain suitable arrangements for the clearing and settlement of contracts;
- (g) monitor compliance with the SEC, FINRA, and MSRB rules, and the rules of the ATS Platforms;
- (h) investigate complaints with respect to its business;
- (i) maintain high standards of integrity and fair dealing; and
- (j) prevent abuse.

1.2.24 On April 4, 2003 the SEC approved CSC as a broker dealer and on November 21, 2006 CSC was approved as an ATS. CSC remains compliant with its regulatory requirements as demonstrated by its continued status as an ATS.

1.2.25 FINRA and the SEC are the authorities charged with ensuring that ATSs (such as CSC) continue to comply with their regulatory requirements. FINRA and the SEC have the power to direct any ATS that is failing, or has failed, to comply with the any applicable rules or regulations to take action to remedy such non-compliance. It also has the power to revoke or suspend the registration of any ATS that fails to meet its regulatory requirements. Accordingly, CSC is subject to the oversight of FINRA and the SEC.

1.2.26 Regulation ATS was most recently amended in 2018, such amendment being a significant tightening of the regulation and a signal from the SEC that strict ATS regulation is among the SEC's regulatory priorities.

Rules and policy statements

1.2.27 As noted above, the primary regulatory frameworks governing broker-dealer activity in the US include, the Securities Act and the Exchange Act (and the rules and regulations promulgated

thereunder, including Regulation ATS), FINRA and MSRB rules, FinCEN anti-money laundering and know-your-customer rules and regulations, and state securities rules and regulations. SEC and FINRA also publish guidance and regulatory interpretations, including through SEC no-action letters,³ and FINRA regulatory notices.⁴

Financial protections afforded to customer funds

1.2.28 The ATS Platforms operated by CSC do not hold customer funds or securities.

Authorization, licensure or registration of the alternative trading system

1.2.29 As noted above, ATSS, including CSC are subject to a comprehensive regulatory framework in the US. Subject to certain limited exceptions, all US ATSS must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSS are subject to extensive regulation and oversight by the SEC and FINRA, not only with respect to ATS operation, but also with respect to the broker-dealer's operations as a whole. Failure to comply with the obligations pursuant to this regulatory framework can lead to suspension, fines, and other sanctions, including the cessation of the operations of an ATS operated by a broker-dealer.

1.2.30 As set forth in greater detail below, broker-dealers in the US are subject to routine and for-cause examinations by the SEC and FINRA. Broker-dealers are also subject to periodic financial and operational reporting (monthly and annually) through the filing of Financial and Operational Combined Uniform Single ("FOCUS") Reports, which are filed with FINRA. Further, a broker-dealer is subject to a number of self-reporting obligations imposed by the SEC and FINRA, including the requirement to self-report certain events pursuant to FINRA Rule 4530 (as discussed in greater detail below) and file and keep current certain information with respect to the broker-dealer's business and operations on Form BD and Form ATS. In addition, pursuant to FINRA Rule 3110 and 3130, a broker-dealer's chief executive officer (or equivalent officer) must certify

³ For additional information with respect to SEC no-action letter, please see <https://www.sec.gov/fast-answers/answersnoactionhtm.html>.

⁴ For additional information with respect to FINRA regulatory notices, please see <https://www.finra.org/rules-guidance/notices>.



annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules, and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer's chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer's board of directors and audit committee.

The foreign regulator's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market

- 1.2.31 To begin, pursuant to FinCEN rules and regulations, broker-dealers are required to file with FinCEN, a Suspicious Activity Report ("SAR") to report any suspicious transaction or pattern of transactions relevant to a possible violation of law or regulation, including, but not limited to, transactions involving market manipulation, wash trading, or insider trading.
- 1.2.32 Additionally, broker-dealers and market participants are subject to a number of rules and regulations with respect to securities fraud, market manipulation, and abusive trading practices. Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder prohibits any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. More specific conduct is also addressed in other SEC and FINRA rules and regulations, including, but not limited to: Exchange Act Section 9 (prohibition against manipulation of security prices); FINRA Rule 5210 (which prohibits the publication of manipulative and deceptive quotations, self-trades, disruptive quoting and trading activity); and FINRA Rule 6140 (which outlines certain prohibitions with respect to the sale of NMS securities).
- 1.2.33 As noted above, the SEC and FINRA conduct surveillance programs that collect and integrate trading data across broker-dealers (including ATs) to detect abusive activity and conduct an examination program to review how broker-dealers handle orders, including how they keep order information and other sensitive client information confidential. This examination, supervision, and

reporting framework also assesses financial and operational condition of broker-dealers.

- 1.2.34 Further, broker-dealers in the US are also subject to certain best execution obligations under FINRA Rule 5310, which generally requires that in any transaction for or with a customer or a customer of another broker-dealer, a broker-dealer and persons associated with the broker-dealer, must use reasonable diligence to ascertain the best market for the subject security, and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.
- 1.2.35 CSC has implemented post trade monitoring reports, which are triggered when certain types of trading activity may have occurred on its ATSS, e.g., washing trading and spoofing.

Laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries in the US

- 1.2.36 The US has a comprehensive financial services regime. The laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries, include, but are not limited to, the Securities Act and the Exchange Act (and the rules and regulations promulgated thereunder), the *Investment Company Act of 1940*, the *Investment Advisers Act of 1940*, the rules and regulations of the US Commodities Futures Trading Commission, the rules of FINRA, the MSRB, and the NFA, FinCEN anti-money laundering and know-your-customer rules and regulations, and state securities rules and regulations.
- 1.2.37 Of the subscribers that have trading rights, and could therefore deal with customers located in the Jurisdictions, the vast majority are companies incorporated in the US.

Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk for market intermediaries who may deal with members and other participants located in Canada

- 1.2.38 FINRA members, such as CSC, are required to maintain membership with the Securities Investor Protection Corporation (“SIPC”). SIPC was created under the Securities Investor Protection Act of 1970 (“SIPA”) as a non-profit membership corporation. SIPC oversees the liquidation of member firms that close when the firm is bankrupt or in financial trouble, and customer assets are

missing. In a liquidation under the SIPA, SIPC and a court-appointed trustee work to return customers' funds and securities as quickly as possible. Within limits, SIPC expedites the return of missing customer property by protecting each customer up to \$500,000 for funds and securities (including a \$250,000 limit for cash only).

Examination and reporting requirements

- 1.2.39 As set forth above, the SEC and FINRA exercise their supervisory responsibility by conducting examinations of whether CSC's rules, procedures and practices are adequate for the protection of investors and for the maintenance of an orderly market.
- 1.2.40 Broker-dealers in the US, including CSC, are subject to periodic examinations by FINRA and the SEC. Types of examinations include: (i) cause examinations, which are initiated in order to investigate some particular issue or event; (ii) sweep examinations, in which multiple firms receive, and must respond to, written inquiries regarding a particular issue; and (iii) cycle examinations, which occur periodically over the life of the broker-dealer. Both FINRA and the SEC conduct examinations of these kinds, and both have considerable resources, and staff, to conduct such examinations.
- 1.2.41 During examinations, the examination staff seek to determine whether the entity being examined is: conducting its activities in accordance with the federal securities laws and rules adopted under these laws, as well as the rules of self-regulatory organizations, such as FINRA; adhering to the disclosures it has made to its clients, customers, the general public and/or the SEC and FINRA; and implementing supervisory systems and/or compliance policies and procedures that are reasonably designed to ensure that the entity's operations are in compliance with applicable legal requirements.
- 1.2.42 In addition, as described above, pursuant to Regulation ATS, each ATS, including CSC, must file an initial operation report with the SEC on Form ATS, prior to commencing operations. Form ATS requires detailed disclosures regarding a wide range of information concerning the ATS, its owners, its businesses, and its operating procedures, including disclosure to the applicable regulators (FINRA and the SEC) of the subscriber terms (and/or user guide(s)). Form ATS serves as a supplement to Form BD, which is filed by

firms seeking registration with the SEC as broker-dealers, and the new membership application process, which is required for broker-dealers to become members of FINRA. Information required to be provided in these forms and applications include ownership and corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, description of trade reporting procedures, contingency planning, and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2.

- 1.2.43 Form ATS and Form BD must be amended, as necessary, to correct any previously provided information that becomes inaccurate for any reason. Amendments include changes to information regarding CSC's ownership, corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, description of trade reporting procedures, contingency planning and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2.
- 1.2.44 In addition, as noted above, pursuant to FINRA Rule 3110 and 3130, a broker-dealer's chief executive officer (or equivalent officer) must certify annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules, and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer's chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer's board of directors and audit committee.
- 1.2.45 Pursuant to SEC and FINRA rules, broker-dealers are subject to periodic financial and operational reporting (monthly and annually) through the filing of FOCUS Reports, which are filed with FINRA. The net capital rule, Exchange Act Rule 15c3-1 (17 C.F.R. §240.15c3-1), is the principal rule by which the financial health of US broker-dealers, including CSC, is regulated and monitored. The net capital rule requires US broker-dealers to maintain "net capital" (i.e., capital in excess of liabilities) in specified amounts that are

determined by the types of business conducted by the broker-dealer. The net capital rule requires broker-dealers to compute net worth based on US generally accepted accounting principles (“GAAP”), as modified by the various provisions and interpretations of the rule.

