CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*

April 24, 2014

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a 90 day comment period proposed amendments (the Proposed Amendments) to the following materials:

- National Instrument 21-101 *Marketplace Operation* (NI 21-101) and Companion Policy 21-101CP (21-101CP);
- National Instrument 23-101 *Trading Rule*s (NI 23-101) and Companion Policy 23-101CP (23-101CP and, together with NI 21-101, 21-101CP and NI 23-101, the Marketplace Rules);
- Form 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* (Form 21-101F1);
- Form 21-101F2 *Initial Operation Report Alternative Trading System* (Form 21-101F2);
- Form 21-101F3 *Quarterly Report of Marketplace Activities* (Form 21-101F3);
- Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* (Form 21-101F4)
- Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5), and
- Form 21-101F6 *Cessation of Operations Report for Information Processor* (Form 21-101F6 and, together with Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F4, and Form 21-101F5, the Forms).

The text of the Proposed Amendments is contained in Annexes B through D of this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

Background

The Marketplace Rules have been in place since 2001 and have been regularly updated since then. The last set of revisions to the Marketplace Rules came into force on July 1, 2012 (the

2012 Amendments), with the exception of amendments to Form 21-101F3, which came into force on December 31, 2012.

Substance and purpose

The purpose of the Proposed Amendments is to update the Marketplace Rules to reflect developments that have occurred since they were last revised, in the following main areas:

- Requirements applicable to marketplaces' and information processors' systems and business continuity planning;
- Government debt transparency; and
- Other various areas where we identified that updates or additional guidance are required.

The Proposed Amendments apply to marketplaces, including alternative trading systems (ATSs), recognized quotation and trade reporting systems (QTRSs), recognized exchanges, and information processors.

Summary of the Proposed Amendments

The Proposed Amendments:

- Extend the existing exemption from the transparency requirements applicable to government debt securities in section 8.6 of NI 21-101 until January 1, 2018;
- Revise the existing requirements applicable to marketplaces' and information processors' systems and business continuity planning;
- Change the provision in section 5.10 of NI 21-101 that currently prohibits a marketplace from disclosing a marketplace participant's order and trade information without the marketplace participant's consent in order to allow the marketplace to provide it to researchers if certain terms and conditions are met;
- Require a marketplace that has co-location arrangements with a third-party service provider to publicly disclose that it has the arrangement along with the name of the provider on its website and ensure each third party that provides a form of access complies with the marketplace's criteria for access;
- Revise the information in Exhibit G in Form 21-101F1 and Form 21-101F2 to ensure we receive relevant information regarding marketplace systems and contingency planning;
- Introduce requirements in Part 13 *Clearing and Settlement* of NI 21-101 to assist in the operation of multiple clearing agencies;
- Make a number of amendments to Form 21-101F3 in order to facilitate the reporting of information in electronic form;
- Provide additional clarification on existing requirements, including guidance on what is considered to be a significant change to Form 21-101F1 and Form 21-101F2; and
- Clarify the obligations of a recognized exchange to its regulation services provider (RSP).

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation.

Annexes

A. Description of changes to the Marketplace Rules and Forms;

B. The Proposed Amendments to NI 21-101 and NI 23-101

C. A blackline of the proposed changes to 21-101CP against the existing 21-101CP; and

D. A blackline of the proposed changes to 23-101CP against the existing 23-101CP

Authority of the Proposed Amendments

In those jurisdictions in which the Proposed Amendments are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the amendments.

In Ontario, the proposed amendments to NI 21-101 and the Forms are being made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 143(1)7 authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants.
- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, and recognized quotation and trade reporting systems including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)12.1 authorizes the Commission to make rules regulating alternative trading systems, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content. Execution, certification, dissemination, and other use, filing and review of all documents required under or governed by the Act, the regulation or the rules and all documents, determined by the regulations or the rules to be ancillary to the documents.

In Ontario the proposed amendments to NI 23-101 are being made under the following provisions of the Act:

- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, and recognized quotation and trade reporting systems including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)12.1 authorizes the Commission to make rules regulating alternative trading systems, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Deadline for Comments

Please submit your comments to the Proposed Amendments, in writing, on or before July 16, 2014. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (NB)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador

Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

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

Comments Received will be Publicly Available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear on certain CSA websites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Ontario Securities Commission website at www.osc.gov.on.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca.

Questions

Please refer your questions to any of the following:

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Senior Policy Advisor Direction des bourses et des OAR Autorité des marchés financiers 514-395-0337 ext. 4358	Policy Advisor Direction des bourses et des OAR Autorité des marchés financiers 514-395-0337 ext. 4324
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ANNEX A

DESCRIPTION OF CHANGES TO THE MARKETPLACE RULES AND FORMS

This Annex describes the Proposed Amendments. It contains the following sections:

1. Information transparency for government debt securities
2. Marketplace systems and business continuity planning
3. Use of marketplace participants' trading information for research
4. Co-location and other access arrangements with a service provider
5. Information in Forms 21-101F1, 21-101F2 and 21-101F3
6. Provision of data to information processors
7. Obligations of a recognized exchange to a regulation services provider
8. Form of information provided to regulators
9. Clearing and settlement
10. Requirements applicable to information processors

1. INFORMATION TRANSPARENCY FOR GOVERNMENT DEBT SECURITIES

Background

Part 8 *Information Transparency Requirements for Marketplaces Dealing in Unlisted Debt Securities, Inter-Dealer Bond Brokers and Dealers* of NI 21-101 sets out the transparency requirements for the entities trading unlisted debt securities, including government debt securities. The specific pre-trade and post-trade transparency requirements applicable to government debt securities are set out in section 8.1 of NI 21-101. Section 8.6 of NI 21-101 provides an exemption from these requirements until January 1, 2015. The exemption was last renewed in 2012. The purpose of the exemption is to maintain the regulatory framework for government debt transparency, but delay imposing regulatory requirements until such time they are appropriate. In the past, we indicated that no other jurisdiction had established mandatory transparency requirements for government debt securities, and that we extended the exemption from the transparency requirement to allow us to review international regulatory developments and progress towards additional transparency in Canada to determine what, if any, mandatory

requirements are needed in this area. [1]

Since the 2012 Amendments were finalized, we have monitored domestic and international regulatory developments in the fixed income market and have summarized them below.

Domestic developments

In Canada, there have been a number of regulatory developments which are noteworthy. In October 2011, IIROC implemented Dealer Member Rule 3300 - *Fair Pricing of Over-The-Counter Securities* (the Fair Pricing Rule), which seeks to accomplish a number of objectives, including ensuring that dealers' clients, in particular retail clients, are given prices for over-the-counter securities that are fair and reasonable in relation to prevailing market conditions.

On January 9, 2014, IIROC re-published for comment Proposed Rule 2800C – *Transaction Reporting for Debt Securities* (Proposed IIROC Rule).[2] The Proposed IIROC Rule, previously published for comment on February 20, 2013,[3] will require dealers to report, on a post-trade basis, all debt market transactions executed by the dealer member, including those executed on an ATS or through an inter-dealer bond broker (IDB). The Proposed IIROC Rule will facilitate the creation of a database of transaction information that would enable IIROC to carry out its responsibilities with respect to the surveillance and oversight of over-the-counter debt market trading.

On July 15, 2013, a number of amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) came into force and implemented the second phase of the CSA Client Relationship Model (CRM) Project (CSA CRM 2). The purpose of the amendments is to ensure that clients of all registrants, including dealers, receive clear and complete disclosure of all charges and registrant compensation associated with the investment products, including fixed income products, and services they receive. The amendments introduced requirements for registrants to: (i) disclose the annual yield to maturity of debt securities on trade confirmations issued to clients after their purchase[4]; (ii) disclose either total compensation or the gross commission[5] on all debt security trade confirmations issued to all clients; and (iii) where the gross commission is disclosed, provide a prescribed general notification.[6] On December 31, 2013, IIROC published for comment a series of proposed rule amendments to implement CSA CRM 2 in its dealer member rules. The rule amendments are substantially the same as the CSA CRM 2 amendments, including those described above.

We also met with dealers and institutional buy-side representatives, individually or through their committees, and with ATS and IDB representatives to discuss fixed income market

[1] CSA Notice of Proposed Amendments to NI 21-101 and NI 23-101 published at (2011) 34 OSCB (Supp-1).
[2] Available at http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201312361&tocID=22.
[3] Available at http://www.iiroc.ca/Documents/2013/2e5bf850-7ea6-4b36-9217-f744517554a9_en.pdf.
[4] Subsection 14.12(b.1) of NI 31-103.
[5] "Total compensation" is the total amount of any mark-up or mark-down, commission or other services that were charged on a debt security trade. "Gross commission" is the commission a registrant charges on the debt security trade (as compared to "net commission, which is the Registered Representative's portion of the commission charged on the trade).
[6] Subsection 14.12(c.1) of NI 31-103.

developments, the sources of information for those participating in the fixed income markets, including retail investors, and whether there was a need for additional transparency in the fixed income market.

The market participants involved in our consultations generally indicated that there was sufficient information available regarding fixed income securities. Some believed, however, that there was information asymmetry, and that different information was available to different market participants. For example, larger market participants (dealers and buy-side representatives) have access to a wealth of information, including indicative pricing information shared through the Bloomberg platform, composite pricing data offered by a fixed income marketplace, dealers' information and index pricing. In addition, certain larger market participants also subscribe to the Fixed Income Price Service (FIPS) of CDS Innovations Inc., which provides details of all fixed income trades reported to CDS Clearing and Depository Services Inc. (CDS) on a daily basis.[7] FIPS includes all fixed income federal, provincial, municipal and corporate securities that are eligible for deposit at CDS.

Smaller market participants also have access to fixed income information, but not to the same extent as the larger market participants. For some, the cost of information appears to be an issue. The sources of fixed income information available to retail investors are limited and have not changed significantly. Mostly, they rely on their dealer's information, and the prices they receive are those offered by their registered representatives (RR), which are based on the dealers' retail desk prices with an additional mark-up representing the RR's commission. Some market participants involved in our consultations believed that there should be more education of investors about fixed income securities and their risks and that this may be more beneficial than additional fixed income information.

International developments

In the United States, the Trade Reporting and Compliance Engine (TRACE) was originally established to provide transparency for corporate debt securities. The scope of the securities reportable to TRACE includes, and has included for some time, all securities issued or guaranteed by an agency or a government-sponsored enterprise, except securities issued by the U.S. Treasury.[8] No new developments have occurred.

In Europe, on January 14, 2014, the European Parliament and the Council announced that they agreed in principle on updated rules for markets in financial instruments (MiFID II). For the first time, MiFID II would introduce a pre- and post-trade transparency regime for non-equity instruments, where pre-trade transparency waivers would be available for large orders, requests for quote and voice trading, and post-trade transparency would be provided with the possibility of deferred publication or volume masking, as appropriate.[9] The agreement will be forwarded to the European Securities and Markets Authority for details regarding how the various provisions

[7] See details at http://www.tmx.com/en/data/products_services/regulatory_depository/fixed_income_price_service.html.
[8] The definition of a TRACE-eligible security is in FINRA Rule 6710, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4400.
[9] According to press release of the European Commission, available at http://europa.eu/rapid/press-release_MEMO-14-15_en.htm?locale=en.

are to be implemented. At this time, it is expected that the rules will be finalized this year, with general compliance required by 2016.

Proposed Amendments

The initiatives described above are a step forward in the development of a robust regulatory framework for fixed income securities. While we continue to be of the view that transparency in the fixed income market is important, we have delayed imposing requirements that would mandate transparency in government debt and propose to extend the exemption from transparency for government debt securities until January 1, 2018. .

However, we are of the view that there is a role for regulatory policy in this area and, for this reason, we do not propose to remove the transparency requirements currently set out in NI 21-101. We believe this is appropriate because we did not find, through our review of fixed income market developments, that there has been significant progress towards more transparency in our markets. We are of the view that smaller market participants, and in particular retail investors, could benefit from additional sources of information, including information that meets regulatory standards and is not cost prohibitive.

At the same time, we are mindful that the Canadian fixed income market is relatively small as compared to fixed income markets globally, and believe it would not be appropriate to mandate transparency for government debt securities before other jurisdictions. As we noted, at this time, no other international jurisdiction has mandated transparency for government debt securities, although this will change when MiFID II is implemented. As it is currently believed that MiFID II will be implemented in 2016, we plan to review the effects of its implementation prior to proposing any transparency requirements through NI 21-101. If, after this review, the CSA believe that it would be beneficial to mandate transparency for government debt securities, we will first need to ensure the appropriate framework is in place before implementing such a requirement.

As the current transparency exemption expires on December 31, 2014, we note that the CSA may have to take steps to expedite the approval and implementation of this specific proposed amendment in order to meet this deadline.

