

## CSA Staff Notice 21-324

### *Information Processor for Exchange-Traded Securities other than Options*

June 28, 2018

#### Introduction

Canadian Securities Administrators (CSA) staff (CSA staff or we) are publishing this notice to inform the public that TMX Information Processor (TMX IP) will continue to act as an information processor (IP) for exchange-traded securities other than options<sup>1</sup> under National Instrument 21-101 *Marketplace Operation* (NI 21-101) until June 30, 2022. This notice discusses the role of the IP and the terms and conditions under which it will continue to operate.

In Ontario and Saskatchewan, TMX IP will be designated as an IP and subject to terms and conditions contained in a designation order. In Quebec, TMX IP will be recognized as an IP and subject to terms and conditions outlined in a Recognition Order. In all other jurisdictions, TMX IP will operate pursuant to a number of undertakings (which are similar to the terms and conditions to be set out in the Ontario, Saskatchewan and Quebec orders).

This notice is also available on websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

#### Transparency Requirements and the Need for an Information Processor

An IP supports the transparency requirements in Part 7 of NI 21-101.<sup>2</sup> It collects, consolidates

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<sup>1</sup> In Québec, options are derivatives under the *Derivatives Act* (Québec) and are excluded from the definition of “exchange-traded securities”.

<sup>2</sup> Subsection 7.1(1) requires a marketplace that displays orders of exchange-traded securities to a person or company to provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an IP or, in its absence, to an information vendor. Subsection 7.1(2) provides an exception for those marketplaces that only display orders to their employees or to persons or companies retained by the marketplaces to assist in the operation of the marketplace, if the orders posted on the marketplaces meet the size threshold set by a regulation services provider. Subsection 7.2(1) of NI 21-101 requires marketplaces to provide information about trades in exchange-traded securities to an IP or, in its absence, to an information vendor.

and disseminates marketplace data and thus makes available at least one source of consolidated data to investors and market participants.

The transparency requirements in Part 7 of NI 21-101 and in particular the availability of timely and accurate data are critical to the regulatory framework and support fair and efficient markets and confidence in those markets.

The provision of consolidated information by the IP facilitates compliance by marketplace participants with relevant regulatory requirements that apply in a multiple marketplace environment by ensuring the availability of consolidated data that meets regulatory standards and which users can use to demonstrate or evaluate compliance with these requirements.

Part 14 of NI 21-101 provides for the operation and regulatory requirements applicable to an IP.<sup>3</sup> They include:

- a requirement to provide prompt and accurate order and trade information and to not unreasonably restrict fair access to such information;
- a requirement to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities;
- an obligation to maintain reasonable books and records; and
- certain system requirements, including an annual independent systems review.

In addition, the IP is required to establish, in a timely manner, an electronic connection to each marketplace that is required to provide information under NI 21-101, and also to enter into an agreement with each such marketplace. The agreement must set out that the marketplace will provide the IP information in accordance with Part 7 of NI 21-101 and that it will comply with any other reasonable requirements set by the IP.

In order to act as the IP, the CSA must determine that it is in the public interest for the entity to act as an IP for equity securities other than options. In addition, in Quebec, an IP needs to be recognized as an IP and subject to terms and conditions outlined in a Recognition Order. In Ontario and Saskatchewan, a Designation Order will be issued for an IP that also includes terms and conditions.

## **TMX IP**

TMX IP has been the IP for exchange-traded securities other than options since July 1, 2009.<sup>4</sup>

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<sup>3</sup> An IP is defined as a person or company that receives and provides information under NI 21-101 and has filed Form 21-101F5 *Initial Operation Report for Information Processor* (**Form 21-101F5**).

<sup>4</sup> CSA Staff Notice 21-309 *Information Processor for Exchange-Traded Securities other than Options* (**CSA Staff Notice 21-309**) was published in 2009 to inform the public that TMX IP would act as an IP between July 1, 2009 to June 30, 2014. In Québec, the Autorité des marchés financiers issued decision n° 2009-PDG-0047 on June 4, 2009.