- 1.2.46 Regulation ATS also requires CSC, as an ATS, to permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is being conducted by the SEC or by a self-regulatory organization of which such subscriber is a member.
- 1.2.47 Regulation ATS also requires that CSC, as an ATS, report information regarding marketplace activity on a quarterly basis on Form ATS-R, including for example, general trading activity, fixed income activity, and traded fixed income securities, similar to certain information a Canadian ATS is required to provide in Form 21-101F3 *Quarterly Report of Marketplace Activities* (“**Form 21-101F3**”).
- 1.2.48 Finally, a FINRA-member broker-dealer is required under FINRA Rule 4530 to report to FINRA certain specified events, including the broker-dealer’s conclusion that it has discovered significant, widespread, or systemic violations of securities and investment related laws by the broker-dealer or any of its associated persons. Rule 4530 not only requires self-reporting of violations of securities law and regulation, but also of specified events, such as certain criminal convictions, certain customer complaints, and ongoing regulatory actions. Finally, the self-reporting and reporting rule also requires that a broker-dealer report to FINRA certain statistical and summary information regarding written customer complaints on a quarterly-basis.
- 1.2.49 Regulation ATS requires that an ATS, including CSC, that intends to cease carrying on business as an ATS must file a cessations report with the SEC promptly upon ceasing to operate as an ATS. This requirement is similar to the requirement for a Canadian ATS to provide prior notice to the regulator of an intention to cease carrying on business as an ATS and the requirement to file a Form 21-101F4 *Cessation of Operations Report for Alternative Trading System*.

The protection of customer funds and securities by market intermediaries who may deal with Canadian Subscribers

- 1.2.50 The Exchange Act Rule 15c3-3, which is commonly known as the “customer protection rule,” is intended to protect customers’ funds held by their broker-dealers and prohibit broker-dealers from using customer funds and securities to finance any part of their business that is unrelated to servicing securities customers. The rule requires a broker-dealer that maintains custody of customer securities and cash to comply with two primary requirements. First, the rule requires broker-dealers to maintain physical possession or control over customers’ fully paid and excess margin securities. For purposes of the first requirement, physical possession or control means that the broker-dealer must hold fully paid and excess margin securities in certain specified locations and that the securities shall remain free of any liens or other security interests. One such permissible location is a US bank; another such location is on the books and records of a registered clearing agency, such as certain subsidiaries and affiliates of the DTC. As a practical matter, most fixed-income securities are held by DTC (or an affiliate of DTC). A broker-dealer can establish possession and control for purposes of the customer protection rule by holding securities in non-US control locations (called “foreign control locations”); provided that the non-US custodian provides certain representations to the US broker-dealer regarding the status of the securities and the absence of liens.
- 1.2.51 Second, the broker-dealer must maintain a reserve of cash or qualifying securities in an account at a bank that is at least equal in value to the net cash the broker-dealer owes to customers. The calculation of net cash set forth in the customer protection rule requires that the broker-dealer add all customer credit items (such as an amount equal to any free cash in customer securities accounts) and deduct from such credit items, any customer debit items (such as margin loans). The net amount by which customer credit items exceed customer debit items, if any, must be on deposit in the broker-dealer’s customer reserve account.
- 1.2.52 Deposits in the broker-dealer’s customer reserve account must take the form of cash or certain qualifying securities. Generally, weekly computations of the reserve are required. The reserve account is for the exclusive benefit of customers, and as such, funds may not be withdrawn unless an updated reserve formula calculation reflects that the reserve requirement has decreased.

1.2.53 As noted above, an additional layer of customer protection, FINRA members, such as CSC, are required to maintain membership with SIPC.

2. GOVERNANCE

2.1 Governance – the governance structure and governance arrangements of the alternative trading system ensure:

(b) Fair representation and effective oversight of CSC

2.1.2 CSC is an indirect, wholly-owned subsidiary of ICE. ICE operates a leading network of global futures, equity and equity options exchanges, as well as global clearing and data services across financial and commodity markets.

2.1.3 The CSC board consists of three executive directors.

(c) Appropriate provisions for directors and officers

2.1.4 CSC takes reasonable steps to ensure: (i) appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers; and (ii) each officer and director is a fit and proper person. There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of CSC. CSC's directors and officers are appointed in the manner provided in CSC's by-laws and are in turn subject to the duties and obligations imposed under Delaware law. Each of CSC's directors and officers have been appointed due to their background and experience in the financial and securities markets.

(d) CSC has policies and procedures to appropriately identify and manage conflicts of interest

2.1.5 CSC has established, maintains and reviews 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.

2.1.6 To ensure compliance with FINRA Rules 3110 and 3310, MSRB Rules G-27 and G-41, CSC has implemented compliance policies and procedures outlining its regulatory obligations and written supervisory procedures and designed to achieve compliance with applicable securities laws and regulations. As a broker dealer, CSC

has an obligation to identify and respond to existing material conflicts of interest and any material conflicts of interest it expects to arise between CSC, including each individual acting on CSC's behalf, and a subscriber or other party. Further, CSC must design its organizational structures, lines of reporting and physical locations to control conflicts of interest. CSC must ensure that before or at the time it provides a service that gives rise to a conflict, that it discloses the conflict.

- 2.1.7 Additionally, CSC relies on the ICE's Global Code Business Conduct (the "**Code**") and all policies that are incorporated by reference into the Code. The Code is a public facing document that is available here: <https://ir.theice.com/~media/Files/ICE-IR/Policies/Code%20of%20Business%20Conduct%20v12%20-%20English.pdf>. The Code outlines the rules and principles by which ICE operates on a global basis, which includes but is not limited to its core competencies, protecting confidential information and conflicts of interest. A conflict of interest is described in the Code as a situation where an opportunity for personal gain conflicts with ICE's (or CSC's) best interests. While it is CSC's preference to avoid conflicts of interest, if a conflict of interest cannot be avoided, or an employee cannot determine whether a given situation presents a conflict, it is CSC's policy for the conflict or the potential conflict to be immediately discussed with a manager to determine the appropriate course of action. Further, to avoid potential conflicts of interest, it is CSC's policy that work performed or positions held by CSC employees outside of working at CSC must not interfere with employees' duties at CSC, and outside business activities generally are required to be approved by CSC. CSC has adopted policies that require employees to proactively address potential conflicts of interest related to an employee's family member or other person with whom an employee has a close personal relationship. Conflicts regarding a financial interest in a customer, competitor or supplier as well as conflicts relating to business gift, meal and entertainment conflicts of interest policies are also addressed in CSC's policies.
- 2.1.8 CSC has appropriate conflict of interest provisions for all directors, officers and employees. CSC has implemented reasonable safeguards and procedures to protect its subscriber's order and trade information, including limiting access to order or trade information or subscribers and Users to employees of CSC and implementing standards controlling trading by employees of CSC for their own

accounts. CSC has implemented effective oversight procedures to ensure that the safeguards and procedures established by it are followed.

3. REGULATION OF PRODUCTS

Review and Approval of Products – Business lines must be approved by the Foreign Regulator

- 3.1.1 Business lines, including the operation of an ATS, must be approved by FINRA, listed on a broker-dealer's Form BD, as filed with the SEC, and listed on the broker-dealer's membership agreement with FINRA. Any addition of business lines to CSC must be approved by FINRA prior to implementation by the broker-dealer.
- 3.1.2 Pursuant to Regulation ATS, when filing its initial operation report on Form ATS, an ATS is required to provide the SEC with a list of the types of securities the ATS trades or expects to trade, as well as a list of the securities the ATS trades or expects to trade. As noted above, an ATS is required to update its Form ATS, as necessary, to correct any previously provided information that becomes inaccurate for any reason. The types of products offered on CSC's ATS Platforms that would trade or expect to trade for Canadian Subscribers is set out in detail above at Section 28 and 29 at "Part 1 – Background".
- 3.1.3 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. In this regard, CSC must ensure that the operation of the ATS Platforms, as well as the Operating Procedures, comply with applicable securities laws and regulations and with applicable FINRA rules. In addition, the Market Access Rule, which CSC is subject to, imposes additional financial and regulatory risk management controls and supervisory procedure requirements on the ATS or broker-dealer. This includes the requirement for CSC to establish, maintain and ensure compliance with risk management and supervisory controls, policies, and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks

associated with market access or providing clients with market access.

4. ACCESS

The requirements of the ATS relating to access to the facilities of the ATS change are fair, transparent and reasonable

Details of access criteria

4.1 In particular, the ATS:

- (i) **has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;**
- (ii) **has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;**
- (iii) **does not unreasonably prohibit or limit access by a person or company to services offered by it;**
- (iv) **keeps records of each grant and denial or limitation of access, including reasons for granting, denying or limiting access; and**
- (v) **restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.**

4.1.1 CSC has established written standards for granting access to each of its services to ensure Users are appropriately eligible to access the ATS Platform, as described above. CSC keeps records of each grant of access including the reasons for granting access to an applicant, and each denial or limitation of access, including the reasons for denying or limiting access to an applicant as described at section 15 and section 16 at Part I – Background above.