We note that, currently, NI 21-101 includes transparency requirements for corporate debt securities[10] and an information processor for corporate debt securities, CanPX Inc. (CanPX), is in place. CanPX currently requires firms that have achieved a de minimus market share of 0.5% of the total corporate debt trading in two of the three most recent quarters to report the corporate bond trade information for a number of designated corporate debt securities.[11] While we are not proposing any changes to the requirements applicable to corporate debt securities at this time, we note that we are reviewing the framework for corporate debt transparency and will consider steps

[10] Section 8.2 of NI 21-101 requires marketplaces to report accurate and timely information for orders of designated corporate debt securities to an information processor, as required by the information processor. It also requires marketplaces, IDBs and dealers to report accurate and timely information regarding details of trades of corporate debt securities to the information processor, as required by the information processor. Section 8.3 of NI 21-101 requires the information processor to produce an accurate consolidated feed in real-time showing the information provided to it.

[11] The most recent list of designated corporate debt securities is available at http://www.canpxonline.ca/selectioncriteria.php.

to increase corporate debt transparency in the coming year.

2. MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

Background

In Canada, trading has been conducted electronically for many years. The high degree of connectivity among marketplaces and marketplace participants required for electronic equity trading means that the impact of marketplace systems failures can have wide-reaching and unintended consequences. Part 12 of NI 21-101 sets out requirements for marketplace systems and business continuity planning to mitigate the probability and effects of systems failures and we think that it is important for these requirements to be updated so that they continue to be effective in helping ensure that marketplace systems are reliable, robust and have adequate controls.

The Ontario Securities Commission (OSC) engaged a consultant, Fionnuala Martin and Associates (Consultant), to conduct a review of the risks of electronic trading and to determine if any changes were necessary to current rules to address any identified gaps. The Consultant completed a report with a number of recommendations, including: increased transparency regarding marketplace testing environments, the use of industry-wide test symbols in marketplace production environments and for marketplace requirements related to business continuity planning to be equivalent to those of marketplace participants.[12]

Upon reviewing all of the Consultant's recommendations and conducting our own review of current systems requirements, we propose adding requirements with respect to five main areas: (i) business continuity testing; (ii) use of uniform test symbols in marketplace production environments and increased transparency of testing environments; (iii) security breaches; (iv) expansion of the scope of independent systems reviews (ISRs); and (v) marketplace launches and material changes to marketplace technology requirements.

(i) Business Continuity Testing

Section 12.4 of NI 21-101 requires that marketplaces develop and maintain reasonable business continuity and disaster recovery plans (BCP and DRP) and test these plans annually. We propose to amend subsection 12.4(1) to clarify that the testing of business continuity plans must be done according to prudent business practices.

In addition, we think that the increase in marketplace fragmentation for listed equities has made the recovery process in the case of a disaster significantly more complex and that a successful industry-wide BCP test is key to any realistic expectation of a Canadian capital markets recovery from a major disaster within a reasonable length of time. We also note that the U.S. Securities and Exchange Commission has proposed to require certain entities to participate in industry BCP and DRP tests in Regulation Systems Compliance and Integrity (Reg SCI).[13]

[12] The complete report with recommendations may be found at Appendix A of OSC Staff Notice 23-702 Electronic Trading Risk Analysis Update published on December 12, 2013 at (2013), 36 OSCB 11767.

[13] Subparagraph 1000(b)(9)(ii) of Reg SCI would require an SCI entity to coordinate the testing of business

Compulsory participation in BCP and DRP tests by marketplaces and clearing agencies has been discussed several times over the last few years and based on the above analysis, the CSA have concluded that it is appropriate to propose that marketplaces, recognized clearing agencies, information processors, and marketplace participants must participate in industry-wide business continuity tests as determined by an RSP, regulator, or in Québec, a securities regulatory authority.

It is our expectation that participation in industry-wide BCP tests will improve the resilience of Canadian market infrastructure entities, including marketplaces, and reduce recovery time after a disaster. As an extension of this result, we are also proposing in subsection 12.4(2) of NI 21-101 that a marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must ensure that each system operated by or on behalf of the marketplace that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within 2 hours following the declaration of a disaster by the marketplace. In addition, subsection 14.6(3) of NI 21-101 would require an information processor to be able to resume operations of its critical information technology systems within one hour following the declaration of a disaster by the information processor.

(ii) Uniform test symbols in production environments

Although marketplaces currently provide testing environments for participants, these environments remain unconnected, do not utilize uniform test symbols and in some cases are offered in facilities that may not be a reasonably good proxy of the marketplace's production environment. In order for participants to have the ability to properly test their IT systems in today's fragmented yet interdependent market, we have proposed the requirement for marketplaces to use uniform test symbols for the purpose of testing to be performed in the production environment. We expect that the details of how to best implement this proposed requirement will be discussed with industry groups and we welcome any comments with respect to the implementation of this proposed requirement.

In the meantime, in order for marketplace participants and their clients to better understand the current testing environments of the marketplaces that they trade on, we have proposed to include in section 10.1 of NI 21-101 that a marketplace publicly disclose the hours of operation of its testing environment, and describe any difference between its testing and production environments along with a description of the potential impact of these differences on the effectiveness of testing by its participants.

(iii) Security breaches

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continuity and disaster recovery plans on an industry- or sector-wide basis with other SCI entities. For more information see https://www.federalregister.gov/articles/2013/03/25/2013-05888/regulation-systems-compliance-and-integrity.

Due to the growing complexity and interconnectedness of the various marketplace systems, a security breach of one system that shares network resources could impact other systems vital to the operation and integrity of the marketplace. Security breaches not only include cyber-attacks originated by outsiders but all unauthorized systems breaches. Such system intrusions can be perpetrated by outsiders, employees or agents of the marketplace, and can be both intentional and inadvertent.

As a result of the growing concern with system security, we have proposed a requirement in subsection 12.1(c) of NI 21-101 for a marketplace to promptly notify the regulator or in Québec, the securities regulatory authority, of any material security breach, in addition to the existing requirement to provide notification of any material systems failure, malfunction or delay of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing (trading related systems). In addition, proposed subsection 12.1.1(b) of NI 21-101 would require a marketplace to promptly notify the regulator or in Québec, the securities regulatory authority, if there is a security breach of any system that shares network resources with one or more of the trading related systems, that if breached would pose a security threat to a trading related system (auxiliary system).

(iv) Expansion of scope of ISRs

We propose in paragraph 12.2(1)(b) of NI 21-101 that the annual ISR by a qualified party review a marketplace's information security controls of the marketplace's auxiliary systems. We think that a review of the information security controls of auxiliary systems will aid in ensuring the security of a marketplace's systems.

We have further proposed that the report resulting from the ISR must be furnished to the regulatory authority within the earlier of 30 days of providing the report to its board of directors or the audit committee or 60 days after the calendar year end.

(v) Launch of new marketplaces and material changes to marketplace technology requirements

As mentioned above, the failure of a marketplace's systems can have wide-reaching and unintended consequences. A marketplace beginning operations or making a material change to its systems can therefore negatively impact many other parties if these actions are not carried out in a careful manner. Therefore, we are proposing requirements to ensure that, from a systems perspective, the launching of new marketplaces and material changes made to a marketplace's technology requirements are conducted according to prudent business practices and are implemented so that marketplace participants and service vendors have a reasonable opportunity to adapt to these changes.[14]

Paragraphs 12.3(5)(c) and 12.3(6)(b) of NI 21-101 would require a marketplace's senior executive to certify that all information technology systems have been tested according to prudent business practices and are operating as designed prior to a marketplace beginning operations or implementing material changes to its technology requirements. We expect that

[14] These Proposed Amendments codify staff practice outlined in OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes* published on October 4, 2012 at (2012) 35 OSCB 8928.

these proposed requirements will help mitigate systems risks that arise when a new marketplace or a material systems change to a marketplace's technology requirements is introduced.

In order to give marketplace participants and their service providers a reasonable opportunity to make any necessary changes to their systems to access and interface with a new marketplace or to accommodate a significant change to a marketplace's technology requirements, we propose to amend subsection 12.3(3) of NI 21-101 so that a marketplace would not be able to launch operations or implement a material change to its technology requirements before the later of three months after a regulator or a securities regulatory authority, as applicable, has completed its review and a reasonable time that would allow marketplace participants to complete any necessary systems work and testing.

(vi) Other systems related amendments

Given the growing diversity and complexity of marketplace systems, marketplaces are increasingly looking to third parties to provide vital equipment and know-how to operate certain systems. We believe that system requirements denoted in subsection 12.1 of NI 21-101 should apply to each marketplace system that supports order entry, order routing, execution, trade comparison, data feeds, surveillance and trade clearing. To that end, we have made clear in these amendments that system requirements apply to systems not only operated by a marketplace but also operated *on behalf of* a marketplace.

We are also proposing to amend section 6.8 of NI 23-101 to ensure that marketplaces that trade standardized derivatives will immediately notify its marketplace participants if the marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data.

Lastly, we are revising the information required in Exhibit G in Form 21-101F1 and Form 21-101F2 to ensure we receive relevant and consistent information from marketplaces regarding systems, contingency planning, system capacity and IT risk management.

3. USE OF MARKETPLACE PARTICIPANTS' TRADING INFORMATION FOR RESEARCH

Background

Subsection 5.10(1) of NI 21-101 prohibits a marketplace from providing a marketplace participant's order and trade information to a person or company other than the market participant, a securities regulatory authority or an RSP unless (i) the marketplace participant has consented in writing, (ii) the release of the order and trade information is required by applicable law or NI 21-101, or (iii) the order and trade information was disclosed by another person or company, and the disclosure was lawful.

Before the 2012 Amendments were implemented, the requirement applied only to ATSs. It was

extended, as part of the 2012 Amendments, to recognized exchanges and QTRSs to harmonize the rules for all marketplaces. An unintended result of this was that all marketplaces, including exchanges, were prohibited from providing order and trade information for capital markets research without the written consent of all of their marketplace participants. In Ontario, an exemption order was granted to marketplaces to allow them to provide marketplace participants' data for capital markets research. [15]

Proposed Amendments

We support capital markets research and are of the view that marketplaces should be allowed to provide marketplace participants' data for research provided that certain terms and conditions are met. Therefore, we propose an exception from the confidentiality requirements in subsection 5.10(1) of NI 21-101 to allow marketplaces to provide their marketplace participants' data without their consent to capital market researchers.[16] In proposed subsection 7.7(1) of 21-101CP, we clarify that proposed subsection 5.10(1.1) of NI 21-101 does not impose any obligation on a marketplace to disclose its marketplace participants' information if requested by a researcher. In fact, the marketplace may choose to maintain this information in confidence, and this may be codified in its contracts with marketplace participants.

Proposed subsection 5.10(1.1) of NI 21-101 contains the provision that allows a marketplace to release a marketplace participant's order or trade information to a person or company if that marketplace has entered into a written agreement with each person or company that will receive the order and trade information.

The terms and conditions under which marketplaces would be able to provide data are listed in proposed subsections 5.10(1.1), 5.10(1.2) and 5.10(1.3) of NI 21-101. Proposed paragraph 5.10(1.1)(a) lists the minimum provisions that must be included in such agreements. The purpose of these provisions is to ensure that the marketplace participants' data provided by a marketplace is not misused. Proposed subparagraph 5.10(1.1)(a)(ii) requires that the agreement should have provisions that ensure that the person or company does not publish or disseminate data or information that discloses, directly or indirectly, the transactions, trading strategies or the market position of a particular marketplace participant or its clients. Proposed subparagraph 5.10(1.1)(a)(iii) requires that the agreement stipulate that the order and trade information not be used for any purpose other than capital markets research. This proposed subparagraph does not dictate the nature of the research, or who may conduct such research. However, in proposed subsection 7.7(1) of 21-101CP, we clarify that using marketplace participants' data for trading, advising others to trade or for reverse engineering trading strategies are examples where data would not be used for capital markets research. This proposed provision would apply to the researcher or any other person, such as a research assistant, or company with whom the researcher works. If the researcher engages another person or company, they would have to seek the marketplace's consent, as required by proposed subparagraph 5.10(1.1)(a)(i) before passing along the order or trade information received to that person or company. The purpose of the

[15] Available at http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20131003_210_alpha-trading.htm

[16] The proposed amendments to NI 21-101 that would allow for this exception are substantially similar to the terms and conditions in the OSC exemption order granting marketplaces an exemption from the requirement to keep order and trade information in confidence.

marketplace notification and consent is to allow the marketplace to determine the appropriate course of action to ensure that the data is not misused. This may include, for example, requiring that any other person or company working with a researcher enter into an agreement with the marketplace.

Proposed subparagraphs 5.10(1.1)(a)(iv) and (v) require that the marketplace participants' information received is kept securely stored and only for a reasonable period of time after the completion of the research and publication process. Proposed subparagraph 5.10(1.1)(a)(vi) requires that the agreement has a provision that would require a researcher to inform the marketplace of any breach or possible breach of the confidentiality of the information provided.