TMX IP collects data from relevant marketplaces and is authorized to consolidate and disseminate this data in the form of the following products (together, the Consolidated Products):

- Consolidated Data Feed, which provides access to order and trade market data from each marketplace that contributes its data to the TMX IP (contributing marketplace);
- Consolidated Last Sale, which provides real-time trading data from all contributing marketplaces;
- Canadian Best Bid and Offer, which provides a consolidated best bid and offer for all Canadian exchange-traded securities other than options;
- Canadian Best Bid and Offer for Protected Only Marketplaces, which provides a consolidated view of the order book only for those marketplaces that have protected bids and offers under Part 6 of National Instrument 23-101 – *Trading Rules (NI 23-101)*, Order Protection;
- Consolidated Depth of Book, which provides a single consolidated view of the order book from the contributing marketplaces; and
- Consolidated Depth of Book for Protected Only Markets, which provides a single consolidated view of the order book for those marketplaces that have protected bids and offers under Part 6 of NI 23-101.

To recover some of its operational costs, TMX IP uses a “pass-through” fee model, where the contributing marketplaces enter into contractual agreements with data vendors and subscribers directly, allowing each marketplace’s fees to be passed through to the clients. A monthly fee is charged by TMX IP for each of the Consolidated Products. The fees are published on the TMX IP’s website and reviewed by the CSA.

TMX IP is subject to a number of undertakings<sup>5</sup> under which it agreed to:

- establish policies and procedures to address conflicts of interest related to the operation of the information processor by the TMX Group Limited; distribute only the Consolidated Products under the IP designation and to obtain approval from CSA staff to distribute additional products using the data provided to it by marketplaces; in addition, TMX IP acknowledged that it does not have exclusive rights to consolidate and disseminate order and trade information;
- conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and with its performance with respect to the undertakings;

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<sup>5</sup> CSA Staff Notice 21-309 includes the initial TMX IP undertakings, which were subsequently updated in CSA Staff Notice 21-313 *Information Processor for Exchange-Traded Securities other than Options*.

- provide a report of the self-assessment to the IP Governance Committee and file the report and the views of the IP Governance Committee with the CSA; and
- ensure that all data contributors are given access to the IP on fair and reasonable terms.

These undertakings were included as terms and conditions in the Recognition Order issued in Quebec.

### **Local Matters**

Certain jurisdictions are publishing other information required by local securities legislation. In Alberta, this information is contained in Appendix A to this notice and consists of TMX IP's Undertakings.

### **Questions**

Please refer your questions to any of the following:

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## APPENDIX A

### LOCAL MATTERS

#### UNDERTAKINGS PROVIDED BY TMX IP

**In connection with the extension of its role as information processor for exchange-traded securities other than options,<sup>6</sup> TSX Inc. (TSX) in its capacity as an IP (TMX IP) undertakes the following:**

##### **1. PUBLIC INTEREST RESPONSIBILITIES**

- (a) TMX IP must conduct its business and operations in a manner that is consistent with the public interest.
- (b) TMX IP must provide written reports to the CSA Staff, as required by the CSA Staff, describing how it is meeting its regulatory and public interest functions.

##### **2. CHANGES TO FORM F5**

- (a) As required by section 14.2 of NI 21-101, TMX IP will file with the CSA Staff amendments to the information provided in Form F5. TMX IP must not implement a significant change to the information in the Form F5 without the prior approval of the CSA Staff.<sup>7</sup>

##### **3. GOVERNANCE AND CONFLICTS OF INTEREST**

- (a) TMX IP will notify the CSA Staff of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.
- (b) The Boards of Directors of TMX Group Limited and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to TMX IP.
- (c) TMX IP will maintain and monitor compliance with policies and procedures to separate TSX's marketplace business operations from TMX IP operations and manage inherent conflicts of interest and provide material changes to these policies and procedures to the CSA Staff for review.
- (d) The technology used by TMX IP will not give the marketplaces affiliated with TMX Group Limited an advantage with respect to their data as compared to other marketplaces.

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<sup>6</sup> In Québec, options are derivatives under the *Derivatives Act* (Québec) and are excluded from the definition of "exchange-traded securities".

<sup>7</sup> Examples of significant changes are provided in subsection 16.3 of the Companion Policy to NI 21-101.