4.1.2 In addition, Regulation ATS sets forth certain fair access requirements for ATSS, if, during at least four of the preceding six calendar months, such ATS had:

- i. With respect to any NMS stock, 5 percent or more of the average daily volume in that security reported by an effective transaction reporting plan;

- ii. With respect to an equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization, 5 percent or more of the average daily trading volume in that security as calculated by the self-regulatory organization to which such transactions are reported;
 - iii. With respect to municipal securities, 5 percent or more of the average daily volume traded in the US; or
 - iv. With respect to corporate debt securities, 5 percent or more of the average daily volume traded in the US.
- 4.1.3 If any of these requirements are met, subject to certain exceptions, an ATS must:
- i. Establish written standards for granting access to trading on its system;
 - ii. Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the written standards required above in an unfair or discriminatory manner;
 - iii. Make and keep records of:
 - All grants of access including, for all subscribers, the reasons for granting such access; and
 - All denials or limitations of access and reasons, for each applicant, for denying or limiting access; and
 - iv. Report the information required on SEC Form ATS-R regarding grants, denials, and limitations of access.

These access requirements are similar to the required access requirements for ATSS in Canada.

Due diligence and ongoing supervision

- 4.1.4 To satisfy its regulatory requirements under SEC and FINRA rules, CSC conducts due diligence on subscribers prior to permitting a subscriber to access the ATS Platforms to ensure that such subscriber meets the eligibility criteria required pursuant to US

Regulators and to protect the integrity of CSC and the orderliness of its trading on the ATS Platforms.

- 4.1.5 Access to the ATS Platforms will be limited to Canadian Subscribers who must meet CSC's eligibility criteria. Subscribers generally fall into the following categories: large multi-national banks; insurance company; US registered investment company; derivatives dealers; and/or any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million. Before being provided direct access to the ATS Platforms, each Canadian Subscriber will be required to confirm that it is a "permitted client" as that term is defined in NI 31-103. Retail customers will not be provided access to the ATS Platforms. Retail customers will not be provided access to the ATS Platforms.
- 4.1.6 Once a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must:
- (a) Execute a Fixed Income Master Subscriber Agreement and Platform Provider Schedule in which the prospective Canadian Subscriber agrees to abide by the Operating Procedures;
 - (b) Be and remain at all times either an (x) "institutional account" as defined in FINRA Rule 4512⁵, or (y) a broker-dealer registered pursuant to Section 15 of the Exchange Act.
 - (c) A Canadian Subscriber must then appoint a "Subscriber User Administrator", who will be the individual appointed by the Canadian Subscriber with the authority to a list of users that are permitted to access the ATS Platforms and enter into transactions on the Canadian Subscriber's behalf.
- 4.1.7 A Canadian Subscriber will be required to confirm that it continues to satisfy the eligibility criteria for access to the ATS Platforms on an ongoing basis. Specifically, CSC will reach out at least every two years to a Canadian Subscriber to confirm that a Canadian

⁵ An "institutional account" means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

Subscriber continues to satisfy the eligibility requirements for access to the ATS Platforms. A Canadian Subscriber will be required to provide prompt notification to CSC if it no longer qualifies as a “permitted client”.

- 4.1.8 CSC is required to comply with the existing rules imposed by US Regulators on an ongoing basis, including those with respect to best execution, as discussed in greater detail above.
- 4.1.9 A Canadian Subscriber will be required to confirm that it continues to comply with the eligibility criteria periodically on an ongoing basis. A Canadian Subscriber will be required to provide prompt notification to CSC if it no longer qualifies as a permitted client.
- 4.1.10 CSC will maintain the following updated information and submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis (within 30 days of the end of each six-month period), and at any time promptly upon the request of the ATS Relief Decision Makers:
- (a) a current list of all Canadian Subscribers on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to CSC that it could be provided with direct access;
 - (b) a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;
 - i. for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
 - (c) for each product:
 - i. the total trading volume and value originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis and
 - ii. the proportion of worldwide trading volume and value on the ATS Platforms conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers and

- (d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the ATS Platforms which were reported to the regulator in the home jurisdiction, if any.

4.1.11 As required under the *Bank Secrecy Act* (“BSA”) and its implementing regulations, CSC is required to have anti-money laundering policies and procedures (collectively, an “AML Policy”) which prohibit and actively prevent money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities. Contained in its AML Policy is CSC's Customer Identification Program that complies with the requirements of the BSA and applicable regulations. Additionally, as a US entity, CSC complies with the requirements outlined by the Office of Foreign Assets Control.

5. REGULATION OF PARTICIPANTS ON THE ALTERNATIVE TRADING SYSTEMS

Regulation - The alternative trading system has the authority, resources, capabilities, systems and processes to set requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them by exclusion from participation in the marketplace.

5.1 Members and other participants are required to demonstrate their compliance with these requirements

5.1.1 The ATS Platforms, FINRA and the SEC maintain appropriate systems and resources for conducting member regulation and market regulation, for evaluating compliance with ATS, FINRA and SEC requirements and disciplining participants.

5.1.2 Subscribers to an ATS are subject to the SEC rules and regulations applicable to securities transactions generally, and the SEC has investigation, examination, and enforcement power with respect to subscribers who violate these rules and regulations. In addition, subscribers that are FINRA-member broker-dealers are subject to FINRA rules, with FINRA having investigation, examination, and enforcement power with respect subscribers who violate applicable FINRA rules.

5.2 CSC Operating Procedures

- 5.2.1 As provided in the ICE BondPoint Operating Procedures, in the event that a User believes that the ATS Platform has caused an error, the User must inform CSC immediately. If after an investigation by CSC it is found that the ATS Platform has caused an error, CSC will unwind the transaction. However, absent manifest error caused by the ATS Platform, CSC will endeavor to work with each of the counterparties to the transaction that is alleged to have been executed in error. CSC is unable to guarantee that it will be able to unwind or adjust a trade to the satisfaction of the User that alleged the error trade.
- 5.2.2 CSC has implemented controls to prevent trade errors on the ATS Platforms. Users are solely responsible for all orders and trades that they enter into through their use of the platform, even if such order was placed or a trade was completed on behalf of the User by a CSC employee; provided that the CSC employee has placed such order or completed such trade as instructed by the User. The ATS Platforms provide several warning mechanisms to prevent Users from placing orders in error, and CSC strongly encourages Users to use these features.
- 5.2.3 CSC has trade error policies and procedures in place for transactions executed on the ATS Platform. As outlined in Operating Procedures, for all protocols, except Portfolio Auctions, Users must notify CSC within two (2) minutes of execution that a trade was entered into error or is otherwise in dispute. Absent manifest error caused by the ATS Platform, CSC will endeavor to work with each of the counterparties to the transaction that is alleged to have been executed in error. However, CSC is unable to guarantee that it will be able to unwind or adjust a trade to the satisfaction of the User that alleged the error trade. CSC has also implemented “no cancellations” ranges, which are used to determine if a trade is off-market based on the polling of external sources. For Portfolio Auctions, Users are required to notify CSC within 30 minutes of the close of the auction that a trade is in dispute. CSC does not have the authority to cancel or amend a trade effected during a Portfolio Auction and will work with subscribers after the Portfolio Auction to rectify the dispute.
- 5.2.4 CSC assigns credit limits for each subscriber on the ATS Platforms in compliance with SEC Rule 15c3-5. Orders will not be placed and/or executed until subscribers have successfully passed the credit limit.

- 5.2.5 The ATS Platform provides a risk manager tool for its subscribers to set risk limits for their Users, as described in the User Guidelines.
- 5.2.6 As noted above, broker-dealers, including those that operate an ATS, are subject to market surveillance by the SEC and FINRA, which is largely accomplished through various trade-reporting forms and systems, including OATS, TRACE, ACT, CAT, and SEC Form 13H. Regulation ATS also requires ATSS to report certain information regarding marketplace activity on a quarterly basis on Form ATS-R.
- 5.2.7 A distinguishing characteristic of an ATS from that of an exchange in the US is that an ATS is not permitted to “[s]et rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the system; or (ii) discipline subscribers other than by exclusion from trading. To the extent that a subscriber breaches CSC’s trading related rules, CSC is limited to either suspending or terminating their access to CSC’s ATS. If the subscriber’s acts are thought to be violation of law, CSC will refer the subscriber to FINRA or the SEC.

6. CLEARING AND SETTLEMENT

Clearing arrangements – The ATS has appropriate arrangements for the clearing and settlement of transactions through a clearing broker.

- 6.1.1 Clearing and settlement of trades through the ATS Platforms in Non-Canadian Fixed Income Securities is required to be handled through third-party clearing and settlement service providers using customary procedures.
- 6.1.2 The ATS has appropriate arrangements for the clearing and settlement of transactions through a clearing house. The clearing house is subject to acceptable regulation.
- 6.1.3 With respect to securities transactions arranged on the ICT ATS, CSC has entered into a fully disclosed clearing relationship with Pershing LLC (“**Pershing**”) (CRD#: 7560/SEC#: 8-17574), an SEC registered broker-dealer, a member of FINRA and a full service member of the Depository Trust Company (“**DTC**”) and its subsidiaries, the National Securities Clearing Corporation (“**NSCC**”) and the Fixed Income Clearing Corporation (“**FICC**”, together with the DTC and NSCC, the “**Clearing House**”).

- 6.1.4 With respect to securities transactions arranged on the ICE BondPoint ATS, CSC has entered into a fully disclosed clearing relationship with its affiliate, ICE Securities Execution & Clearing, LLC (“ISEC”, together with Pershing, the “Clearing Brokers”) (CRD#: 299634/SEC#: 8-70258), an SEC registered broker-dealer, a member of FINRA and a full service member of the Clearing House.
- 6.1.5 In addition, as noted above, broker-dealers, including those that operate an ATS, are subject to various trade-reporting forms and systems, which generally outline broker-dealer trade reporting obligations and responsibilities.