Proposed subsection 5.10(1.2) sets out the requirements applicable to marketplaces that release their marketplace participants' order and trade data to researchers. A marketplace is required to take all appropriate steps, that in its sole discretion, are necessary to prevent or deal with a breach or possible breach of the confidentiality of the information provided or of the agreement with the researcher. In the event of a breach or possible breach of the confidentiality of the information provided or of the agreement, a marketplace is also required to inform the regulator or, in Québec, the securities regulatory authority. We consider a breach of the agreement or of the confidentiality of the information provided sufficiently important to warrant regulatory notification. If notified, the regulators would monitor whether the marketplace is taking all appropriate steps to deal with the breach or possible breach.

Proposed subsection 5.10(1.3) of NI 21-101 sets out the conditions that must be met for a person or company receiving order and trade information from a marketplace to disclose this information. The only exception permitted by this subsection is to allow those conducting peer reviews to have access to the marketplace's order and trade data solely for the purpose of verifying the research prior to its publication. Proposed paragraph 5.10(1.3)(b) requires the peer reviewer to maintain the confidentiality of the information.

To help regulators determine if the marketplace has entered into the agreements required under section 5.10 of NI 21-101, we propose to add that a copy of any agreement referred to in section 5.10 be added to the list of documents that must be maintained for at least seven years in section 11.3 Record Preservation Requirements of NI 21-101.

4. CO-LOCATION AND OTHER ACCESS ARRANGEMENTS WITH A SERVICE PROVIDER

Background and Proposed Amendments

Co-location is the ability of traders (be it participants of a marketplace or their clients operating through direct electronic access) to install servers in close physical proximity to a marketplace's trading engine, thus effectively reducing trading latency. Currently, a number of third party service providers provide co-location access to various marketplaces. We are of the view that co-location, and any other form of marketplace access, should be provided on a fair and transparent basis.

To help ensure that co-location, and any other form of marketplace access, is provided on a fair basis, proposed section 5.13 of NI 21-101 would require a marketplace that allows a third party service provider to provide access to its trading engine to ensure the third party service provider complies with the access provisions the marketplace has established under section 5.1 of NI 21-101. Section 5.1 requires a marketplace to not: (i) unreasonably prohibit, condition or limit access by a person or company to services offered by it; (ii) permit unreasonable discrimination among clients; and (iii) impose any burden on competition that is not reasonably necessary and appropriate and subsection 5.1(2) requires a marketplace to establish written standards for granting access to each of its services.

To increase transparency regarding when access to a marketplace is provided by a third party service provider, proposed subsection 10.1(i) of NI 21-101 would require a marketplace to disclose any access arrangements with a third party service provider, including the name of the provider and the standards for access to be complied with by the provider on the marketplace's website.

5. INFORMATION IN FORMS 21-101F1, 21-101F2 AND 21-101F3

Background

The information a recognized exchange provides in its Form 21-101F1 or an ATS provides in its Form 21-101F2 is crucial for regulators to understand the various important aspects of the marketplace, including its operations, marketplace participants and the securities that it trades. Form 21-101F3 is a form that is to be filed quarterly by marketplaces and the information in a Form 21-101F3 provides us with helpful information such as the types of trading activity that occurs on a marketplace. Together, the information in all of these forms allows us to regulate marketplaces and monitor changes in market activity more effectively.

In order to ensure that we receive current and accurate information in Forms 21-101F1 and 21-101F2 and can more easily review certain information contained in these forms, we have proposed changes related to: (a) guidance as to what constitutes a significant change to information in Form 21-101F1 and Form 21-101F2; (b) providing certain changes to these forms to a marketplace's RSP; (c) an annual certification pertaining to the information in the forms and (d) filing of materials related to outsourcing.

Based on past experiences in reviewing Form 21-101F3s filed by various marketplaces, we have also proposed changes to Form 21-101F3 as outlined in (e) below.

(a) Guidance regarding significant changes to Form 21-101F1 and Form 21-101F2

In order for regulators to have complete and accurate information regarding a marketplace, the information in these forms needs to be kept up-to-date and any significant changes to this information need to be reviewed by a securities regulatory authority to ensure that they are in keeping with the public interest. Therefore, subsection 3.2(1) of NI 21-101 requires that a marketplace file an amendment to the information provided in Form 21-101F1 or in Form 21-

101F2, as applicable, at least 45 days before implementing a significant change. Subsection 3.2(3) of NI 21-101 requires that changes to fee information set out in Exhibit L – Fees be filed at least seven business days before their implementation. To assist a marketplace in determining if a change is significant, subsection 6.1(4) of 21-101CP gives guidance that a change that could significantly impact a marketplace, its marketplace participants, investors or the Canadian capital markets is considered to be a significant change. Paragraphs 6.1(4)(a) through (n) of 21-101CP give examples of significant changes.

Under the current guidance in 21-101CP, all changes listed in paragraphs 6.1(4)(a) through (n) could be considered significant. However, feedback received from marketplaces and insight gained from reviewing marketplace filings show that some of these changes may or may not be significant, depending on their actual impact. For example, a change that would be considered significant to the operations of a continuous auction equity marketplace may not necessarily have the same impact on a request-for-quote fixed income marketplace.

Therefore, we propose amendments to subsection 6.1(4) to clarify that the types of changes currently listed in paragraphs 6.1(4)(a) through (n) of 21-101CP are only considered significant if they significantly impact a marketplace, its systems, market structure, marketplace participants or their systems, investors, issuers or the Canadian capital markets. The proposed guidance would further state that whether a change contemplated by a marketplace makes a significant impact depends on whether it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or results in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the RSP.

A number of changes made by a marketplace will always be considered significant. These changes, listed in proposed paragraphs 6.1(4)(a), (b) and (c) of 21-101CP, are changes to a marketplace's structure, including procedures governing how orders are entered, displayed (if applicable), executed, cleared and settled. They also include changes related to the introduction or modifications to order types, fees or fee models.

As set out above, other changes may or may not be significant, depending on their impact. They are listed in proposed paragraphs 6.1(4)(d) through (n). It is our expectation that a marketplace considering these changes will make a determination as to whether or not they have a significant impact, based on the guidance provided. If a marketplace's proposed changes to either Form 21-101F1 or Form 21-101F2 have a significant impact, the changes must be filed at least 45 days in advance of their implementation. Otherwise, the changes must be filed subsequent to their implementation, as required by subsection 3.2(3) of NI 21-101.

Subsection 6.1(5) of 21-101CP includes guidance regarding changes that are not considered to have a significant impact on a marketplace, its market structure, marketplace participants, investors, issuers or the capital markets.

(b) Provision of Proposed Form Changes to Regulation Services Provider

We are of the view that an RSP of a marketplace should be kept informed of changes to the

operations of the marketplace in order to effectively perform its regulatory functions. To that end, proposed subsection 3.2(1.1) of NI 21-101 would require a marketplace that has entered into an agreement with an RSP to provide the RSP with any proposed significant changes to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1, where the marketplace is an exchange or Form 21-101F2 where the marketplace is an ATS. In addition, the marketplace would need to provide the RSP with any proposed significant changes to a matter set out in Exhibit I – Securities of Form 21-101F1, where the marketplace is an exchange or Exhibit I – Securities of Form 21-101F2 where the marketplace is an ATS.

We have proposed that only changes to Exhibits E and I must be provided to the RSP because this information may impact the monitoring of trading conducted by the RSP.

(c) Annual Certification of Form 21-101F1 and Form 21-101F2 Information

To help ensure the information in a marketplace's Form 21-101F1 or Form 21-101F2, as applicable, is accurate and updated regularly, proposed subsection 3.2(4) of NI 21-101 would require the chief executive officer of a marketplace to annually certify that the information in the marketplace's applicable form, is true, correct and complete and reflects the operations of the marketplace as they have been implemented. Along with this certification, we have proposed that a marketplace annually provide an updated and consolidated form in subsection 3.2(5) of NI 21-101.

These proposed changes will assist us in having an accurate and complete understanding of the operations of the marketplaces that we oversee and the risks faced by the market, thereby improving our ability to regulate more effectively.

(d) Filing of Materials Related to Outsourcing

To better ensure that marketplaces have established appropriate policies and procedures and other materials required under subsections 5.12(a), (b), (f), (g) and (h) of NI 21-101 related to the outsourcing of the operation of any key marketplace service or system to a service provider, we propose that marketplaces file these materials as part of Exhibit F of Form 21-101F1 or Form 21-101F2, as applicable.

(e) Changes to Form 21-101F3

Based on our past experience with reviewing and using data collected from Form 21-101F3 we have proposed changes to this form to include additional information that we think is important in our oversight of a marketplace and to remove certain information to facilitate the electronic filing of this form.

In particular, we have removed the requirement to provide a list of all marketplace participants that are using the marketplace's co-location services and the percentage of marketplace participants that use a marketplace's co-location services as we now propose to receive this

information in Form 21-101F1 or Form 21-101F2. We also propose to remove the requirement to provide a list of participants granted, denied or limited access to the marketplace as we now propose to receive this information in Form 21-101F1 or Form 21-101F2 as well. In addition, we propose to revise how information is provided to us in Charts 2, 3, 15 and 16. Specifically, we propose that marketplaces provide the raw number of the volume, value and number of trades in charts 2, 15 and 16 rather than a percentage and that marketplaces provide the actual number of orders executed and cancelled rather than provide a percentage in chart 3. These Proposed Amendments would streamline some of the information in Form 21-101F3 and facilitate the electronic filing of this form.

With respect to Chart 8, we propose to ask for information on each fixed income security traded on the marketplace rather than only asking for information on the top ten fixed income securities (based on the value of the volume traded) that are traded on the marketplace. This additional information will help us better understand the trading that is conducted in the fixed income market.

Finally, we are proposing to receive information in Form 21-101F3 regarding significant systems and technology changes that were planned, under development or implemented during the quarter. We think that this information will help us anticipate and perhaps address issues that we may identify for marketplaces with respect to these significant changes.

6. PROVISION OF DATA TO AN INFORMATION PROCESSOR

Background and Proposed Amendments

We note that an information processor (or information vendor, in its absence), is a key element in the multiple marketplace environment for equity listed securities. It facilitates compliance by marketplace participants with relevant requirements in a multiple marketplace environment by ensuring the availability of consolidated data that meets regulatory standards and which users, as well as regulators, could use to demonstrate or evaluate compliance with certain regulatory requirements. As a result, it is important to ensure that the information processor receives accurate and timely information from marketplaces. This is reflected in the requirements that marketplaces provide accurate and timely data to the information processor in subsections 7.1(1) and 7.2(1) of NI 21-101.

Currently, subsection 9.1(2) of 21-101CP sets out the expectation that a marketplace will not make the order and trade information it is required to report under sections 7.1 and 7.2 of NI 21-101 to any other person or company on a more timely basis than it makes it available to the information processor or information vendor.

We are of the view that this information is not timely if it is made available by a marketplace to any other person or company before it is made available to the information processor, or if applicable, information vendor. We have therefore proposed new subsections 7.1(3) and 7.2(2) of NI 21-101 to codify this requirement.

7. OBLIGATIONS OF A RECOGNIZED EXCHANGE TO A REGULATION

SERVICES PROVIDER

Background

Section 7.1 of NI 23-101 provides a recognized exchange with an option to either directly monitor the conduct of its members or engage an RSP to perform this monitoring. Today, a number of recognized exchanges have engaged IIROC to act as their RSP and perform the required monitoring. When an exchange decides to engage an RSP to monitor the conduct of its members, section 7.2 of NI 23-101 requires, among other things, that an agreement between an exchange and RSP include that the recognized exchange will transmit to the RSP information that the RSP needs to effectively monitor: (i) the conduct of and trading by marketplace participants on and across marketplaces, and (ii) the conduct of the recognized exchange.

Proposed Amendments

The CSA have been told that the requirements under this subsection 7.2 of NI 23-101 are not necessarily clear to all recognized exchanges and that different interpretations exist as to what a recognized exchange's specific obligations are under these provisions. To help clarify these requirements, we have proposed a new section, 7.2.1 *Obligations of a Recognized Exchange to a Regulation Services Provider*, that turns certain provisions that currently must be included in an agreement with an RSP under section 7.2 into direct requirements that a recognized exchange would have to follow. We have also provided further guidance regarding proposed section 7.2.1 in 23-101CP to assist exchanges in understanding their obligations to an RSP. While we are of the view that these Proposed Amendments do not significantly change our expectations of a marketplace or its existing relationship with an RSP, we believe these changes will help eliminate incorrect interpretations of the current provisions.

Specifically, we propose in section 7.1(3) of NI 23-101 that a recognized exchange that has entered into a written agreement with an RSP must set requirements that are necessary for the RSP to be able to effectively monitor trading on the exchange and across marketplaces as required by the RSP. The proposed guidance in 7.1 of 23-101CP explains that a recognized exchange is expected to adopt all rules of the RSP that relate to trading as part of the requirements it must set under subsection 7.1(3). Further, it is proposed that the exchange transmit to the RSP information required by the RSP to monitor the conduct of the recognized exchange, including compliance of the recognized exchange with the requirements set under subsection 7.1(3). Analogous requirements relating to QTRSs have also been proposed in section 7.4.1 of NI 23-101.

