

Note: [14 Sep 2020] – Changes to 21-101CP. Refer to Annex E of the CSA Notice announcing amendments to NI 21-101 dated 18 Jun 2020.

ANNEX E

Changes to Companion Policy 21-101CP *Marketplace Operation*

1. *Companion Policy 21-101CP Marketplace Operation is changed by this Document.*
2. *Subsection 6.1(6) is changed by replacing “seven” with “15” immediately before “business days before the expected implementation date”.*
3. *Section 6.2 is replaced with the following:*

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

Section 4.3 requires recognized exchanges and recognized quotation and trade reporting systems to file interim financial reports within 60 days after the end of each interim period. In the view of the Canadian securities regulatory authorities, the term interim period means a period commencing on the first day of the recognized exchange’s or quotation and trade reporting system’s financial year and ending nine, six or three months before the end of the same financial year.

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

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

4. *Section 7.2 is changed by replacing “authority” with “authorities” after “Canadian securities regulatory”.*

5. ***Section 7.3 is changed by deleting “, policies” after “violations of rules”.***
6. ***Section 7.8 is changed by replacing subsection (1) with the following:***
 - (1) Marketplaces are required under section 5.11 of the Instrument to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides. These may include conflicts, actual, potential or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, including partners, directors, officers, or employees of the marketplace’s owners, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities..
7. ***Section 14.1 is changed by replacing subsection (1) with the following:***
 - (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain adequate internal controls over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants of Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO) or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST)..
8. ***Section 14.1 is changed by replacing subsection (2) with the following:***
 - (2) Capacity management requires that a marketplace monitor, review, and test (including stress test) the actual capacity and performance of its systems on an ongoing basis. Accordingly, paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, processing capability and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once every 12 months. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently..
9. ***Section 14.1 is changed by replacing subsection (2.1) with the following:***
 - (2.1) Paragraph 12.1(c) of the Instrument requires a marketplace to promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure,

malfunction, delay or security incident that is material. A failure, malfunction, delay or security incident is considered “material” if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the marketplace’s operations or on participants. Non-material events may become material if they recur or have a cumulative effect..

10. Section 14.1 is changed by adding the following subsections:

- (2.2) For purposes of paragraph 12.1(c) of the Instrument, a security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of any of the systems that support the functions listed in section 12.1 or any system that shares network resources with one or more of these systems or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. Any security incident that requires non-routine measures or resources by the marketplace would be considered material and thus reportable to the regulator or, in Québec, the securities regulatory authority. The onus would be on the marketplace to document the reasons for any security incident it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security incident. The criteria for public disclosure of a security incident should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected..
- (2.3) With respect to the prompt notification requirement in paragraph 12.1(c), the Canadian securities regulatory authorities expect that a marketplace will provide notification of a systems failure, malfunction, delay or security incident that is material, orally or in writing, upon escalating the matter to its senior management. It is expected that, as part of the required notification, the marketplace will provide updates on the status of the failure, malfunction, delay or incident and the resumption of service. The marketplace should also have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all incidents. In this regard, the marketplace should undertake a “post-incident” review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the marketplace’s participants. The results of such internal reviews are required to be communicated to the regulator or, in Québec, the securities regulatory authority as soon as practicable. We note that CSA Staff Notice 21-326 *Guidance for Reporting Material Systems Incidents* provides marketplaces with additional guidance and a comprehensive set of guidelines for reporting material systems incidents under paragraph 12.1(c)..
- (2.4) Paragraph 12.1(d) of the Instrument requires a marketplace to keep a record of any systems failure, malfunction, delay or security incident and identify whether

or not it is material. We note that a marketplace may be asked to provide the regulator or, in Québec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a systems failure, malfunction, delay, security incident or any other system or process-related data..

- (2.5) A marketplace should also refer to the guidance in (2.2), (2.3) and (2.4) regarding security incidents that arise in connection with a marketplace's auxiliary systems under section 12.1.1 of the Instrument. A marketplace may be asked to provide the regulator or, in Québec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a security incident..

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

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

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

- (3.1) Section 12.1.2 of the Instrument requires a marketplace to engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls. We would expect a marketplace to implement appropriate improvements where necessary. For the purposes of section 12.1.2, we consider a qualified party to be a person or company or a group of persons or companies

with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third-party information system consultants, as well as employees of the marketplace or an affiliated entity of the marketplace but may not be persons responsible for the development or operation of the systems or capabilities being tested. The regulator or, in Québec, the securities regulatory authority may, in accordance with securities legislation, require the marketplace to provide a copy of any such assessment..

13. Section 14.1 is changed by deleting subsection (4).

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

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

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

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

- (1) Business continuity management is a key component of a marketplace's operational risk-management framework. Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs..

16. These changes become effective on September 14, 2020.