Access to the clearing house

- 6.1.6 As noted above, CSC does not have direct access to the Clearing House, but has instead entered into contractual relationships with the Clearing Brokers for the post-execution management of clearing and settlement of transactions executed on the respective ATSs. As previously noted the Clearing Brokers are each members of the Clearing House. The Clearing House is registered as a clearing agency with the SEC pursuant to Section 17A of the Exchange Act. In that capacity the Clearing House has satisfied the requirements of US law for the operation of a clearing agency in the US. The Clearing House has established appropriate written standards for access to its services. The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.

- 6.1.7 In the US, broker-dealers, including clearing brokers are primarily governed by the Exchange Act, and the rule and regulations promulgated thereunder. The Exchange Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as SROs, including FINRA. FINRA has significant authority over broker-dealers, including clearing brokers, delegated to them by the SEC and consented to by their members, to adopt and enforce rules; impose fines and other sanctions; and conduct examinations and

investigations. Further, subject to certain exemptions, firms that serve as clearing agencies in the US are required to register pursuant to Section 17A of the Exchange Act and the rules promulgated thereunder, and are subject to additional oversight and supervision by the SEC.

Order and trade reporting procedures

- 6.1.8 CSC transmits transaction information for clearance and settlement to its Clearing Broker for transactions executed on the ICT ATS and as applicable on the ICE BondPoint ATS.
- 6.1.9 By agreement, once the trades are submitted to the Clearing Brokers for clearance and settlement, the Clearing Brokers also make the required regulatory reporting on behalf of CSC. CSC is a TRACE and MSRB RTRS reporting firm and as such, with the exception of transactions in municipal securities arranged on an agency basis on the Platforms (which are not required to be reported by CSC), CSC will report all other securities transactions executed on the ATS Platforms to TRACE and RTRS either within 15 minutes of the time of trade or at month end as applicable. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that it was a “customer” that traded with CSC. CSC’s market participant identifier is CSCA and VABD. Trade information is consistent with TRACE and MSRB reporting standards and includes information regarding the type of counterparty, issuer, class or series of the security (achieved through the inclusion of the security’s unique identifier), coupon, maturity, price of trade, time of trade and volume of trade, capped at \$5mm+ for investment grade securities or \$1mm+ for non-investment grade securities.

Clearing and settlement

- 6.1.10 CSC does not receive any subscriber’s funds or securities. For those trades conducted as riskless principal, the ATS Platforms will introduce all of its subscribers’ trades on a fully disclosed basis to a broker-dealer registered with the SEC under the Exchange Act. The ATS Platforms will not carry any subscribers’ cash or margin accounts, and do not receive nor hold subscribers’ funds or securities as relates to such trading activity.

Regulation of the clearing brokers – the clearing brokers are subject to applicable regulation.

6.1.11 All riskless principal trades are submitted to a regulated clearing broker for clearing and settlement. The US Regulators have the appropriate authority and procedures for oversight of Clearing Brokers. This oversight includes regular, periodic examinations of the Clearing Brokers by the US Regulators.

7. SYSTEMS AND TECHNOLOGY

7.1 **Systems and technology – Each of the ATSS critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the ATS to properly carry on its business. Critical systems are those that support the following functions:**

- (i) **order entry,**
- (ii) **execution,**
- (iii) **trade reporting,**
- (iv) **trade comparison,**
- (v) **data feeds,**
- (vi) **market surveillance,**
- (vii) **trade clearing, and**
- (viii) **financial reporting.**

Description of the matching system

7.1.1 For each of its systems that support order entry, execution, data feeds, trade reporting, trade comparison and system-enforced rules, CSC maintains a level of capacity that allows it to properly carry on its business and has in place processes to ensure the integrity of each system. This includes maintaining reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

Market continuity provision

7.1.2 As a general matter, pursuant to FINRA Rule 3110, broker-dealers are required to establish and maintain a system to supervise the

broker-dealer's business and the activities of each associated person employed by the broker-dealer that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. This includes establishing cybersecurity policies and procedures designed to protect infrastructure and customers from inappropriate activity. ATSS that trade NMS stock or meet certain volume thresholds are also subject to the provisions of SEC Regulation SCI (17 CFR § 242.1000 et seq.), which require ATSS to maintain and enforce written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and operate in a manner that complies with the Exchange Act. In addition, as set forth in greater detail below, ATSS that meet certain volume thresholds are subject to additional market continuity obligations under Regulation ATS.

- 7.1.3 For each system, operated by or on behalf of the marketplace, that supports order entry, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, CSC is required to develop and maintain an adequate system of internal control over those systems and adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support. In connection with the foregoing, CSC relies on the following written policies to ensure compliance with applicable regulation:
- i. CSC's 15c3-5 Written Supervisory Procedures,
 - ii. CSC's Trading Limit Policy,
 - iii. ICE's Technology Planning and Governance Policy including all applicable policies referenced therein,
 - iv. ICE's Record Retention Policy,
 - v. ICE's Area Access Policy and
 - vi. ICE's Information Security Policy.



The aforementioned policies are confidential, internal policies of CSC, unless otherwise noted. Each is summarized below.

- (a) CSC's 15c3-5 Written Supervisory Procedures describe how CSC tests its compliance with the requirements under the Market Access Rule. The Market Access Rule is described in greater detail at Section 1.2.18 of the Application.
- (b) CSC's Trading Limit Policy addresses CSC's financial risk management controls required under the Market Access Rule.
- (c) ICE's Technology Planning and Governance Policy, and the policies referred to therein describe CSC's software development lifecycle. More specifically, this policy provides detail relating to governance, operational oversight and enterprise risk management. Other policies referred to in the ICE's Technology Planning and Governance Policy address areas such as change management procedures, incident management procedures, disaster recovery, business continuity, information security, physical security and vendor management.
- (d) ICE's Record Retention Policy establishes general standards and procedures for ICE and its subsidiaries, including CSC, as relates to the retention, handling and destruction of the company's official books and records, and other information of legal or operational significance. The policy requires that: (1) Information is retained and accessible in accordance with legal, regulatory and business requirements; (2) Information is organized for efficient retrieval; (3) Information that has been requested or may be requested in connection with legal or regulatory proceedings is preserved from destruction and (4) Information no longer required for legal, regulatory or business purposes and not the subject of a preservation request is disposed of in a prompt and safe manner. As a US registered broker-dealer and an operator of an alternative trading system, CSC is subject to a number of regulatory requirements as relates to the maintenance of its books and records. However, as a foundational matter Exchange Act Rules 17a-3 and 17a-4 are the SEC's primary rule set that subjects broker-dealers to recordkeeping obligations. SEC Rule 17a-3 establishes the records that must be maintained

in the ordinary course of business, these records generally fall into the following categories: operational records, financial records, corporate records, reports and manuals. SEC Rule 17a-4 creates the record retention requirements, including the length of time records are to be maintained and their accessibility during the retention period. Generally speaking under SEC Rule 17a-4 there are two time periods by which records must be maintained. The initial time period holds that required records must be maintained in an easily accessible manner. While the second time period provides the duration that these records must be maintained prior to destruction, such duration also covers the initial time period. Under SEC Rule 17a-4 records may be maintained either via hard copy or by electronic means. If maintained via electronic means they must be maintained in such a way that the records are non-rewritable and non-erasable. The ICE's Record Retention Policy addresses the requirements of SEC Rules 17a-3 and 17a-4 by categorizing the type of records to be maintained, the manner in which they shall be maintained and the duration of maintenance.

- (e) ICE's Area Access Policy addresses specific issues relating to CSC's shared office location at 55 East 52nd Street, New York City, New York 10055 (the "NYC Office"). CSC shares office space in the NYC Office with affiliates that operate unrelated business lines. The policy, which is provided to each individual in the NYC Office, notes that the dedicated space occupied by CSC is generally off limits to personnel that are not associated with CSC. Personnel that are not associated or support CSC are only permitted to be in the CSC office space to the extent they have a business related purpose and are escorted.
- (f) ICE's Information Security Policy is used to ensure employees have standardized, accountable, documented, and secure guidelines for conducting business. The Information Security Policy clarifies the responsibilities of users as well as the steps they must take to help protect information and information systems. The policy describes ways to prevent and respond to a variety of threats to information and information systems. The policy covers all information environments operated internally or contracted with a third party. The term "information environment"



defines the total environment and includes, but is not limited to, all documentation, physical and logical controls, personnel, hardware (e.g., desktop, laptop, company-owned PDA, network devices), and software.

- 7.1.4 In addition, pursuant to FINRA Rule 4370, broker-dealers must create and maintain a written business continuity plan identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the broker-dealer to meet its existing obligations to customers.

Information technology risk management procedures – The ATS has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

Please see Sections 1.2.10, 1.2.18 and 5.2.4.

Trade halts

- 7.1.5 The ‘trade halt’ is a feature of the CSC’s risk management functionality and enables relevant staff in trading operations to halt trading across the market as a whole. A trade halt can be applied when one of the ATS platforms is experiencing one of the following issues: (i) network or technical issues, (ii) incorrect uploaded reference data, or (iii) any other scenario when a trade halt would be deemed to be in the best interests of the market. The decision to apply a trade halt must be authorized by a principal of CSC.