8. FORM OF INFORMATION PROVIDED TO REGULATORS

Section 11.2.1 of NI 21-101 requires a marketplace to transmit information required by its RSP and its securities regulatory authority within ten business days in electronic form. To ensure that regulators receive the information they need in the form and format that is most helpful for them to conduct their oversight, we propose to add the requirement that a marketplace transmit information in the manner that is requested by a securities regulatory authority and if applicable, its RSP.

9. CLEARING AND SETTLEMENT

Background and Proposed Amendments

Part 13 *Clearing and Settlement* of NI 21-101 sets out certain clearing and settlement requirements for all trades executed on a marketplace.

Proposed section 13.2 of NI 21-101 codifies the policy objective that marketplace participants should not be unreasonably prevented from having access to the clearing agency of their choice. This policy objective is important since the acquisition by Maple Group Acquisition Corporation of TMX Group Inc. and The Canadian Depository for Securities Limited resulted in the transformation of Canada's not-for-profit securities clearing and settlement utility into a vertically-integrated for-profit clearing agency. The CSA recognize that it is necessary to prevent potential impediments to competition in clearing and settlement to ensure that the markets are fair and efficient.

In April 2012, the Committee for Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO) published their report *Principles for financial market infrastructures* (PFMI Report).[17] The PFMI Report notes that competition among financial market infrastructures (such as clearing agencies) can be an important mechanism for facilitating efficient and low-cost services. The CPSS-IOSCO standards for the safe and efficient functioning of financial market infrastructures contained in the PFMI Report are currently being adopted by certain Canadian jurisdictions as ongoing regulatory requirements for recognized clearing agencies.[18]

Proposed subsection 13.2(2) of NI 21-101 limits the scope of subsection 13.2(1). Marketplace trades in standardized derivatives or exchange-traded securities that are options, would not be subject to the provision.

The CSA are not aware of any current plans by industry to develop or support competing clearing agencies that would serve domestic cash marketplaces. However, in the context of the Maple transactions we received strong stakeholder support for ensuring a regulatory framework that could allow for competition among clearing agencies. In the event that industry decides at some later stage that the benefits of competition would out-weigh the costs of supporting multiple clearing agencies, marketplaces should be required to accommodate any competition. The CSA recognize that should industry decide to support a multi-clearing agency environment in the Canadian cash markets, time will be needed by the relevant market infrastructures (i.e. marketplaces and clearing agencies) to consider and develop processes, interfaces and links to facilitate the clearing of cash market trades at multiple clearing agencies.

[17] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

[18] See proposed OSC Rule 24-503 *Clearing Agency Requirements*, MSC Rule 24-503 *Clearing Agency Requirements*, and AMF Regulation 24-503 *Respecting clearing house, central securities depository and settlement system requirements*, together with their related companion policies.

We seek stakeholder feedback on the above issues, and welcome your comments on proposed new section 13.2 of NI 21-101.

10. REQUIREMENTS APPLICABLE TO INFORMATION PROCESSORS

Background and Proposed Amendments

Part 14 *Requirements for an Information Processor* of NI 21-101 sets out the filing, systems and other requirements applicable to information processors.

Subsection 14.4(6) of NI 21-101 requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. Subsection 14.4(7) requires an information processor to file its financial budget within 30 days after the start of a financial year. The purpose of these requirements is to ensure that CSA staff receive some of the information they need to assess the financial condition of the information processor.

We note that an information processor may be operated as a division or unit of another person or company. For example, the information processor for equity securities other than options is operated as a division of TMX Group Inc. Under the current requirements, the information processor may file the audited financial statements and the budget of its parent company, which may not include sufficient detail to enable us to assess the financial viability of the information processor unit.

For this reason, we have proposed amendments to Part 14 to require, if an information processor is operated as a division or unit of a person or company, the person or company to file the income statement, statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. Proposed subsection 14.4(6.1) of NI 21-101 requires that this information must be filed within 90 days after the end of the financial year of the person or company that operates the information processor. We do not propose to require that this financial information be audited, because this information will be filed in addition to the audited financial statements of the person or company that operates the information processor.

We also have proposed subsection 14.4(7.1) of NI 21-101 that would require a person or company that operates an information processor as one of its divisions or units to file the financial budget of the information processor within 30 days from the beginning of the financial year of the person or company.

Finally, we have also proposed amendments to the systems requirements applicable to the information processor similar to those proposed for marketplace systems for consistency. Specifically, we have proposed amendments to subparagraph 14.5(d)(ii) to require an information processor to provide its independent systems review report within the earlier of 30 days of providing it to the board of directors or the audit committee, or 60 days after the calendar year end.

ANNEX B – The Proposed Amendments

AMENDMENTS TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION

1. National Instrument 21-101 Marketplace Operation is amended by this Instrument.

2. National Instrument 21-101 Marketplace Operation is amended by replacing "*shall****" wherever it occurs with "****must****".***

3. National Instrument 21-101 Marketplace operation is amended by replacing "*percent****" wherever it occurs with "****%****".***

4. Section 1 is amended by

(a) replacing "*;****" with "****,****" in paragraph (a)(iv) of the definition of marketplace, and***

(b) replacing "*Accouting****" with "****Accounting****" in the definition of private enterprise.***

5. Section 1.4(2) is amended by replacing "*Commodity Futures Act****" wherever it occurs with "****Commodity Futures Act****".***

6. Section 3.2 is amended by

(a) adding "*applicable****" after "****in the manner set out in the****" in subsection(1),***

(b) adding the following item after subsection (1):

(1.1) A marketplace that has entered into an agreement with a regulation services provider in accordance with NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the filing to its regulation services provider at least 45 days before implementing the change**.,**

(c) adding "*applicable****" after "****amendment to the information provided in the****" in subsection (3), and***

(d) adding the following item after subsection (3):

(4) The chief executive officer of a marketplace, or individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace's current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and its operations have been implemented as described in the applicable Form.

(5) A marketplace must provide an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year**..**

7. Section 5.1 is amended by replacing "*;****" with "****,****" in subsections (2)(a) and (3)(a).***

8. Section 5.7 is amended by deleting an additional space after "*not****".***

9. Section 5.10 is amended by

(a) adding the following item after subsection (1):

(1.1) Despite subsection (1), a marketplace may release a marketplace participant's order or trade information to a person or company if the marketplace has entered into a written agreement with each person or company that will receive the order and trade information that provides that

(a) the person or company must

(i) not disclose to or share any information with any person or company if that information could directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace's consent, other than as provided under subsection (1.3) below;

(ii) not publish or otherwise disseminate data or information that discloses, directly or indirectly, the transactions, trading strategies or market positions of a marketplace

participant or a client of the marketplace participant;

(iii) not use the order and trade information or provide it to any other person or company for any purpose other than capital markets research;

(iv) keep the order and trade information securely stored at all times;

(v) keep the order and trade information only for a reasonable period of time after the completion of the research and publication process; and

(vi) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided; and

(b) the marketplace has the right to take appropriate steps, that in the marketplace's sole discretion, are necessary to prevent or deal with a breach or possible breach of the confidentiality of the information provided or of the agreement.

(1.2) A marketplace that releases a marketplace participant's order or trade information pursuant to subsection (1.1) must

(a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement; and

(b) take all appropriate steps that in the marketplace's sole discretion, are necessary against that person or company to prevent or deal with a breach or possible breach of the confidentiality of the information provided or of the agreement.

(1.3) A person or company that receives a marketplace participant's order or trade information from a marketplace pursuant to subsection (1.1) may disclose the order or trade information used in connection with research submitted to a publication if it has entered into a written agreement with the marketplace that provides that:

(a) the information the person or company will disclose is used for verification purposes only,

(b) the person or company must obtain written agreement from the publication or any person or company involved in the verification of the research to maintain the confidentiality of the information,

(c) the person or company must notify the marketplace prior to sharing the information for verification purposes, and

(d) the person or company must obtain written agreement from the publication or any person or company involved in the verification of the research that the publication or other person or company will immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided**.**

10. Section 5.12 is amended by

(a) deleting "**:**" after "**the marketplace must**" in the preamble,

(b) replacing "**key services and systems**" with "**key services or systems**" in subsections (b) and (c), and

(c) deleting "**,**" after "**on behalf of the marketplace**" in subsection (e).

11. Part 5 is amended by

(a) adding the following item:

5.13 Access Arrangements with a Service Provider

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

12. Section 6.7(1) is amended by replacing "**;**" with "**,**" in subsections (a) and (b).

13. Section 7.1 is amended by adding the following item:

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

14. Section 7.2 is amended by

(a) adding "**(1)**" before "**A marketplace must provide accurate and timely**", and

(b) adding the following item:

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

15. Subsection 8.1(5) is amended by replacing "**interdealer**" with "**inter-dealer**".

16. Section 8.6 is amended by replacing "**2015**" with "**2018**".

17. Section 10.1 is amended by

(a) adding "**,**" after "**disclose**",

(b) adding "**,**" after "**website**",

(c) adding "**,**" after "**or services it provides, including**",

(d) adding "**,**" after "**but not limited to**",

(e) deleting "**:**" after "**information related to**",

(f) replacing "**;**" wherever it occurs with "**,**",

(g) deleting "**; and**" in subsection (g) and replacing it with "**,**",

(h) replacing "**.**" with "**,**" in subsection (h), and

(i) adding the following items:

(i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and

(j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing**.**

18. Section 11.2 is amended by replacing "**;**" with "**,**" in paragraph (c)(xviii).

19. Section 11.2.1 is amended by

(a) adding "**, in the manner requested by the regulation services provider**" after "**the information required by the regulation services provider**" in subsection (a), and

(b) adding "**, in the manner requested by the securities regulatory authority" ***after "under securities legislation**" in subsection (b).***

20. Section 11.3(1) is amended by

(a) deleting "**and**" in subsection (f),

(b) replacing "**.**" with "**; and**" after "**subsections 13.1(2) and 13.1(3)**" in subsection (g), and

(c) adding the following items:

(h) a copy of any agreement referred to in section 5.10; and

(i) a copy of any agreement referred to in subsection 5.12(c)**.**

21. Section 12.1 is amended by

(a) ***replacing*** **"**For each of its systems that support" ***with*** **"**For each system, operated by or on behalf of the marketplace, that supports***",***

(b) ***replacing "***;***" with "***,***" in paragraphs (a)(i), (a)(ii), (b)(i) and (b)(ii),***

(c) ***replacing*** **"**malfunction or delay***" with*** **"**malfunction, delay" ***in subsection (c), and***

(d) ***adding the following after*** **"**delay***" in subsection (c):***

or security breach and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the marketplace's internal review of the failure, malfunction, delay or security breach**..**

22. ***The following item is added after section 12.1:***

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

(a) develop and maintain an adequate system of information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and

(b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material security breach and provide timely updates on the status of the breach, the resumption of service, where applicable, and the results of the marketplace's internal review of the security breach**..**

23. ***Subsection 12.2(1) is replaced with:***

(1) A marketplace must annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that the marketplace is in compliance with

(a) paragraph 12.1(a);
(b) section 12.1.1; and
(c) section 12.4.

24. ***Subsection 12.2(2) is amended by***

(a) ***adding*** **"**the earlier of***" before*** **"**30 days***" in subsection (b), and***

(b) ***adding*** **"**or 60 days after the calendar year end***" after*** **"**committee***" in subsection (b).***

25. ***Section 12.3 is amended by***

(a) ***replacing*** **"Availability of***" with*** **"Marketplace***" in the title of the section,***

(b) ***replacing subsection (3) with:***

(3) A marketplace must not begin operations or implement a material change to its technology requirements until the later of

(a) three months after notification of the completion of the review of the

marketplace's initial filing or change in information by the regulator, or in Québec, the securities regulatory authority, is provided to the marketplace, and

(b) a reasonable period of time after the regulator, or in Québec, the securities regulatory authority, has completed its review of the marketplace's initial filing or change in information and notified the marketplace of the completion of the review.**,**

(c) deleting "12.3***" in subsection (4), and***

(d) adding the following items after subsection (4):

(5) A marketplace must not begin operations before,

(a) it has complied with paragraphs (1)(a) and (2)(a),

(b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and

(c) the chief information officer of the marketplace, or person performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.

(6) A marketplace must not implement a material change to its technology requirements before,

(a) it has complied with paragraphs (1)(b) and (2)(b), and

(b) the chief information officer of the marketplace, or individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.

(7) Subsection (6) does not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, of its intention to make the change**.**

26. Part 12 is amended by adding the following item after section 12.3:

12.3.1 Uniform Test Symbols

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

27. Section 12.4 is replaced with the following item:

12.4 Business Continuity Planning

(1) A marketplace must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans,

(b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and

(2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operations must ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within two hours following the declaration of a disaster by the marketplace.

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

(4) A regulation services provider that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace must ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider..