#### 4. IP PRODUCTS

- (a) Unless TMX IP obtains prior approval from CSA Staff, it may only distribute the following products (together the Consolidated Data Products):
- a. The Consolidated Data Feed (**CDF**);
  - b. The Canadian Best Bid and Offer (**CBBO**);
  - c. The Consolidated Best Bid and Offer for Protected Only Markets (**CBBOP**);
  - d. The Consolidated Last Sale (**CLS**);
  - e. The Consolidated Depth of Book (**CDB**); and
  - f. The Consolidated Depth of Book for Protected Only Markets (**CDBP**).
- (b) Unless TMX IP obtains prior approval from CSA Staff, it must distribute all Consolidated Data Products.
- (c) TMX IP will review the Consolidated Data Products, and consider any new products or changes to the Consolidated Data Products that may be reasonably required by amendments that may be adopted by the CSA Staff during the term of these undertakings.
- (d) TMX IP may bundle each data product comprising the Consolidated Data Products for sale to Data Purchasers, but must also make each data product available as a separate permissionable feed.
- (e) If TSX or any of its affiliated entities intend to create and distribute products using the data provided to TMX IP under Part 7 of NI 21-101 through its commercial distribution channels and not through TMX IP:
- i. The data required to be provided to TMX IP by Data Contributors, other than data from the marketplaces that are affiliates of TSX, must not be used without the permission of the Data Contributors; and
  - ii. Any additional product must be made available for purchase separately from, and not bundled with, the Consolidated Data Products or any other products approved under paragraph 4(a).
- (f) TSX, in its capacity of TMX IP, will not provide any of its affiliated entities with the data provided by the Data Contributors, other than the data from the marketplaces that are affiliates of TSX, without the permission of the Data Contributors.
- (g) TMX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an IP under NI 21-101, provided that TMX IP may perform normal course recycle, batch and maintenance operations. TMX IP will provide customer support between the hours of 7:30 – 17:30 Toronto time and 24/7 technical support.

## 5. AGREEMENTS WITH DATA CONTRIBUTORS

- (a) TMX IP will ensure that Data Contributors are given access to TMX IP on fair and reasonable terms.
- (b) The standard agreements and contracts to be entered into between TMX IP and Data Contributors in connection with TMX IP services will be provided to the CSA Staff for review and approval prior to their execution.
- (c) Proposed material changes to agreements or contracts between TMX IP and Data Contributors will be provided to the CSA Staff for review and approval.

## 6. FEES, FEE STRUCTURE AND REVENUE SHARING

- (a) TMX IP will make available, on its website, the fee schedule for TMX IP Consolidated Data Products.
- (b) If any adjustments or modifications are proposed to fees, fee structure, or the fee/revenue sharing model relating to the services of TMX IP, TMX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
- (c) TMX IP will report annually, in writing, to the CSA Staff whether it has fully recovered its costs (including cost of capital and cost to meet the requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering TMX IP services and will review and report on whether the profit margin received from TMX IP services is in line with industry standards.
- (d) If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of TMX IP, TMX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. TMX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to TMX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to the CSA Staff within 30 days of the IP Governance Committee having received the analysis and recommendations.
- (e) TMX IP will conduct reviews of the “pass-through” fee model, as requested by the CSA Staff (the **Review Initiation Date**). Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. TMX IP will ask the IP Governance Committee to review the report and provide its views, in writing, to TMX IP. The report and the views of the IP Governance Committee will be provided to the CSA Staff within 90 days of the Review Initiation Date.

## **7. NON-EXCLUSIVITY**

TMX IP acknowledges that the designation as an IP does not grant TMX IP any exclusive right to consolidating and disseminating order and trade data. TMX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

## **8. SELF-ASSESSMENT**

- (a) TMX IP will conduct the annual independent system review referred to in section 14.5 of NI 21-101 and provide the report of such review to the CSA Staff no later than 90 days after the end of TMX IP's fiscal year.
- (b) TMX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and with its performance with respect to the terms and conditions of these undertakings. The report of such self-assessment will be provided to the IP Governance Committee promptly upon its completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to the CSA Staff no later than 90 days after the end of TMX IP's fiscal year.

## **9. FINANCIAL VIABILITY**

TMX Group Limited will provide TMX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

## **10. NOTICE**

TMX IP must provide the CSA Staff with at least one year's notice should it determine not to continue to act as an IP.