8. FINANCIAL VIABILITY AND REPORTING

- 8.1 **Financial viability – The ATS has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.**

- 8.1.1 Pursuant to Exchange Act Rule 15c3-1, CSC must have financial resources sufficient for the proper performance of its functions as an ATS. CSC maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed to meet SEC and FINRA requirements.

9. RECORDKEEPING

- 9.1 **Recordkeeping – The ATS has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the ATS, audit trail information on**

all trades, and compliance with, and/or violations of the ATS requirements.

- 9.1.1 CSC rules require that CSC keeps books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form. This includes a record of all subscribers who have been granted access to the ATS Platforms, daily trading summaries including securities traded and transaction volumes, correspondence, agreements, detailed order records and execution report details of orders, as applicable. Records are kept in electronic form and readily accessible.
- 9.1.2 CSC has a record retention policy that details how all relevant records must be kept, and for how long. This ensures that CSC remains in compliance with all relevant regulatory requirements, which include SEC and FINRA rules. CSC has implemented a policy, which outlines its regulatory requirements under Exchange Act Rules 15c3-1, 17a-3 17a-4, 17a-5, 17a-8, 17a-11,17f-2, Regulation ATS, FINRA Rules 1250, 2210, 2111, 2232, 3010, 3110, 3170, 3270, 3280, 3310 4511, 4512, 4513, 4515, 4517, 4530, MSRB Rules G-5, G-7, G-9, G-10, G-20, G-27 G-37 and CFR 1023.100 to 1023.670. For a brief description of the record retention policy, please see paragraph 7.1.4.
- 9.1.3 Regulation ATS, SEC Rules 17a-3 and 17a-4, and FINRA Rule 4511 set forth record keeping requirements that detail the types of information that must be retained by broker-dealers, as well as the duration for which these records must be maintained. The types of information include business records and other records, including, but not limited to, those subscribers who have been granted access to CSC, daily trading summaries for CSC, and records of each order. The SEC and FINRA have mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the ATS Platforms for supervisory and enforcement purposes is available to the US Regulators on a timely basis.
- 9.1.4 The SEC and FINRA conduct periodic compliance reviews and examinations and require that records comply with SEC and FINRA rules and are readily accessible, on an ongoing basis.
- 9.1.5 The record preservation requirements for ATSS are set forth in Section 303 of Regulation ATS and SEC Rule 17a-4. These rules and regulations establish the time period, which varies depending on



the record being retained, for which certain books and records are to be retained and preserved.

10. OUTSOURCING

Outsourcing – Where the ATS has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations, and that are in accordance with industry best practices.

10.1.1 Creditex Group Inc. owns, licenses and services the trading technology to its wholly owned subsidiary CSC.

10.1.2 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules. If a broker-dealer, as part of its business structure, outsources certain covered activities (e.g., order taking and handling of customer funds and securities), the broker-dealer's supervisory system and written supervisory procedures must include procedures regarding its outsourcing practices to ensure compliance with applicable securities laws and regulations and FINRA rules. The broker-dealer's procedures should include, without limitation, a due diligence analysis of all of its current or prospective third-party service providers to determine whether they are capable of performing the outsourced activities. In addition, when a broker-dealer outsources covered activities to a third-party, the broker-dealer has a continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities. This requires the broker-dealer to have in place specific policies and procedures that will monitor the service providers' compliance with the terms of any agreements and assess the service provider's continued fitness and ability to perform the covered activities being outsourced.⁶ CSC satisfies the foregoing regulatory requirements as outlined in CSC's written supervisory procedures, created to ensure compliance with applicable regulations. As required under FINRA Rule 3110, CSC has implemented policies and procedures in

⁶ For additional information with respect to broker-dealer obligations with respect to third-party service providers, please see *Notice to Members 05-48 - Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers*, available at <https://www.finra.org/rules-guidance/notices/05-48>.

connection with its use of third-party services providers. When entering into an outsourcing agreement, CSC's policies require that CSC has a written contract with the service provider that includes the expectations of CSC and the other party to the services agreement. CSC is required to follow prudent business practices and conduct a due diligence analysis of prospective service providers, including an assessment of its reputation, financial stability, capability to deliver the services and have adequate confidentiality safeguards. On an ongoing basis but at least annually, CSC reviews certain third-party service providers to determine the quality of services provided, whether such third-party service providers are providing the services in a satisfactory manner consistent with the requirements outlined in such third-party service provider's contract.

11. FEES

11.1 Fees

- (a) **The ATS's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the ATS on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that the ATS has sufficient revenues to satisfy its responsibilities.**

11.1.2 All fees imposed by the ATS are reasonable and equitably allocated and do not have the effect of creating unreasonable condition or limit on access by participants to the services offered by the ATS Platforms. Fees are balanced with the criterion that the ATS Platforms have sufficient revenues to satisfy their respective responsibilities.

11.1.3 For riskless principal trades, fees paid by subscribers are incorporated into the net price of a respective security to be traded on the ATS Platforms and calculated as either a mark-up/mark-down applied to the cost of purchasing/selling the security. The fees (i.e. the mark-up/mark down) are collected by the Clearing Brokers, and then passed back to the ATS Platforms.

11.1.4 For agency trades, fees paid by subscribers are billed on a monthly basis.

12. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

- 12.1 **Information sharing and regulatory cooperation – The ATS has mechanisms in place to enable it to share information and otherwise cooperate with the securities regulatory authorities in the Jurisdictions, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.**

12.1.1 The President of CSC warrants to notify staff of the securities regulators in each of the Jurisdictions promptly if any of the representations made in connection with or related to this application for CSC’s registration cease to be true or correct in any material respect, or become incomplete or misleading.

Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the securities regulatory authorities in the Jurisdictions and the Foreign Regulator.

12.1.2 As noted above, the SEC and the securities regulatory authorities in the Jurisdictions are parties to a memorandum of understanding related to securities market oversight and enforcement, available at https://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf. In addition, the ASC, AMF, BCSC and OSC are parties to memoranda of understanding with FINRA related to securities market oversight and enforcement, available at <https://www.finra.org/sites/default/files/Industry/p141242.pdf> (ASC), https://www.finra.org/sites/default/files/MoU_FINRA_QAMF_061015.pdf (AMF) of Quebec, https://www.finra.org/sites/default/files/BCSC%20MoU_Aug_2016.pdf (BCSC) and <https://www.finra.org/sites/default/files/Industry/p125113.pdf> (OSC).

PART III SUBMISSIONS BY CSC

13. SUBMISSIONS CONCERNING THE ATS RELIEF

13.1.1 CSC is regulated and operates in the US as an ATS and, therefore, may be considered an “alternative trading system” as defined in section 1.1 of NI 21-101 and is prohibited from carrying on business in the Jurisdictions unless it (a) is registered as a dealer, (b) is a member of a self-regulatory entity and (c) complies with the provisions of the Marketplace Rules. CSC seeks to provide Canadian Subscribers that trade in fixed income products with access to trade on the ATS Platforms and, therefore, may be

considered to be engaging in the business of trading in the Jurisdictions. CSC is not registered with the ATS Relief Decision Makers in the Jurisdictions as an investment dealer and is not a member of any Canadian self-regulatory entity.

- 13.1.2 CSC is registered with the SEC as a broker-dealer and an ATS and is a member of FINRA, a self-regulatory organization in the US with a mandate similar to that of IIROC in Canada. CSC satisfies all of the criteria for registration with the SEC as a broker-dealer and continues to satisfy the requirements under Regulation ATS and is a member of FINRA. It is our position that as described in “Part II - Application of Approval Criteria to the Alternative Trading System”, above, CSC is subject to a substantially similar regulatory regime in the US to that in Canada.
- 13.1.3 In Staff Notice 21-328, CSA staff provide an exemption model where foreign ATSS may be permitted to offer direct access to Canadian participants without having to establish a Canada-based affiliate provided they meet certain terms and conditions, including a requirement that they comply with the applicable regulations in their home jurisdiction. In Staff Notice 21-328, CSA Staff state that to offer direct access to Canadian participants, a foreign ATS would need to apply for an exemption from the Marketplace Rules and provide details of the application process, exemption criteria, and sample terms and conditions that may be included in a foreign ATS's exemption order. A foreign ATS may be exempt from the Marketplace Rules provided that certain conditions of the CSA's proposed exemption and regulatory framework are met, including maintaining regulatory compliance in its home jurisdiction, providing the CSA with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model. Although the proposed exemption would grant foreign ATSS relief from the Marketplace Rules, depending on their model of operations, foreign ATSS or their participants may still be subject to registration under applicable securities legislation, for example, the dealer registration requirements under applicable Canadian securities legislation for engaging in the business of trading.
- 13.1.4 CSC submits that it satisfies the criteria in the exemption model for foreign ATSS to offer direct access to Canadian participants without having to establish a Canada-based affiliate, as set out in Staff

Notice 21-328. CSC has submitted this Application for an exemption from the Marketplace Rules and has provided details demonstrating how it meets the CSA's criteria set out in Staff Notice 21-328, including maintaining regulatory compliance in its home jurisdiction, providing the CSA with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model. Based on CSC's model of operations, CSC has determined that it may be subject to dealer registration under applicable Canadian securities legislation and so it proposes to rely on the "international dealer exemption" under section 8.18 of NI 31-103 in the Jurisdictions.