28. Part 12 is amended by adding the following item after section 12.4:

12.4.1 Industry-Wide Business Continuity Tests

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

29. Part 13 is amended by:

(a) replacing "and settled***" with "***to a clearing agency***" in subsections (2) and (3) in section 13.1, and***

(b) adding the following item after section 13.1:

13.2 **Access to Clearing Agency of Choice**

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

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

30. Section 14.4 is amended by

(a) adding "or changes to an electronic connection***" after "***in a timely manner an electronic connection***" in subsection (4),***

(b) adding the following item after subsection (6):

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

(c) adding the following item after subsection (7):

(7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days after the start of the financial year of the person or company..

30. Section 14.5 is amended by

(a) replacing ";" wherever it occurs with ",", and

(b) adding "the earlier of***" before "***30 days***" and adding "***or 60 days after the calendar year end,***" after "***audit committee***" in paragraph (d)(ii).***

31. Section 14.6 is replaced by the following item:

14.6 Business Continuity Planning

An information processor must

(1) develop and maintain reasonable business continuity plans, including disaster recovery plans,

(2) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and

(3) ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.**.**

32. Section 14.7 is amended by

(a) replacing "with this Instrument, or other than a securities regulatory authority, unless:***" with "***with this Instrument or a securities regulatory authority, unless***" and***

(b) replacing ";***" with "***,***" in subsection (a).***

33. Section 14.8 is amended by

(a) deleting ":***" after "***but not limited to***", and***

(b) replacing ";***" wherever it occurs with "***,***".***

34. FORM 21-101F1 INFORMATION STATEMENT EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM is amended by

(a) replacing "shall***" wherever it occurs with "***must***",***

(b) replacing "should***" wherever it occurs with "***must***",***

(c) adding "; AMENDMENT No.***" after "***AMENDMENT***" in Type of Filing,***

(d) replacing "percent***" with "***%***" in Exhibit B,***

(e) adding "and the Board mandate***" after "***including their mandates***" in Exhibit C,***

(f) deleting ":***" wherever it occurs in Exhibit D,***

(g) deleting ";***" wherever it occurs in Exhibit D,***

(h) adding ",***" after "***private enterprises***" in Exhibit D,***

(i) replacing "not be limited***" with "***is not limited***" in Exhibit E,***

(j) replacing "Description***" wherever it occurs in Exhibit E with "***A description***",***

(k) adding the following to the end of Exhibit E:

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

(l) adding ",***" after "***execution, data***" in Exhibit F,***

(m) adding the following item at the end of Exhibit F:

4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to subsection 5.12(a) of National Instrument 21-101 *Marketplace Operation*.

5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to subsection 5.12(b) of National Instrument 21-101 *Marketplace Operation*.

6. A description of the measures the marketplace has taken pursuant to subsection 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.

7. A description of the measures the marketplace has taken pursuant to subsection 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.

8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to subsection 5.12(h) of National Instrument 21-101 *Marketplace Operation*.**,**

(n) replacing Exhibit G with the following:

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group.

Business Continuity Planning

Please describe:

1. Where the primary processing site is located,
2. What the approximate percentage of hardware, software, and network redundancy is at the primary site,
3. If there is an uninterruptible power source (UPS) at the primary site,
4. How frequently market data is stored off-site,
5. Whether the marketplace has a secondary processing site and, if so, the location of the secondary processing site,
6. The filer's business continuity plan, including the disaster recovery plan. Please provide any relevant documentation,
7. How frequently the business continuity and disaster recovery plans are tested,
8. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace,
9. Any single points of failure faced by the marketplace.

Systems Capacity

Please describe:

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

Systems

Please describe:

1. Whether the trading engine was developed in-house or by a commercial vendor,
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable,
3. The marketplace's networks. Please provide a copy of the network diagram used in-house that covers order entry, real-time market data and transmission,
4. The message protocols supported by the marketplace's systems,
5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Please describe the IT risk assessment framework, including:

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

(o) replacing "Filer***" wherever it occurs with "***filer***" in Exhibit I,***

(p) replacing "Exhibit E.4***" with "***Exhibit E item 4***" in Exhibit J,***

(q) ***adding*** **"**Please identify if the marketplace participant accesses the marketplace through co-location.**"** ***after*** **"**or other access.**"** ***in item 4 of Exhibit K,***

(r) ***deleting*** **":"** ***after*** **"**indicating for each**"** ***in item 5 of Exhibit K,***

(s) ***replacing*** **";"** ***wherever it occurs with*** **","** ***in item 5 of Exhibit K,***

(t) ***adding*** **"**a copy of**"** ***after*** **"**and its members, provide**"** ***in item 2 of Exhibit M,***

(u) ***deleting*** **"."** ***after*** **"**regulation services provider**"** ***in the second box of Exhibit M, and***

(v) ***adding*** **"***Marketplace Operation***"** ***after*** **"**21-101**"** ***in Exhibit N.***

35. ***Form 21-101F2 INITIAL OPERATION REPORT ALTERNATIVE TRADING SYSTEM is amended by***

(a) ***replacing*** **"**INITIAL OPERATION REPORT**"** ***with*** **"**INFORMATION STATEMENT**"** ***in the title,***

(b) ***replacing*** **"**should**"** ***wherever it occurs with*** **"**must**"** ***in the Form,***

(c) ***replacing*** **"**shall**"** ***wherever it occurs with*** **"**must**"** ***in the Form,***

(d) ***adding*** **"**; AMENDMENT No.**"** ***after*** **"**AMENDMENT**"** ***in Type of Filing,***

(e) ***adding*** **"**name of**"** ***after*** **"**[**"** ***in item 12 of Type of Filing,***

(f) ***replacing*** **"**percent**"** ***with*** **"**%**"** ***in Exhibit B,***

(g) ***replacing*** **"**not be**"** ***with*** **"**is not**"** ***in Exhibit E,***

(h) ***replacing*** **"**Description**"** ***wherever it occurs with*** **"**A description**"** ***in Exhibit E,***

(i) ***adding the following to the end of Exhibit E:***

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

(j) ***deleting*** **"**the**"** ***after*** **"**including any function associated with**"** ***in Exhibit F,***

(k) ***adding*** **"**data**"** ***after*** **"**clearing and settlement,**"** ***in Exhibit F,***

(l) ***adding the following items after item (3) in Exhibit F:***

4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to subsection 5.12(a) of National Instrument 21-101 *Marketplace Operation*.

5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to subsection 5.12(b) of National Instrument 21-101 *Marketplace Operation*.

6. A description of the measures the marketplace has taken pursuant to subsection 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.

7. A description of the measures the marketplace has taken pursuant to subsection 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.

8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to subsection 5.12(h) of National Instrument 21-101 *Marketplace Operation*.**,**

(m) ***replacing Exhibit G with the following:***

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group.

Business Continuity Planning

Describe:

1. Where the primary processing site is located,
2. What the approximate percentage of hardware, software, and network redundancy is at the primary site,
3. If there is an uninterruptible power source (UPS) at the primary site,
4. How frequently market data is stored off-site,
5. Whether the marketplace has a secondary processing site and, if so, the location of the secondary processing site,
6. The filer's business continuity plan, including the disaster recovery plan. Please provide any relevant documentation,
7. How frequently the business continuity and disaster recovery plans are tested,
8. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace,
9. Any single points of failure faced by the marketplace.

Systems Capacity

Describe:

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

Systems

Describe:

1. Whether the trading engine was developed in-house or by a commercial vendor,
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable,
3. The marketplace's networks. Please provide a copy of the network diagram used in-house that covers order entry, real-time market data and transmission,
4. The message protocols supported by the marketplace's systems,
5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Describe the IT risk assessment framework, including:

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

(n) ***adding "***list***" after "***If this is an initial filing,***" in Exhibit I,***

(o) ***replacing "***Exhibit E.4***" with "***Exhibit E item 4***" in item 1 of Exhibit J,***

(p) ***deleting "," after "***institution***" in item 2 of Exhibit J,***

(q) ***adding "***Identify if the marketplace participant accesses the marketplace through co-location.***" after "***access.***" in item 4 of Exhibit K,***

(r) deleting "**:**" after "**for each**" in item 5 of Exhibit K, and

(s) replacing "**;**" wherever it occurs with "**,**" in item 5 of Exhibit K,

(t) adding "**Marketplace Operation**" after "**21-101**" in Exhibit N, and

36. Form 21-101F3 Quarterly Report of Marketplace Activities is amended by

(a) replacing "**should**" wherever it occurs with "**must**" in the Form,

(b) replacing item 4 with the following:

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

(c) replacing item 5 with the following:

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

(d) adding the following items after item 5:

6. Systems - If any outages occurred at any time during the period for any system relating to trading activity, including trading, routing or data, provide the date, duration, reason for the outage and its resolution.

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

(e) deleting "**%**" wherever it occurs in Chart 2 of Section 1 of Part B,

(f) deleting "**% Number of exchange traded securities that are**" in Chart 2 of Section 1 of Part B,

(g) deleting "**%**" wherever it occurs in Chart 3 of Section 1 of Part B,

(h) replacing "**third-party**" with "**third party**" in item 6 of Section 1 of Part B,

(i) deleting item 7 of Section 1 of Part B,

(j) adding "**during the quarter**" after "**regular trading hours**" in item 1 of Section 2 of Part B,

(k) replacing "**the 10 most traded fixed income securities**" with "**each fixed income security traded**" in item 2 of Section 2 of Part B,

(l) deleting "**(based on the value of the volume traded) for trades executed**" in item 2 of Section 2 of Part B,

(m) replacing Chart 8 of Section 2 of Part B with the following chart:

Chart 8 – Traded fixed income securities

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

Category of Securities	Value Traded	Number of Trades
[Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – **Government** [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – **Corporate** [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – **Other** [Enter issuer, maturity, coupon]		

(n) deleting "%***" wherever it occurs in Charts 15 and 16 of Section 4 of Part B,***

(o) deleting "of***" in Chart 15 of Section 4 of Part B, and***

(p) deleting item 6 of Section 4 of Part B.

37. Form 21-101F4 CESSATION OF OPERATIONS REPORT FOR ALTERNATIVE TRADING SYSTEM is amended by replacing "shall***" with "***must***".***

38. Form 21-101F5 INITIAL OPERATION REPORT FOR INFORMATION PROCESSOR is amended by

(a) replacing "INITIAL OPERATION REPORT FOR***" with "***INFORMATION STATEMENT***" in the title,***

(b) adding ": AMENDMENT No.***" after "***AMENDMENT***" in Type of Filing,***

(c) replacing "should***" wherever it occurs with "***must***" in the Form,***

(d) replacing "shall***" wherever it occurs with "***must***" in the Form,***

(e) adding "," after "National Instrument 21-101***" under the heading "Exhibits",***

(f) adding "," after "standing committees of the board***" and after "***previous year***" in item 1 of Exhibit C,***

(g) replacing "system***" with "***System***" in item 3 of section 1 of Exhibit G,***

(h) replacing "Description***" with "***A description***" in item 5 of section 1 of Exhibit G,***

(i) replacing "exists***" with "***exist***" in item 2 of Exhibit J,***

(j) adding "provide***" after "***National Instrument 21-101***" in item 2 of Exhibit J,***

(k) replacing "who***" with "***that***" in item 3 of Exhibit K.***

39. FORM 21-101F6 CESSATION OF OPERATIONS REORT FOR INFORMAITON PROCESSOR is amended by replacing "shall***" with "***must***".***

40. This Instrument comes into force on •.

AMENDMENTS TO NATIONAL INSTRUMENT 23-101
TRADING RULES

1. National Instrument 23-101 Trading Rules is amended by this Instrument.

2. Section 6.8 is amended by adding ", except for paragraph 6.3(1)(c)," ***after*** "*In Québec*, this Part".

3. The following item is added after subsection 7.1(2):

(3) If a recognized exchange has entered into a written agreement with a regulation services provider, the recognized exchange must set requirements that are necessary for the regulation services provider to be able to effectively monitor trading on the recognized exchange and across marketplaces as required by the regulation services provider..

4. Section 7.2 is replaced with the following item:

7.2 Agreement between a Recognized Exchange and a Regulation Services Provider - A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider which provides that the regulation services provider will:

(a) monitor the conduct of the members of the recognized exchange,
(b) monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3)
(c) enforce the requirements set under subsection 7.1(1)..

5. The following item is added after section 7.2:

7.2.1 Obligations of a Recognized Exchange to a Regulation Services Provider – A recognized exchange that has entered into a written agreement with a regulation services provider must

(a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.1(1), and

(ii) the conduct of the recognized exchange, including the compliance of the recognized exchange with the requirements set under subsection 7.1(3) ; and

(b) comply with all orders or directions made by the regulation services provider..

6. The following item is added after subsection 7.3(2):

(3) If a recognized quotation and trade reporting system has entered into a written agreement with a regulation services provider, the recognized quotation and trade reporting system must set requirements that are necessary for the regulation services provider to be able to effectively monitor trading on the recognized quotation and trade reporting system and across marketplaces as required by the regulation services provider..

7. Section 7.4 is replaced with the following:

7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider - A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider which provides that the regulation services provider will

(a) monitor the conduct of the users of the recognized quotation and trade reporting system,

(b) monitor the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3), and

(c) enforce the requirements set under subsection 7.3(1)**..**

8. The following item is added after section 7.4:

7.4.1 Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider – A recognized quotation and trade reporting system that has entered into a written agreement with a regulation services provider must

(a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.3(1), and

(ii) the conduct of the recognized quotation and trade reporting system, including the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3); and

(b) comply with all orders or directions made by the regulation services provider**..**

9. This Instrument comes into force on •.

Annex C

Companion Policy 21-101 CP
to National Instrument 21-101
Marketplace Operation

PART 1 INTRODUCTION

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

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

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

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

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

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

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

1.3 Definition of Foreign Exchange-Traded Security - The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at www.iosco.org.

1.4 Definition of Regulation Services Provider - The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace.

PART 2 MARKETPLACE

2.1 Marketplace

(1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. ~~Paragraphs (c~~Subparagraphs (a)(iii) and (~~d~~a)(iv) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders ~~of~~for exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.

(2) Two of the characteristics of a "marketplace" are

(a) that it brings together orders for securities of multiple buyers and sellers; and

(b) that it uses established, non-discretionary methods under which the orders interact with each other.

(3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it

(a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or

(b) receives orders centrally for processing and execution (regardless of the level of automation used).

(4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."

(5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:

(a) A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.

(b) A system that merely routes orders for execution to a facility where the orders are executed.

(c) A system that posts information about trading interests, without facilities for execution.

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

(6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is required to be registered as a dealer under securities legislation.

(7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IIROC Rule 36 and IIROC Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker

that chooses to be an ATS will not be subject to Rule 36 or IIROC Rule 2100, but will be subject to all other IIROC requirements applicable to a dealer.

(8) Section 1.2 of the Instrument contains an interpretation of the definition of “marketplace”. The Canadian securities regulatory authorities do not consider a system that only routes unmatched orders to a marketplace for execution to be a marketplace. If a dealer uses a system to match buy and sell orders or pair orders with contra-side orders outside of a marketplace and route the matched or paired orders to a marketplace as a cross, the Canadian securities regulatory authorities may consider the dealer to be operating a marketplace under ~~paragraph (c~~subparagraph (a)(iii) of the definition of “marketplace”. The Canadian securities regulatory authorities encourage dealers that operate or plan to operate such a system to meet with the applicable securities regulatory authority to discuss the operation of the system and whether the dealer’s system falls within the definition of “marketplace”.

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

3.1 Exchange

(1) Securities legislation of most jurisdictions does not define the term "exchange".

(2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

(a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;

(c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or

(d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.

(3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

(4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

(1) Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.

(2) A quotation and trade reporting system is considered to have "quoted" a security if

(a) the security has been subject to a listing or quoting process, and

(b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

3.3 Definition of an ATS

(1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as

(a) requiring listing agreements,

(b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,

(c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and

(d) disciplining subscribers.

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

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

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

3.4 Requirements Applicable to ATSs

(1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.

(2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.

(3) Under paragraph 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.

(4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under paragraph 6.1(a) and all other requirements in the Instrument and in NI 23-101 and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.

(5) Paragraph 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IIROC is the only entity that would come within the definition.

(6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.

(7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS and its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, debt securities or options.

(8) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

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

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

(1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.

(2) In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities will look at a number of factors, including

(a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;

(b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;

(c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions;

(d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors;

(e) whether the exchange or quotation and trade reporting system has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;

(f) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and

(g) whether the exchange or quotation and trade reporting system's process for setting fees is fair, transparent and appropriate, and whether the fees are equitably allocated among the participants, issuers and other users of services, do not have the effect of creating barriers to access and at the same time ensure that the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions.

4.2 Process

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

PART 5 ORDERS

5.1 Orders

(1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders". However, if those prices or quantities are implied and determinable, for example, by knowing the features of the marketplace, the indications of interest may be considered an order.

(2) The terminology used is not determinative of whether an indication of interest constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty (i.e. the indication is "actionable"). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated or an implied price, based on understandings or past dealings, will be viewed as an order.

(3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.

(4) The securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of the Instrument to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties provided that

(a) order details are shown only to the negotiating parties,

(b) other than as provided by paragraph (a), no actionable indication of interest or order is displayed by either party or the marketplace, and

(c) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Instrument.

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

PART 6 MARKETPLACE INFORMATION AND FINANCIAL STATEMENTS

6.1 Forms Filed by Marketplaces

(1) The definition of marketplace includes exchanges, quotation and trade reporting systems and ATSs. The legal entity that is recognized as an exchange or quotation and trade reporting system, or registered as a dealer in the case of an ATS, owns and operates the market or trading facility. In some cases, the entity may own and operate more than one trading facility. In such cases the marketplace may file separate forms in respect of each trading facility, or it may choose to file one form covering all of the different trading facilities. If the latter alternative is chosen, the marketplace must clearly identify the facility to which the information or changes apply.

(2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain proprietary financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.

(3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and industry participants to be better informed as to how securities trade on the marketplace.

(4) Under subsection 3.2(1) of the Instrument, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets. ~~The Canadian securities regulatory authorities would consider significant changes to include:~~

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

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

(a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;

(b) new or changes to order types, and

(c) changes in the fees and the fee model of the marketplace.

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

(d) new or changes to the services provided by the marketplace, including the hours of operation;

(~~c~~e) new or changes to the means of access to the market or facility and its services;

~~(d) new or changes to order types;~~(~~e~~f) new or changes to types of securities traded on the marketplace;

(~~f~~g) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;

(~~g~~h) new or changes to types of marketplace participants;

(~~h~~i) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;

(~~i~~j) changes to the governance of the marketplace, including the structure of its board of directors and changes in the board committees and their mandates;

(~~j~~k) changes in control over marketplaces;

(~~k~~l) changes in affiliates that provide services to or on behalf of the marketplace;

(~~l~~m) new or changes in outsourcing arrangements for key marketplace services or systems; and

(~~m~~(n) new or changes in custody arrangements~~; and(n) changes in fees and the fee model of the marketplace~~.

(5) ~~Significant changes would not include changes~~Changes to information in Form 21-101F1 or Form 21-101F~~2~~,2 that

(a) ~~would~~do not have ~~an~~a significant impact on the marketplace~~'s~~, its market structure ~~or~~, marketplace participants ~~on~~, investors, issuers or the Canadian capital markets~~;~~, or

(b) are housekeeping or administrative changes such as

(i) changes in the routine processes, policies, practices, or administration of the marketplace,

(ii) changes due to standardization of terminology,

(iii) corrections of spelling or typographical errors,

(iv) necessary changes to conform to applicable regulatory or other legal requirements, ~~and~~

(v) ~~(v)~~ minor system or technology changes that would not significantly impact the system or its capacity~~.~~ ,and

(vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace,

~~Such changes~~ would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument.

(6) The Canadian securities regulatory authorities generally consider a change in a marketplace's fees or fee structure to be a significant change. However, the Canadian securities regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee structure of marketplaces, marketplaces may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3.2(2) of the Instrument provides that marketplaces may provide information describing the change in fees or fee structure in a shorter timeframe, at least seven business days before the expected implementation date of the change in fees or fee structure.

(7) For the changes referred to in subsection 3.2(3) of the Instrument, the Canadian securities regulatory authorities may review these filings to ascertain the appropriateness of the categorization of such filings. The marketplace will be notified in writing if there is disagreement with respect to the categorization of the filing.

(8) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Instrument. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.

(8.1) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument.

(9) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the calendar quarter ending March 31), July 30 (for the calendar quarter ending June 30), October 30 (for the calendar quarter ending September 30) and January 30 (for the calendar quarter ending December 31).

(10) In order to ensure records regarding the information in a marketplace's Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify that the information contained in the marketplace's Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and that its operations have been implemented as described within 30 days after the end of each calendar year. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be provided pursuant to subsection 3.2(5) of the Instrument.

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.

PART 7 MARKETPLACE REQUIREMENTS

7.1 Access Requirements

(1) Section 5.1 of the Instrument sets out access requirements that apply to a marketplace. The Canadian securities regulatory authorities note that the requirements regarding access for marketplace participants do not restrict the marketplace from maintaining reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace.

(2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a marketplace should permit fair and efficient access to

(a) a marketplace participant that directly accesses the marketplace,

(b) a person or company that is indirectly accessing the marketplace through a marketplace participant, or

(c) another marketplace routing an order to the marketplace.

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

(3) The reference to "services" in section 5.1 of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing, data and includes co-location.

(4) Marketplaces that send indications of interest to a selected smart order router or other system should send the information to other smart order routers or systems to meet the fair access requirements of the Instrument.

(5) Marketplaces are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a marketplace should consider a number of factors, including

(a) the value of the security traded,

(b) the amount of the fee relative to the value of the security traded,

(c) the amount of fees charged by other marketplaces to execute trades in the market,

(d) with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace, and,

(e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

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

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

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

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

7.5 **Review of Rules** - The Canadian securities regulatory authorities review the rules, policies and similar instruments of a recognized exchange or recognized quotation and trade reporting system in accordance with the recognition order and rule protocol issued by the jurisdiction in which the exchange or quotation and trade reporting system is recognized. The rules of recognized exchanges and quotation and trade reporting systems are included in their rulebooks, and the principles and

requirements applicable to these rules are set out in section 5.3 of the Instrument. For an ATS, whose trading requirements, including any trading rules, policies or practices, are incorporated in Form 21-101F2, any changes would be filed in accordance with the filing requirements applicable to changes to information in Form 21-101F2 set out in subsections 3.2(1) and 3.2(3) of the Instrument and reviewed by the Canadian securities regulatory authorities in accordance with staff practices in each jurisdiction.

7.6 Fair and Orderly Markets

(1) Section 5.7 of the Instrument establishes the requirement that a marketplace take reasonable steps to ensure it operates in a way that does not interfere with the maintenance of fair and orderly markets. This applies both to the operation of the marketplace itself and to the impact of the marketplace's operations on the Canadian market as a whole.

(2) This section does not impose a responsibility on the marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or quotation and trade reporting system that has assumed responsibility for monitoring the conduct of its marketplace participants directly rather than through a regulation services provider. However, marketplaces are expected in the normal course to monitor order entry and trading activity for compliance with the marketplace's own operational policies and procedures. They should also alert the regulation services provider if they become aware that disorderly or disruptive order entry or trading may be occurring, or of possible violations of applicable regulatory requirements.

(3) Part of taking reasonable steps to ensure that a marketplace's operations do not interfere with fair and orderly markets necessitates ensuring that its operations support compliance with regulatory requirements including applicable rules of a regulation services provider. This does not mean that a marketplace must system-enforce all regulatory requirements. However, it should not operate in a manner that to the best of its knowledge would cause marketplace participants to breach regulatory requirements when trading on the marketplace.

7.7 Confidential Treatment of Trading Information

(1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release its marketplace participants' order or trade information without obtaining its marketplace participants' written consent provided this information is used for capital markets research, and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. If the marketplace decides to disclose this information however, it must ensure that certain terms and conditions are met to ensure that the marketplace participants' information is not misused.

These terms and conditions are set out in subsections 5.10(1.1), 5.10(1.2) and 5.10(1.3) of the Instrument. Subsection 5.10(1.1) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(a)(iii) of the Instrument requires the agreement to provide that the person or company agrees to use the order and trade information only for capital markets research purposes. Using the information for the purposes of trading, advising others to trade or for reverse engineering trading strategies are examples where the information would not be used for capital markets research purposes. Subparagraph 5.10(1.1)(a)(i) of the Instrument provides that the agreement must prohibit the researcher from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data. A carve-out is included in subsection 5.10(1.3) of the Instrument to allow those conducting peer reviews to have access to the data for the purpose of verifying the research prior to the publication of the results of the research. To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(a)(ii) of the Instrument requires the agreement to provide that

researchers will not publish or disseminate data or information that discloses, directly or indirectly, the transactions, trading strategies or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times, as required by subparagraph 5.10(1.1)(a)(iv) of the Instrument and that the data is only kept for a reasonable period after the completion of the research and publication process. The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and to take all appropriate steps in the event of a breach or possible breach of the agreement or of the confidentiality of the information provided.

(~~1~~2) Subsection 5.10 (2) of the Instrument provides that a marketplace ~~shall~~must not carry on business as a marketplace unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's trading information. These include

(a) limiting access to the trading information of marketplace participants, such as the identity of marketplace participants and their orders, to those employees of, or persons or companies retained by, the marketplace to operate the system or to be responsible for its compliance with securities legislation; and

(b) having in place procedures to ensure that employees of the marketplace cannot use such information for trading in their own accounts.

(~~2~~3) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the marketplace, whether or not they have direct responsibility for the operation of the marketplace.

(~~3~~4) Nothing in section 5.10 of the Instrument prohibits a marketplace from complying with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. This statement is necessary because an investment dealer that operates a marketplace may be an intermediary for the purposes of National Instrument 54-101, and may be required to disclose information under that Instrument.

7.8 Management of Conflicts of Interest

(1) Marketplaces are required under section 5.11 of the Instrument to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides. These may include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.