- 13.1.5 The robust US regulatory regime governing ATSS provides adequate investor protection and oversight and supervision of CSC. It is appropriate for CSC to rely on the regulatory regime in the US as a substitute for the regulatory regime in Canada, as the oversight, supervision and regulatory requirements are sufficiently similar to that of the Canadian regulatory regime applicable to ATSS. By complying with the regulatory regime applicable to ATSS in the US, CSC considers that it will be complying with the substantially similar requirements of the Canadian regulatory regime applicable to ATSS.
- 13.1.6 Access to the ATS Platforms will be limited to Canadian Subscribers who must meet CSC's eligibility criteria. Before being provided direct access to the ATS Platforms, CSC will confirm that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103. A Canadian Subscriber will be required to confirm that it continues to satisfy the eligibility criteria for access to the ATS Platforms on an ongoing basis.
- 13.1.7 Staff Notice 21-328 suggests that if a foreign ATS is subject to a comparable and comprehensive regulatory regime in its home jurisdiction, which meets certain criteria and can be relied on for investor protection and the promotion of a fair and efficient market, such home jurisdiction regulatory regime may provide a substitute compliance regime for the foreign ATS carrying on activities with Canadian participants, provided that the foreign ATS complies with relevant terms and conditions imposed upon the operations of the foreign ATS within Canada by the Canadian securities regulatory authorities. Further, it may be duplicative to impose the Marketplace Rules on foreign ATSS that are already subject to an existing

comparable regulatory regime in their home jurisdiction that is similar to the regulatory regime applicable to ATs in Canada. Staff Notice 21-328 states that the foreign ATs exemption regime ultimately aims to avoid market fragmentation and reduce regulatory duplication and burden, while facilitating investor protection and promoting a fair and efficient market. CSC submits that the policy basis that underlies the exemption from the Marketplace Rules for foreign ATs provided in Staff Notice 21-328 would be satisfied by granting CSC the Requested Relief.

- 13.1.8 Canadian Subscribers that trade in Non-Canadian Fixed Income Securities would benefit from the ability to trade on CSC's ATs Platforms, as they would have access to a range of Non-Canadian Fixed Income Securities liquidity, which is not currently available in the Jurisdictions. CSC would offer subscribers resident in the Jurisdictions a transparent, efficient market to trade fixed income securities. CSC uses sophisticated information systems and has adopted rules and compliance functions that will ensure that Canadian subscribers are adequately protected. CSC therefore submits that it would not be prejudicial to the public interest to grant the Requested Relief.

PART IV FEES

14. FEES

- 14.1 Filing fees have been paid or are in the process of being paid to the securities regulatory authorities in the Jurisdictions.

PART IV OTHER MATTERS

15. OTHER MATTERS

- 15.1 In connection with this Application we enclose:
- 15.1.1 Appendix A – Draft Decision, and
- 15.1.2 Appendix B – Authorization and Verification Statement of the CSC, authorizing us to file this Application and confirming the truth of the facts contained herein.
- 15.2 Should you have any questions regarding this Application, please contact me at the number above or Jennifer Jeffrey at jjeffrey@osler.com with any questions regarding this Application.

OSLER

Yours very truly,

(signed) "*Terry Doherty*"

Terry Doherty
TD/jj

c. Robert J. Laorno, *Intercontinental Exchange*
Cathy O'Connor, *Intercontinental Exchange*

Enclosures

INCLUDES COMMENT LETTERS RECEIVED

APPENDIX A
DRAFT DECISION
(see attached)

INCLUDES COMMENT LETTERS RECEIVED



APPENDIX B

AUTHORIZATION AND VERIFICATION STATEMENT

We authorize Osler, Hoskin & Harcourt LLP to make and file the application dated April 8, 2020 on behalf of Creditex Securities Corporation and confirm the truth of the facts stated therein.

DATED at Clinton Corners, New York this 8 day of April, 2020.

**CREDITEX SECURITIES
CORPORATION**

By: (signed) "Robert Laorno"

Name: Robert Laorno

Title: Secretary and GC

APPENDIX B

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO,
QUEBEC, NEW BRUNSWICK AND NOVA SCOTIA (the Jurisdictions)**

AND

**IN THE MATTER OF THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN
MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
CREDITEX SECURITIES CORPORATION (the Filer)**

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption pursuant to subsection 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) in the Jurisdictions other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario from NI 21-101 in whole, pursuant to subsection 12.1(1) of National Instrument 23-101 *Trading Rules* (**NI 23-101**) in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario from NI 23-101 in whole and pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario from NI 23-103 in whole (the **Exemptive Relief Sought**). Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

- (a) the Alberta Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a private corporation incorporated under the laws of Delaware whose registered office is at 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, Delaware, United States of America (US), and whose head office is located at 55 East 52nd Street, 40th Floor, New York, New York, US.
2. The Filer is an indirect wholly owned subsidiary of Intercontinental Exchange, Inc. (ICE, NYSE ticker: ICE). ICE is a Fortune 500 company that operates a global network of futures, equity and equity options exchanges, as well as global clearing and data services across financial and commodity markets. ICE currently operates 12 exchanges and 6 clearing houses, and offers trade execution, central clearing, and data services. As part of its global network, ICE owns and operates entities registered with and regulated by the US Securities and Exchange Commission (SEC), including ICE Clear Credit, a registered clearing agency and the New York Stock Exchange. ICE is also the owner of multiple broker-dealers, which are members of the Financial Industry Regulatory Authority (FINRA), including the Filer and TMC Bonds L.L.C.
3. The Filer offers fixed income products and is an alternative trading system (ATS) and a broker-dealer registered with the SEC pursuant to section 15 of the *Securities Exchange Act of 1934*, as amended, (Exchange Act) and is registered as an introducing broker pursuant to the *Commodity Exchange Act (CEA)*. The Filer is also a member of FINRA, the Municipal Securities Rulemaking Board (MSRB) and the National Futures Association. The Filer operates two ATSs that are registered with the SEC.
4. The Filer is subject to a comprehensive regulatory regime in the US. The Filer operates as an ATS and a broker-dealer registered with the SEC and an introducing broker pursuant to the CEA. The Filer is regulated by the SEC and FINRA as a broker-dealer and an ATS and as an introducing broker by the Commodity Futures Trading Commission and the National Futures Association. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.
5. ATS #1 operates under the name of ICE Credit Trade (ICT ATS), which is also a doing business name of the Filer. The ICT ATS is primarily a fixed income session-based auction market located and operated primarily in the US. The ICT ATS offers fixed income trading on a riskless principal basis in fixed income securities denominated in either US dollars or other foreign currencies, and settles on a fully-disclosed basis through its clearing broker.
6. ATS #2 operates under the name of ICE BondPoint (ICE BondPoint ATS), which is also a doing business name of the Filer. In connection with the Filer's fixed income securities related business that occurs on the ICE BondPoint ATS, the Filer may act in either (i) a riskless principal capacity, whereby the Filer is the counterparty to both the buyer and seller of a respective transaction, or (ii) in an agency capacity, whereby the Filer introduces the transaction counterparties to one another after the execution of a transaction on the ICE BondPoint ATS. When acting in an agency capacity, the counterparties to the transaction will clear and settle such transaction directly with one another, as opposed to the Filer acting as the counterparty intermediary (i.e. riskless principal). When acting in a riskless

INCLUDES COMMENT LETTERS RECEIVED

principal capacity, transactions effected on the ICE BondPoint ATS settle on a fully-disclosed basis through the Filer's clearing broker.

7. The Filer does not have any offices or maintain other physical installations in Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia or any other Canadian province or territory.
8. The Filer is a FINRA Trade Reporting and Compliance Engine (**TRACE**) and MSRB Real-Time Transaction Reporting (**RTRS**) reporting firm and as such, with the exception of transactions in municipal securities arranged on an agency basis on the ICT ATS or the ICE BondPoint ATS (each, an **ATS Platform**, and collectively the **ATS Platforms**) (which are not required to be reported by the Filer), the Filer will report all other securities transactions executed on the ATS Platforms by subscribers located in the Jurisdictions (**Canadian Subscribers**) to TRACE and RTRS either within the required 15 minute time frame or at month end as required under FINRA Rule 6732. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that it was a "customer" that traded with the Filer. The Filer's market participant identifier is CSCA and VABD.
9. The Filer proposes to offer Canadian Subscribers direct access to the ATS Platforms to facilitate trades in any debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), including:
 - (a) debt securities issued by the US government (including agencies or instrumentalities thereof);
 - (b) debt securities issued by a foreign government;
 - (c) debt securities issued by corporate or other non-governmental issuers (US and foreign) or
 - (d) asset-backed securities (including mortgage backed securities), denominated in either US or foreign currencies(collectively, **Non-Canadian Fixed Income Securities**).
10. Non-Canadian Fixed Income Securities includes certain securities that may not be registered pursuant to subsection 12(b) of the Exchange Act and may not be listed on one or more national securities exchanges which are registered pursuant to section 6 of the Exchange Act.
11. The ATS Platforms will only trade the Non-Canadian Fixed Income Securities that are permitted to be traded in the United States under applicable securities laws and regulations.

12. The Filer is currently relying on the “international dealer exemption” under section 8.18 of NI 31-103 in each of the Jurisdictions.
13. The Filer ensures that all applicants to become Canadian Subscribers must satisfy the Filer’s eligibility criteria, including, among other things, that each Canadian Subscriber is a “permitted client” as that term is defined in NI 31-103.
14. An ATS Platform will receive an order from a Canadian Subscriber for execution. All orders and executions will be governed by the respective ATS Platform’s operating procedures.
15. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that the Filer complies with the terms and conditions attached hereto as Schedule A.

DATED _____ 2020

[Lynn Tsutsumi]
[Director, Market Regulation]
[Alberta Securities Commission]

INCLUDES COMMENT LETTERS RECEIVED

SCHEDULE A**TERMS AND CONDITIONS****Regulation and Oversight of the Marketplace**

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;
2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;
3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a “permitted client” as that term is defined in NI 31-103;
5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as “permitted clients”;
6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the ATS Platforms;

Trading by Canadian Subscribers

7. The Filer will only permit Canadian Subscribers to trade the fixed income securities listed in representation number 9 of this Decision;
8. Trades on the ATS Platforms by Canadian Subscribers will be cleared and settled through a clearing agency that is regulated as a clearing agency in the clearing agency’s home jurisdiction;
9. The Filer will only permit Canadian Subscribers to trade those securities which are permitted to be traded in the United States under applicable securities laws and regulations;
10. With the exception of transactions in municipal securities arranged on an agency basis on the ATS Platforms (which are not required to be reported by the Filer), the Filer will report all other securities transactions executed on the ATS Platforms by Canadian Subscribers to TRACE and RTRS in a timely manner. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that it was a “customer” that traded with the Filer. The Filer’s market participant identifier is CSCA and VABD;

Reporting

11. The Filer will promptly notify staff of the Decision Makers of any of the following:
 - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
 - (i) changes to its regulatory oversight;
 - (ii) the access model, including eligibility criteria, for Canadian Subscribers;
 - (iii) systems and technology; and
 - (iv) its clearing and settlement arrangements;
 - (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction that materially affect the operation of the ATS Platforms;
 - (c) any known investigations (other than routine regulatory examinations, audits or inquiries) of, or disciplinary action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;
 - (d) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
 - (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the ATS Platforms, the Filer or any Canadian Subscriber;
12. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within 30 days of the end of each six-month period), and at any time promptly upon the request of staff of the Decision Makers:
 - (a) a current list of all Canadian Subscribers on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access;
 - (b) a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;
 - (i) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
 - (c) for each product:

- (i) the total trading volume and value originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis and
 - (ii) the proportion of worldwide trading volume and value on the ATS Platforms conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers; and
- (d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the ATS Platforms which were reported to the regulator in the home jurisdiction, if any;

Disclosure

13. The Filer will provide to its Canadian Subscribers disclosure that states that:
- (a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
 - (b) the rules applicable to trading on the ATS Platforms may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
 - (c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

14. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;
15. The Filer will file with the Decision Makers a valid and binding appointment of Osler, Hoskin and Harcourt LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the ATS Platforms or the Filer's activities in Canada; and

Information Sharing

16. The Filer shall, subject to applicable laws, provide information within the care and control of the Filer as may be requested from time to time, and otherwise cooperate wherever reasonable with the Decision Makers, staff of the Decision Makers, recognized self-regulatory organizations, investor protection funds and other appropriate Canadian legal and regulatory bodies.

INCLUDES COMMENT LETTERS RECEIVED



By Email sent to comments@osc.gov.on.ca

April 24, 2020

Ontario Securities Commission
22nd floor
20 Queen Street West
Toronto, ON M5H 3S8

Dear Sirs/Mesdames:

Re: CSA Staff Notice 21-328 ("Notice")

This letter sets forth some initial CanDeal comments and questions on the Notice and may be followed by other commentary and questions as other issues occur to us.

CanDeal was disappointed that the Notice was not published without prior public consultation. We believe that prior consultation would have led to a consideration of points that currently make the Notice less clear than it should be and that could alter the balance between the regime for regulation of domestic fixed income marketplaces and the new regime proposed in the Notice for foreign fixed income ATS platforms operating in Canada.

For us, a crucial defect in the Notice is its failure to directly address the treatment under the Notice of foreign ATSs wishing, in addition to the instruments they already trade, to trade Canadian government debt or "corporate debt securities" consisting of non-listed debt issued in Canada. As you know, these securities are predominantly denominated in Canadian dollars.

Clarity with respect to this issue is crucial to CanDeal for two reasons. First, trading in such instruments is CanDeal's core business. Second, in order to operate its core business, CanDeal is required under National Instrument 21-101 Marketplace Operation ("**NI 21-101**") to operate in a particular way including maintaining its IIROC membership and investment dealer registration.

The Notice implies that the securities traded by the foreign ATS would be the foreign securities that it already trades without a marketplace recognition in Canada or any other explicit authority to interact with Canadian-based participants.

We believe that all foreign ATSs currently trade in foreign debt securities not Canadian. In order to trade in Canadian government debt securities or corporate debt securities, a foreign ATS would have to comply fully with the same rules that other Canadian marketplaces do.

.../2

Letter to OSC dated April 24, 2020
Re: CSA Staff Notice 21-328 ("Notice")
Page 2 of 4

This should be clear as a matter of principle. Canadian ATSS should not be put at a competitive disadvantage as a result of the Notice. Indeed, the Canadian registration regime which the Notice says is not intended to be changed by the Notice envisages trading in Canadian securities by locally registered investment dealers, not parties relying on exemptions available to international dealers.

To be specific, participants in a foreign ATS are allowed to trade in foreign securities pursuant to the international dealer exemption ("IDE") in Section 8.18 of National Instrument 31-103 ("NI 31-103"). Those participants cannot trade at all in Canadian securities such as Canadian government debt in reliance on the IDE. Those participants can only do so through a Canadian investment dealer pursuant to the registration exemption in Section 8.5 of NI 31-103.

Only a foreign ATS trading fixed income securities that has complied with domestic Canadian marketplace rules by establishing a Canadian subsidiary that holds an IIROC membership can enable its participants to perfect the Section 8.5 registration exemption.

Foreign ATSS not so registered cannot do so nor is the Notice intended to undercut the existing registration regime:

"We note that although the proposed exemption would grant foreign ATSS relief from the Marketplace Rules, depending on their model of operations, foreign ATSS or their participants may still be subject to registration under applicable securities legislation. Foreign ATSS may trigger registration requirements under applicable Canadian securities laws, because they may engage in the business of trading. A common exemption available in these cases would be the International Dealer Exemption ("IDE"). The IDE may be available where the foreign ATS offers trading in foreign securities. Foreign ATSS should consider the registration requirement and available exemptions when determining which securities to offer for trading." (emphasis added)

We note by way of comment on the second italicized passage above that foreign marketplaces themselves cannot rely on the IDE by virtue of Section 6.2 of NI 21-101.

The Notice effectively adds a third regime to the two different regimes for the handling of applications by foreign entities for exemptions from the Canadian marketplace rules: the newest one created by the Notice for foreign fixed income ATSS, a second for MTFs, and a third for foreign stock exchanges of which the SEF-related orders and even the March Trumid exemption application could be considered examples.

In other exchanges with Staff we have provided detailed reasons to doubt the current efficacy of the MTF exemption regime. Drawing on these exchanges, we believe it is necessary for the OSC Staff and other CSA members to drill down very deep on exemption applications to get a detailed explanation about:

Letter to OSC dated April 24, 2020
Re: CSA Staff Notice 21-328 ("Notice")
Page 3 of 4

- how and through what systems technology and procedural steps every Canadian participant would access the platform along with confirmation that there is no indirect access at the time the application is made.
- explicit confirmation that the applicant is subject to and not exempt from any of the local regulatory requirements they cite as being equivalent, taken as a whole, to those in NI 21-101 and related instruments affecting Canadian marketplaces. For example, the foreign applicant needs to attest that it is subject to a regime not only like that created by NI 21-101 but also by the ATS protocol which the Staff follows in evaluating significant changes and housekeeping changes. Most Canadians hold their fixed income investments or have their pensions administered through money managers of one sort or another, and foreign ATSs seeking to engage with these investors or managers should meet Canadian standards. If the foreign ATS is exempt from local requirements equivalent to those in Ontario and other CSA jurisdictions, there is no duplication and the foreign ATS should therefore be made to follow the Canadian requirements that marketplaces like ours do.
- concepts of materiality and governance employed by the foreign regulator along with a demonstration that in practice these are indeed equivalent to and not just analogous to the requirements that are expected of Canadian marketplaces. For example, for all exemptions whether under the Notice or otherwise, there should be a strict analysis of how the concept of materiality will be interpreted and made the subject of notifications to the OSC equivalent to what the OSC would expect of a Canadian marketplace. This analysis should address questions such as:
 - Will the concept of materiality be analogous to those strict requirements imposed under the Canadian marketplace rules or will they be looser? What is material for a jurisdiction like the U.S.? We submit that whatever the materiality standard followed in the U.S., it is bound to be different than what is material for any one CSA jurisdiction.

We observe that the Trumid and Creditex exemption applications tend to describe what the U.S. rules say without commenting on how, in practice, the two regimes actually are equivalent. If they are not the same, the premise that exemptions should be granted to avoid duplicative regulation is simply not well-founded and the exemption should not be granted.