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

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

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

PART 8 RISK DISCLOSURE TO MARKETPLACE PARTICIPANTS

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

8.2 [repealed]

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

9.1 Information Transparency Requirements for Exchange-Traded Securities

(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. The Canadian securities regulatory authorities consider that a marketplace that sends

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

(2) In complying with sections 7.1 and 7.2 of the Instrument, ~~a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition,~~ any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.

(3) **[**~~Repealed~~**]**~~**repealed]**~~

(4) **[**~~Repealed~~**]**~~**repealed]**~~

(5) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

9.2 [~~**Repealed**~~**repealed]**

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, ~~2015.~~2018. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.

(2) The requirements of the information processor for government debt securities are as follows:

(a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to ~~unlisted~~government debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and

(b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.

(3) The requirements of the information processor for corporate debt securities are as follows:

(a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than $2 million, the trade details provided to the information processor are to be reported as "$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than $200,000, the trade details provided to the information processor are to be reported as "$200,000+".

(b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.

(c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.

(4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.

(5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.

(6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

Rating Organization	Long Term Debt	Short Term Debt
Fitch, Inc.	BBB	F3
Dominion Bond Rating Service Limited	BBB	R-2

Moody's Investors Service, Inc.	Baa	Prime-3
Standard & Poors Corporation	BBB	A-3

7. A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.

8. The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.

9. The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.

10.2 **Availability of Information –** In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.

10.3 **Consolidated Feed –** Section 8.3 of the Instrument requires the information processor to produce a consolidated feed in real-time showing the information provided to the information processor.

PART 11 MARKET INTEGRATION

11.1 **[~~Repealed~~repealed]**

11.2 **[~~Repealed~~repealed]**

11.3 **[~~Repealed~~repealed]**

11.4 **[~~Repealed~~repealed]**

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

PART 12 TRANSPARENCY OF MARKETPLACE OPERATIONS

12.1 Transparency of Marketplace Operations

(1) Section 10.1 of the Instrument requires that marketplaces make publicly available certain information pertaining to their operations and services. While section 10.1 sets out the minimum disclosure requirements, marketplaces may wish to make publicly available other information, as appropriate. Where this information is included in a marketplace's rules, regulations, policies and procedures or practices that are publicly available, the marketplace need not duplicate this disclosure.

(2) Paragraph 10.1(a) requires marketplaces to disclose publicly all fees, including listing, trading, co-location, data and routing fees charged by the marketplace, an affiliate or by a third party to which services have been directly or indirectly outsourced or which directly or indirectly provides those services. This means that a marketplace is expected to publish and make readily available the

schedule(s) of fees charged to any and all users of these services, including the basis for charging each fee (e.g., a per share basis for trading fees, a per subscriber basis for data fees, etc.) and would also include any fee rebate or discount and the basis for earning the rebate or discount. With respect to trading fees, it is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed in this context.

(3) Paragraph 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of the priority of execution for all order types and the types of crosses that may be executed on the marketplace. A marketplace should also disclose whether it sends information regarding indications of interest or order information to a smart order router.

(4) Paragraph 10.1© requires a marketplace to disclose its conflict of interest policies and procedures. For conflicts arising from the ownership of a marketplace by marketplace participants, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients at least quarterly. This is consistent with the marketplace participant's existing obligations to disclose conflicts of interest under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*. A marketplace should disclose if a marketplace or affiliated entity of a marketplace intends to trade for its own account on the marketplace against or in competition with client orders.

(5) Paragraph 10.1(f) requires marketplaces to disclose a description of any arrangements where the marketplace refers its participants to the services of a third-party provider where the marketplace receives some benefit (fee rebate, payment, etc.) if the marketplace participant uses the services of the third- party service provider, and has a potential conflict of interest.

(6) Paragraph 10.1(g) requires marketplaces that offer routing services to disclose a description of how routing decisions are made. The subsection applies whether routing is done by a marketplace-owned smart order router, by an affiliate of a marketplace, or by a third- party to which routing was outsourced.

(7) Paragraph 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Instrument requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party vendors.

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

13.1 Recordkeeping Requirements for Marketplaces – Part 11 of the Instrument requires a marketplace to maintain certain records. Generally, under provisions of securities legislation, the securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.

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

exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 14 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

14.1 Systems Requirements - This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument whether operating in-house or outsourced.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control 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, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from the Canadian Institute of Chartered Accountants (CICA) and '*COBIT ® 5 Management Guidelines,* from the IT Governance Institute., © 2012 ISACA*, IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management.*

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(2.1) Subsection 12.1(c) of the Instrument refers to a material security breach. A material security breach or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of the Instrument or any system that shares network resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the regulator. The onus would be on the marketplace to document the reasons for any security breach it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security breach. The criteria for public disclosure of a security breach should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment ~~of the internal controls referred to in paragraph 12.1(a) of the Instrument~~to ensure that the marketplace is in compliance with subsection 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The focus of the assessment of any systems that share network resources with trading-related systems required under subsection 12.2(1)(b) would be to address potential threats from a security breach that could negatively impact a trading related system. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

(4) Paragraph 12.1(c) of the Instrument requires the marketplace to notify the regulator or, in Québec, the securities regulatory authority of any material systems failure. The Canadian securities regulatory authorities consider a failure, malfunction or delay to be "material" if the marketplace would in the normal course of operations escalate the matter to or inform its senior management ultimately accountable for technology. The Canadian securities regulatory authorities also expect that, as part of this notification, the marketplace will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.

(5) Under section 15.1 of the Instrument, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the

self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

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

14.2 ~~Availability of~~Marketplace Technology Specifications and Testing Facilities

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

The Canadian securities regulatory authorities consider a change that may require a marketplace participant to make systems changes in order to fully interact with a marketplace, such as the introduction of an order type, to be a change to a technology requirement to interface with the marketplace.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.

(2.1) Subsection 12.3(3) of the Instrument prohibits a marketplace from beginning operations or implementing a material change to its technology requirements until the later of (i) three months after the regulator, or in Québec, the securities regulatory authority, has completed its review of the marketplace's initial filing or change of information and notified the marketplace of the completion of the review and (ii) a reasonable period of time to allow marketplace participants and third party service providers to complete any necessary systems work and testing to accommodate the marketplace launch or technology change.

The regulator, or in Québec, the securities regulatory authority, may consider, under certain circumstances, that a "reasonable period of time" to be longer than three months after a marketplace has been notified that the regulator, or in Québec, the securities regulatory authority, has completed its review of the marketplace's initial filing or change. This may occur, where the changes have a material impact on marketplace participants that would require more than three months for marketplace participants to implement or adjust to the change. It could also occur to accommodate previously announced regulatory or marketplace changes or a marketplace launch and to ensure that marketplace participants do not have to prepare for multiple significant technology changes simultaneously.

(3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

(4) Paragraph 12.3(5)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested

according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.

(5) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(6) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed.

14.3 Business Continuity Planning

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. The Canadian securities regulatory authorities expect that, in order for a marketplace to have a reasonable business continuity plan, including disaster recovery plan, it test it ~~on a periodic basis, and~~according to prudent business practices, and in any event, at least annually ~~and it should participate in industry-wide tests~~.

PART 15 CLEARING AND SETTLEMENT

15.1 Clearing and Settlement - Subsection 13.1(1) of the Instrument requires ~~that~~ all trades executed through a marketplace ~~shall~~to be reported and settled through a clearing agency.

Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, ~~either~~ the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.

15.2 Access to Clearing Agency of Choice – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.

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

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

PART 16 INFORMATION PROCESSOR

16.1 Information Processor

(1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (*i.e.*, orders).

(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting

this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.

16.2 Selection of an Information Processor

(1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,

(a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;

(b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms;

(c) personnel qualifications;

(d) whether the information processor has sufficient financial resources for the proper performance of its functions;

(e) the existence of another entity performing the proposed function for the same type of security;

(f) the systems report referred to in paragraph 14.5(c) of the Instrument.

(2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.

(3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

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

(a) changes to the governance of the information processor, including the structure of its board of directors and changes in the board committees and their mandates;

(b) changes in control over the information processor;

(c) changes affecting the independence of the information processor, including independence from the marketplaces, inter-dealer bond brokers and dealers that provide their data to meet the requirements of the Instrument;

(d) changes to the services or functions performed by the information processor;

(e) changes to the data products offered by the information processor;

(f) changes to the fees and fee structure related to the services provided by the information processor;

(g) changes to the revenue sharing model for revenues from fees related to services provided by the information processor;

(h) changes to the systems and technology used by the information processor, including those affecting its capacity;

(i) new arrangements or changes to arrangements to outsource the operation of any aspect of the services of the information processor;

(j) changes to the means of access to the services of the information processor; and

(k) where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with the Instrument, changes in the criteria and process for selection and communication of these securities.

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

16.4 **Filing of financial statements** – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited.

16.5 **System Requirements** – The guidance in section 14.1 of this Companion Policy applies to the systems requirements for an information processor.

Annex D

Companion Policy 23-101 CP
to National Instrument 23-101
Trading Rules

PART 1 INTRODUCTION

1.1 Introduction - The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to National Instrument 23-101 Trading Rules (the "Instrument"), including

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

1.2 Just and Equitable Principles of Trade - While the Instrument deals with specific trading practices, as a general matter, the Canadian securities regulatory authorities expect marketplace participants to transact business openly and fairly, and in accordance with just and equitable principles of trade.

PART 1.1 DEFINITIONS

1.1.1 Definition of best execution - (1) In the Instrument, best execution is defined as the "most advantageous execution terms reasonably available under the circumstances". In seeking best execution, a dealer or adviser may consider a number of elements, including:

a. price;

b. speed of execution;

c. certainty of execution; and

d. the overall cost of the transaction.

These four broad elements encompass more specific considerations, such as order size, reliability of quotes, liquidity, market impact (i.e. the price movement that occurs when executing an order) and opportunity cost (i.e. the missed opportunity to obtain a better price when an order is not completed at the most advantageous time). The overall cost of the transaction is meant to include, where appropriate, all costs associated with accessing an order and/or executing a trade that are passed on to a client, including fees arising from trading on a particular marketplace, jitney fees (i.e. any fees charged by one dealer to another for providing trading access) and settlement costs. The commission fees charged by a dealer would also be a cost of the transaction.

(2) The elements to be considered in determining "the most advantageous execution terms reasonably available" (i.e. best execution) and the weight given to each will vary depending on the instructions and needs of the client, the particular security, the prevailing market conditions and whether the dealer or adviser is responsible for best execution under the circumstances. Please see a detailed discussion below in Part 4.

1.1.2 Definition of automated functionality - Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to:

(1) act on an incoming order;

(2) respond to the sender of an order; and

(3) update the order by disseminating information to an information processor or information vendor.

Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and

automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

1.1.3 Definition of protected order - (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "**displayed on a marketplace**" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.

1.1.4 Definition of calculated-price order - The definition of "**calculated-price order**" refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.5 Definition of directed-action order - (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked "DAO" by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

(a) execute the order and cancel the remainder using an immediate-or-cancel marker,

(b) execute the order and book the remainder,

(c) book the order as a passive order awaiting execution, and

(d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC's Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may

send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender's instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace's own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

1.1.6 Definition of non-standard order - The definition of "**non-standard order**" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

PART 2 APPLICATION OF THE INSTRUMENT

2.1 Application of the Instrument - Section 2.1 of the Instrument provides an exemption from subsection 3.1(1) and Parts 4 and 5 of the Instrument if a person or company complies with similar requirements established by a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) of the Instrument directly, a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) of the Instrument directly or a regulation services provider. The requirements are filed by the recognized exchange, recognized quotation and trade reporting system or regulation services provider and approved by a securities regulatory authority. If a person or company is not in compliance with the requirements of the recognized exchange, recognized quotation and trade reporting system or the regulation services provider, then the exemption does not apply and that person or company is subject to subsection 3.1(1) and Parts 4 and 5 of the Instrument. The exemption from subsection 3.1(1) does not apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan and the relevant provisions of securities legislation apply.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) Subsection 3.1(1) of the Instrument prohibits the practices of manipulation and deceptive trading, as these may create misleading price and trade activity, which are detrimental to investors and the integrity of the market.

(2) Subsection 3.1(2) of the Instrument provides that despite subsection 3.1(1) of the Instrument, the provisions of the *Securities* Act (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan. The jurisdictions listed have provisions in their legislation that deal with manipulation and fraud.

(3) For the purposes of subsection 3.1(1) of the Instrument, and without limiting the generality of those provisions, the Canadian securities regulatory authorities, depending on the circumstances, would normally consider the following to result in, contribute to or create a misleading appearance of trading activity in, or an artificial price for, a security:

(a) Executing transactions in a security if the transactions do not involve a change in beneficial or economic ownership. This includes activities such as wash-trading.

(b) Effecting transactions that have the effect of artificially raising, lowering or maintaining the price of the security. For example, making purchases of or offers to purchase securities at successively higher prices or making sales of or offers to sell a security at successively lower prices or entering an order or orders for the purchase or sale of a security to:

(i) establish a predetermined price or quotation,

(ii) effect a high or low closing price or closing quotation, or

(iii) maintain the trading price, ask price or bid price within a predetermined range.