A further important point pertinent to what securities are traded by the foreign ATS is how they will lawfully trade on the platform applying for the exemption. It is not clear that Canadian Government debt traded on a foreign ATS could legally trade on the foreign ATS simply by virtue of the granting of an exemption by the Canadian regulators pursuant to the Notice.

This issue is not even addressed by the ATS Notice. Yet it is acknowledged in the March 5 Trumid application made under the OSC's 2003 stock exchange recognition notice in the following words:

Letter to OSC dated April 24, 2020
Re: CSA Staff Notice 21-328 ("Notice")
Page 4 of 4

"Trumid will only permit trading in fixed income securities that are permitted to be traded in the United States under applicable securities laws and regulations;" (page 30 out of 32)

A final and important point on which the Notice appears to be silent is that no foreign regulatory regime can possibly have the focus on Canada and local stakeholders that NI 21-101 has. Even if a foreign jurisdiction's rules were very similar to Canada's, the focus of the foreign regulator would not be. The Canadian approach to debt regulation is to consult extensively with local stakeholders. Canadian clients, dealers, issuers and others such as the Bank of Canada have always had confidence that their views would at least be solicited. This is likely to be lost under the new regime where the range of stakeholders and processes of consulting with them are likely to be different. This is no trivial matter. The current COVID situation underscores the need for and benefits of not relying excessively on foreign actors to take the action a local regulator would. Each regulator will also have its own sense of urgency and its own timetable for taking the necessary action.

As you know, we are still studying the Notice and want to advise you that we may have further comments to give you.

Yours very truly,



Debra MacIntyre
General Counsel and Chief Compliance Officer
CanDeal.ca Inc.

Copy: Jayson Horner, CEO and President, CanDeal.ca Inc.

By Email sent to comments@osc.gov.on.ca

June 2, 2020

Ontario Securities Commission
20 Queen Street West, 22nd floor
Toronto, ON M5H 3S8

Dear Sirs/Mesdames:

Re: Request for Comment ("Request") on Application by Creditex Securities Corporation ("CSC") dated April 8, 2020 ("CSC Application")

We are responding to the request for comments published April 8, 2020 in the Ontario Securities Commission Bulletin¹

CanDeal has operated an electronic fixed income trading platform in Canada since 2001. CanDeal operates as an Alternative Trading System ("ATS") in Canada and is regulated by the Canadian Securities Administrators under National Instrument 21-101 *Marketplace Operation* ("NI 21-101"). As required by NI 21-101 CanDeal is a member of the Investment Industry Regulatory Organization of Canada and registered as an investment dealer.

This exemption application is the first under CSA Staff Notice 21-328 ("CSN 21-328"). CSC is making its exemption application on the basis that the U.S. regulations it is currently subject to are sufficiently similar to those in NI 21-101, that to require CSC to obtain registration as an ATS in Canada would be needlessly duplicative.² Before any exemption is granted CanDeal respectfully submits that as a condition of any such exemption, CSC should identify and agree to be bound by any Canadian requirements which CSC is not obliged to fulfil under comparable U.S. rules either because it is exempt from a U.S. rule or there is no comparable rule or regulatory practice.

We respectfully submit that CSC's application does not establish that its actual regulatory regime is sufficiently like that which CanDeal needs to follow to be duplicative and warrant the granting of the exemption it seeks.

As CSC itself acknowledges, ATs in Canada are more strictly regulated than "smaller ATs" like CSC whose share of total market volume for any security is less than 5%³.

CanDeal submits that because of CSC's relatively small market share in relation to the securities it trades, it is not subject to the same level of regulation that an alternative trading system would be required to accept under NI 21-101. Specifically, CSC does not have to satisfy the access, fee, capacity or transparency requirements that CanDeal does under NI 21-101⁴. CanDeal notes that a number of CSC competitors have been operating in Canada for many years in compliance with the marketplace rules either through a compliant Canadian subsidiary or through arrangements with compliant affiliated or arm's length marketplaces, so doing so should be possible for CSC.

.../2

¹https://www.osc.gov.on.ca/en/Marketplaces_20200408_rfc-application-creditex-securities.htm

²See https://www.osc.gov.on.ca/static/images/Marketplaces/Marketplaces_20200408_creditex-application-exemptive-relief.pdf ("Application"), p. 3 and para 13.1.7 (p. 57)

³See for example, Application para 1.2.10 and 1.2.11 (p 22),

⁴ Application paras 1.2.10, 1.2.11, 1.2.12 and 1.2.13

Letter to OSC dated June 2, 2020
Re: Request on CSC Application
Page 2 of 3

CanDeal agrees that CSC should not have to duplicate burdens in Canada and the U.S. Neither should it escape burdens imposed only in Canada. Yet nowhere does the CSC application provide a table clearly listing Canadian requirements that CSC does not have to address in the U.S. CSC only sometimes proposes a way of remedying the gap where Canadian rules are more demanding⁵ but does not do so consistently.

CSC speaks to the U.S. regime by describing the U.S. rules that apply. There is no discussion about whether in practice the approaches and philosophies of regulatory officials is the same, e.g. whether the interaction between securities commissions and IROC is substantially the same as that between the SEC and FINRA. There is also no detailed discussion about the way the rules are applied. As a result, important matters are left unaddressed. Is there a U.S. equivalent of the protocol that is applied by the OSC to review changes in the Form 21-102F2⁶? Do Canadian and U.S. regulators have similar concepts of materiality?

The exemptions sought in the Application are from the marketplace instrument, NI 21-101 and the trading instrument 23-103 "in whole"⁷. The effect of the exemption sought, if granted, would be to restore to the platform the ability to rely on the registration exemptions which are taken away under section 6.2 of the marketplace instrument.

CSN 21-328 was not intended to undercut or change the existing registration regime⁸. Foreign marketplaces themselves cannot rely on exemptions like the international dealer exemption by virtue of section 6.2 of NI 21-101. CSC acknowledges this in para 13.1.4. Since CSC is confining itself to offering Non-Canadian Fixed Income Securities⁹ and claims it will only be relying on the international dealer exemption¹⁰, it does not need and should not be granted wholesale relief from registration exemptions. Only compliant Canadian marketplaces can access the registration exemption needed by marketplace users to trade Canadian debt.

CanDeal also submits that in a number of places in the exemption application, CSC does not discuss in satisfactory detail how it complies with requirement under the supposedly equivalent U.S. law let alone how the CSC approach already duplicates Canadian requirements and standards.

For example, a fundamental matter for ATs in the Ontario regime is the quality of their governance. In section 2.1.4 of the Application, CSC asserts in a few sentences that there are appropriate provisions for the

⁵ See Application para 1.2.12 (p. 23) where CSC makes an offer, to provide information about access denials to the Canadian regulators even though it is not required to in the U.S.

⁶ https://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20151001_21-706_marketplace-mat-sys-change.pdf and CanDeal's 2012 order implementing its protocol for notification and approval of ATS operational changes: https://www.osc.gov.on.ca/documents/en/Marketplaces/candeal_20120622_amd-recognition-order-21-101f1.pdf

⁷ See subject line of Application and Application p.2

⁸ https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200305_21-328_foreign-marketplaces-trading-fixed-income-securities.pdf ("CSN 21-328") (2020) 43 OSCB 1920: Foreign ATs may trigger registration requirements under applicable Canadian securities laws because they may engage in the business of trading. Foreign ATs should consider the registration requirement and available exemptions when determining which securities to offer for trading.

⁹ These are defined at para 28 of the Application. The definition includes "debt securities of a foreign government" which is somewhat ambiguous but does not appear to include "Canadian government debt" and forms part of a definition, Non-Canadian Fixed Income Securities" that would be inconsistent with including Canadian government debt. CSC should confirm this.

¹⁰ Application para 13.1.4 (p. 57)

Letter to OSC dated June 2, 2020
Re: Request on CSC Application
Page 3 of 3

appointment of directors without providing any details¹¹. The directors are managers and there are apparently no independent persons on the board¹².

Conflicts of interest at the board level are given a cursory treatment in para 2.1.8 with a sentence that asserts appropriate procedures are in place. The influence of its parent organization which operates other exchanges is not discussed at all in the context of governance.

Further, the Application does not explain how the managers are supervised in a meaningful way when managers comprise the whole board.

The method by which fees are set is of great concern to OSC regulators under NI 21-101¹³ and requires detailed notifications under the Protocol. Here again CSC proceeds by way of assertion without providing backup details that would persuade a reader that the assertion is true. So, for example, in section 11.1.2 of the Application CSC simply asserts: "All fees imposed by the ATS are reasonably and equitably allocated and do not have the effect of creating unreasonable condition or limit on access by participants...". No details are provided.

With respect to information sharing and oversight, CSC asserts that it is caught by the supervisory Memorandum of Understanding that allows the OSC to work with the SEC in supervising cross-border regulated entities. Why is reliance on this needed when the exemption can come with conditions? Should it be granted an exemption, CSC should agree to a condition in its exemption order that it will provide all notifications required in Canada of a compliant marketplace.

Yours very truly,



Debra MacIntyre
General Counsel and Chief Compliance Officer
CanDeal.ca Inc.

Copy: Jayson Horner, CEO and President, CanDeal.ca Inc.

¹¹ Application s.2.1.4

¹² Application s 2.1.3

¹³ See s.6.1 of Companion Policy 21-101CP to NI 21-101.