(c) Entering orders that could reasonably be expected to create an artificial appearance of investor participation in the market. For example, entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, at substantially the same price for the sale or purchase, respectively, of that security has been or will be entered by or for the same or different persons.

(d) Executing prearranged transactions that have the effect of creating a misleading appearance of active public trading or that have the effect of improperly excluding other marketplace participants from the transaction.

(e) Effecting transactions if the purpose of the transactions is to defer payment for the securities traded.

(f) Entering orders to purchase or sell securities without the ability and the intention to

(i) make the payment necessary to properly settle the transaction, in the case of a purchase; or

(ii) deliver the securities necessary to properly settle the transaction, in the case of a sale.

This includes activities known as free-riding, kiting or debit kiting, in which a person or company avoids having to make payment or deliver securities to settle a trade.

(g) Engaging in any transaction, practice or scheme that unduly interferes with the normal forces of demand for or supply of a security or that artificially restricts or reduces the public float of a security in a way that could reasonably be expected to result in an artificial price for the security.

(h) Engaging in manipulative trading activity designed to increase the value of a derivative position.

(i) Entering a series of orders for a security that are not intended to be executed.

(4) The Canadian securities regulatory authorities do not consider market stabilization activities carried out in connection with a distribution to be activities in breach of subsection 3.1(1) of the Instrument, if the market stabilization activities are carried out in compliance with the rules of the marketplace on which the securities trade or with provisions of securities legislation that permit market stabilization by a person or company in connection with a distribution.

(5) Section 3.1 of the Instrument applies to transactions both on and off a marketplace. In determining whether a transaction results in, contributes to or creates a misleading appearance of trading activity in, or an artificial price for a security, it may be relevant whether the transaction takes place on or off a marketplace. For example, a transfer of securities to a holding company for *bona fide* purposes that takes place off a marketplace would not normally violate section 3.1 even though it is a transfer with no change in beneficial ownership.

(6) The Canadian securities regulatory authorities are of the view that section 3.1 of the Instrument does not create a private right of action.

(7) In the view of the Canadian securities regulatory authorities, section 3.1 includes attempting to create a misleading appearance of trading activity in or an artificial price for, a security or attempting to perpetrate a fraud.

PART 4 BEST EXECUTION

4.1 Best Execution

(1) The best execution obligation in Part 4 of the Instrument does not apply to an ATS that is registered as a dealer provided that it is carrying on business as a marketplace and is not handling any client orders other than accepting them to allow them to execute on the system. However, the best execution obligation does otherwise apply to an ATS acting as an agent for a client.

(2) Section 4.2 of the Instrument requires a dealer or adviser to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. The obligation applies to all securities.

(3) Although what constitutes "best execution" varies depending on the particular circumstances, to meet the "reasonable efforts" test, a dealer or adviser should be able to demonstrate that it has, and has abided by, its policies and procedures that (i) require it to follow the client's instructions and the objectives set, and (ii) outline a process designed to achieve best execution. The policies and procedures should describe how the dealer or adviser evaluates whether best execution was obtained and should be regularly and rigorously reviewed. The policies outlining the obligations of the dealer or adviser will be dependent on the role it is playing in an execution. For example, in making reasonable efforts to achieve best execution, the dealer should consider the client's instructions and a number of factors, including the client's investment objectives and the dealer's knowledge of markets and trading patterns. An adviser should consider a number of factors, including assessing a particular client's requirements or portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on a regular basis. In addition, if an adviser is directly accessing a marketplace, the factors to be considered by dealers may also be applicable.

(4) Where securities listed on a Canadian exchange or quoted on a Canadian quotation and trade reporting system are inter-listed either within Canada or on a foreign exchange or quotation and trade reporting system, in making reasonable efforts to achieve best execution, the dealer should assess whether it is appropriate to consider all marketplaces upon which the security is listed or quoted and where the security is traded, both within and outside of Canada.

(5) In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all appropriate marketplaces (not just marketplaces where the dealer is a participant). This does not mean that a dealer must have access to real-time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

(6) For foreign exchange-traded securities, if they are traded on a marketplace in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the marketplace as well as the foreign markets upon which the securities trade.

(7) Section 4.2 of the Instrument applies to registered advisers as well as registered dealers that carry out advisory functions but are exempt from registration as advisers.

(8) Section 4.3 of the Instrument requires that a dealer or adviser make reasonable efforts to use facilities providing information regarding orders and trades. These reasonable efforts refer to the use of the information displayed by the information processor or, if there is no information processor, an information vendor.

PART 5 REGULATORY HALTS

5.1 Regulatory Halts - Section 5.1 of the Instrument applies when a regulatory halt has been imposed by a regulation services provider, a recognized exchange, or a recognized quotation and trade reporting system. A regulatory halt, as referred to in section 5.1 of the Instrument, is one that is imposed to maintain a fair and orderly market, including halts related to a timely disclosure policy, or because there has been a violation of regulatory requirements. In the view of the Canadian securities regulatory authorities, an order may trade on a marketplace despite the fact that trading of the security has been suspended because the issuer of the security has ceased to meet minimum listing or quotation requirements, or has failed to pay to the recognized exchange, or the recognized quotation and trade reporting system any fees in respect of the listing or quotation of securities of the issuer. Similarly, an order may trade on a marketplace despite the fact that trading of the security has been delayed or halted because of technical problems affecting only the trading system of the recognized exchange, or recognized quotation and trade reporting system.

PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection

(1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by

orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection

(1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace participant to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

6.3 List of Trade-throughs - Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of "permitted" trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond

immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Instrument respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Instrument respectively.

(b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.

(c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across marketplaces in certain circumstances. This could occur for example:

(i) where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and

(ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as ~~disaplayed~~displayed across marketplaces may have changed, thus causing a trade-through.

(d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets

(1) Section 6.5 of the Instrument provides that a marketplace participant or a marketplace that routes or reprices orders shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. This provision is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

The Canadian securities regulatory authorities consider an order that is routed or repriced to be "entered" on a marketplace. The Canadian securities regulatory authorities do not consider the triggering of a previously-entered on-stop order to be an "entry" or "repricing" of that order.

(2) Section 6.5 of the Instrument prohibits a marketplace participant or a marketplace that routes or reprices orders from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. This could also occur where a marketplace system is programmed to reprice orders without checking to see if the new price would lock the market or where the marketplace routes orders to another marketplace that results in a locked market.

There are situations where a locked or crossed market may occur unintentionally. For example:

(a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,

(b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

(c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(e) the locking or crossing order was entered on a particular marketplace in order to comply with securities legislation requirements such as Rule 904 of Regulation S of the *Securities Act of 1933* that requires securities subject to resale restrictions in the United States to be sold in Canada on a "designated offshore securities market",

(f) the locking or crossing order was displayed due to "race conditions" when competing orders are entered on marketplaces at essentially the same time with neither party having knowledge of the other order at the time of entry,

(g) the locking or crossing order was a result of the differences in processing times and latencies between the systems of the marketplace participant, marketplaces, information processor and information vendors,

(h) the locking or crossing order was a result of marketplaces having different mechanisms to "restart" trading following a halt in trading for either regulatory or business purposes, and

(i) the locking or crossing order was a result of the execution of an order during the opening or closing allocation process of one market, while trading is simultaneously occurring on a continuous basis on another market,

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

6.5 Anti-Avoidance Provision - Section 6.7 of the Instrument prohibits a person or company from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in

Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.

PART 7 MONITORING AND ENFORCEMENT

7.1 Monitoring and Enforcement of Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System - Under section 7.1 of the Instrument, a recognized exchange will set its own requirements governing the conduct of its members. Under section 7.3 of the Instrument, a recognized quotation and trade reporting system will set its own requirements governing the conduct of its users. The recognized exchange or recognized quotation and trade reporting system can monitor and enforce these requirements either directly or indirectly through a regulation services provider. A regulation services provider is a person or company that provides regulation services and is either a recognized exchange, recognized quotation and trade reporting system or a recognized self-regulatory entity.

If a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with a regulation services provider, it is expected that the requirements set by recognized exchange or recognized quotation and trade reporting system under Part 7 of the Instrument will consist of all of the rules of the regulation services provider that relate to trading. For example, if a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with IIROC, the rules adopted by the recognized exchange or recognized quotation and trade reporting system are all of IIROC's Universal Market Integrity Rules. Clock synchronization, trade markers and trading halt requirements would be examples of these adopted rules that relate to the regulation services provider's monitoring of trading on the recognized exchange or recognized quotation and trade reporting system and across marketplaces.

We are of the view that all of the rules of the regulation services provider related to trading must be adopted by a recognized exchange or recognized quotation and trade reporting system that has entered into a written agreement with the regulation services provider given the importance of these rules in the context of effectively monitoring trading on and across marketplaces. We note that the regulation services provider is required to monitor the compliance of, and enforce, the adopted rules as against the members of the recognized exchange or users of the recognized quotation and trade reporting system. The regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules but it is the applicable securities regulatory authority that will enforce these rules against the recognized exchange or recognized quotation and trade reporting system.

Sections 7.2 and 7.4 of the Instrument require the recognized exchange or recognized quotation and trade reporting system that chooses to have the monitoring and enforcement performed by the regulation services provider to enter into an agreement with the regulation services provider in which the regulation services provider agrees to enforce the requirements of the recognized exchange or recognized quotation and trade reporting system~~.~~ set under subsection 7.1(1) and 7.3(1).

Specifically, sections 7.2 and 7.4 require the written agreement between a recognized exchange or recognized quotation and trade reporting system and its regulation services provider to provide that the regulation services provider will monitor and enforce the requirements set under subsection 7.1(1) or 7.3(1) and monitor the requirements set under subsection 7.1(3) or 7.3(3).

Paragraph 7.2.1(a)(i) mandates that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces. The reference to monitoring trading "across marketplaces" refers to the instance where particular securities are traded on multiple marketplaces. Where particular securities are only traded on one marketplace, the reference to "across marketplaces" may not apply in all circumstances.

Paragraph 7.2.1(a)(ii) requires that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3). As well, subsection 7.2.1(b) requires a recognized exchange to comply with all orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange's members on the recognized exchange and with regulation services provider's oversight of the compliance of the recognized exchange with the requirements set under 7.1(3).

7.2 Monitoring and Enforcement Requirements for an ATS - Section 8.2 of the Instrument requires the regulation services provider to set requirements that govern an ATS and its subscribers. Before executing a trade for a subscriber, the ATS must enter into an agreement with a regulation services provider and an agreement with each subscriber. These agreements form the basis upon which a regulation services provider will monitor the trading activities of the ATS and its subscribers and enforce its requirements. The requirements set by a regulation services provider must include requirements that the ATS and its subscribers will conduct trading activities in compliance with the Instrument. The ATS and its subscribers are considered to be in compliance with the Instrument and are exempt from the application of most of its provisions if the ATS and the subscriber are in compliance with the requirements set by a regulation services provider.

7.3 Monitoring and Enforcement Requirements for an Inter-Dealer Bond Broker - Section 9.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of an inter-dealer bond broker. Under section 9.2 of the Instrument, the inter-dealer bond broker must enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the inter-dealer bond broker and enforce the requirements set by the regulation services provider. However, section 9.3 of the Instrument provides inter-dealer bond brokers with an exemption from sections 9.1 and 9.2 of the Instrument if the inter-dealer bond broker complies with the requirements of IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended, as if that policy was drafted to apply to the inter-dealer bond broker.

7.4 Monitoring and Enforcement Requirements for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace - Section 10.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace. Under section 10.2 of the Instrument, the dealer must also enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the dealer and enforce the requirements set by the regulation services provider.

7.5 Agreement between a Marketplace and a Regulation Services Provider
The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.

7. 6 Coordination of Monitoring and Enforcement
(1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.

PART 8 AUDIT TRAIL REQUIREMENTS

8.1 Audit Trail Requirements - Section 11.2 of the Instrument imposes obligations on dealers and inter-dealer bond brokers to record in electronic form and to report certain items of information with respect to orders and trades. Information to be recorded includes any markers required by a regulation services provider (such as a significant shareholder marker). The purpose of the obligations set out in Part 11 is to

enable the entity performing the monitoring and surveillance functions to construct an audit trail of order, quotation and transaction data which will enhance its surveillance and examination capabilities.

8.2 Transmission of Information to a Regulation Services Provider - Section 11.3 of the Instrument requires that a dealer and an inter-dealer bond broker provide to the regulation services provider information required by the regulation services provider, within ten business days, in electronic form. This requirement is triggered only when the regulation services provider sets requirements to transmit information.

8.3 Electronic Form - Subsection 11.3 of the Instrument requires any information required to be transmitted to the regulation services provider and securities regulatory authority in electronic form. Dealers and inter-dealer bond brokers are required to provide information in a form that is accessible to the securities regulatory authorities and the regulation services provider (for example, in SELECTR format).