

**NOTICE OF PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING RULES**

**I. INTRODUCTION**

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

- National Instrument 21-101 *Marketplace Operation* (NI 21-101) and Companion Policy 21-101CP (21-101CP);
- National Instrument 23-101 *Trading Rules* (NI 23-101) and Companion Policy 23-101 CP (23-101CP);
- 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 and, together with Form 21-101F1 and Form 21-101F2, the Forms); and
- Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

**II. DESCRIPTION AND PURPOSE OF THE PROPOSED AMENDMENTS**

The key objective of the Proposed Amendments is to update and streamline the regulatory and reporting requirements in NI 21-101, NI 23-101 and the Forms and to align, where appropriate, requirements applicable to all marketplaces. To accomplish this objective, we are proposing amendments in a number of areas:

1. *Regulatory and reporting requirements of marketplaces* – our objective is to increase consistency, streamline and update the regulatory and reporting requirements applicable to recognized exchanges (Exchanges), recognized quotation and trade reporting systems (QTRSs) and alternative trading systems (ATSs);
2. *Transparency requirements applicable to marketplaces dealing in exchange-traded securities* – the objectives are to propose amendments that would establish that only orders meeting a minimum size threshold will be exempt from the existing pre-trade transparency requirements; to give guidance regarding the definition of an “order” and clarify when an indication of interest (IOI) is considered an order; and to clarify our expectations regarding the obligations of marketplaces that send IOIs to selected smart order routers (SORs);
3. *Transparency of marketplace operations* – the objective is to increase transparency of marketplace operations;

4. *Other requirements applicable to marketplaces* – our objectives are to address conflicts of interest, real and perceived, that may arise at a marketplace; to address instances where marketplaces outsource certain services; to update the trading value and volume threshold at which ATSS are required to provide notification to the securities regulatory authority; to expand the requirement to maintain a business continuity plan beyond systems requirements; and to provide additional guidance on what may constitute an independent systems review;
5. *Definition of a marketplace* – the objective is to give guidance regarding the definition of a “marketplace” in NI 21-101 to clarify when a dealer would be considered to operate a marketplace;
6. *Transparency requirements applicable to marketplaces, inter-dealer bond brokers and dealers dealing in government debt securities* – to extend the current exemption from transparency requirements applicable to government debt securities until December 31, 2014;
7. *Locked and crossed markets* – to extend the obligation in NI 23-101 to not intentionally lock or cross the markets to marketplaces in certain circumstances; and
8. *Information processors* – to revise existing requirements applicable to the information processors.

A detailed description of the Proposed Amendments follows below.

### **III. SUBSTANCE OF THE PROPOSED AMENDMENTS**

#### **1. Regulatory and reporting requirements of marketplaces**

##### *Background and current requirements*

NI 21-101 and NI 23-101 (together, the Marketplace Rules) set out the regulatory and reporting requirements applicable to Exchanges, QTRSs<sup>1</sup> and ATSS. The Marketplace Rules were implemented in December 2001, and their main purpose was to establish the regulatory framework within which existing and new marketplaces, such as ATSS, could operate.

Since the implementation of the Marketplace Rules, we have seen significant growth in the number of ATSS and increasing complexity in the equity markets.<sup>2</sup> As the market share of ATSS has increased, their influence on how trading occurs in the Canadian capital market and their role in shaping market structure have also increased.

We note that there are significant differences between some of the functions that Exchanges, QTRSs and ATSS may perform. For example, unlike the Exchanges and QTRSs, ATSS do not have regulatory responsibilities and may not establish requirements

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<sup>1</sup> At this time, there are no QTRSs in Canada.

<sup>2</sup> ATSS have in the last year increased their market share to approximately 32% of the value of equity securities traded and approximately 26% of the volume traded (based on information for the quarter ended December 31, 2010 from IIROC Market Share Report).

governing the conduct of marketplace participants or discipline their subscribers other than by exclusion from the marketplace. However, the trading activities, services and functions offered by Exchanges and ATSS are similar in many aspects. In addition, the ATSS' trading activities may have an impact on the Canadian market that is as significant as that of the Exchanges. For example, ATSS may positively or negatively impact price discovery, transparency, and fairness of access to liquidity through their introduction of new structures or order types.

In light of the increasing impact of trading on ATSS on the Canadian market, the CSA reviewed the requirements set out in NI 21-101 and the Forms to assess the changes necessary to increase consistency and streamline the regulatory and reporting requirements applicable to Exchanges, QTRSs and ATSS. As a result of this review, we found a number of areas where the regulatory requirements applicable to all marketplaces could be improved or revised for consistency and, as a result of our review, we are proposing a number of revisions in the Proposed Amendments, listed below by topic. Items (i) through (iv) are aimed at increasing consistency between the requirements applicable to Exchanges, QTRSs and ATSS. Item (v) describes the existing requirements that are common to all marketplaces that were included in different sections of NI 21-101 and that we propose to consolidate. Item (vi) refers to our expectation that ATSS consider the maintenance of fair and orderly markets in their trading requirements.

- i. *Marketplace reporting requirements* – we have revised the ongoing reporting requirements applicable to all marketplaces, as well as guidance on what constitutes a significant change to a marketplace's operations;
- ii. *Proposed amendments to the Forms* – we have revised and streamlined these forms;
- iii. *Financial reporting* – we propose that the current financial reporting requirements in NI 21-101 that currently only apply to Exchanges and QTRSs apply to all marketplaces, including ATSS;
- iv. *Other requirements currently applicable only to ATSS*– we propose that the risk disclosure requirements for foreign exchange-listed traded securities and the confidentiality requirements in NI 21-101, currently applicable only to ATSS, apply to all marketplaces;
- v. *Requirements applicable to all marketplaces* – we have combined and consolidated the requirements in NI 21-101 that are common to all marketplaces to avoid duplication and to streamline these requirements; and
- vi. *Marketplace rules* – in 21-101CP, we clarified our expectation that, when developing or changing trading requirements, ATSS consider their obligation to avoid engaging in any activity that interferes with the maintenance of fair and orderly markets.

In addition, we have introduced a new requirement that a marketplace not engage in an activity that interferes with fair and orderly markets.<sup>3</sup> This requirement, implicit in other provisions in existing NI 21-101 and proposed amendments to NI 21-101, such as the fair access requirements, requirements to manage conflicts of interest, transparency

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<sup>3</sup> See section 5.7 of proposed amendments to NI 21-101.

requirements and rule-making requirements, if applicable, is an overarching obligation of any marketplace and is clearly articulated as part of the Proposed Amendments.

Below, we provide a description of the proposed amendments listed in items (i) through (vi).

***i. Marketplace reporting requirements***

*Background and current requirements*

NI 21-101 establishes the initial and ongoing reporting requirements applicable to the marketplaces. The initial reporting requirements are as follows:

- An applicant for recognition as an Exchange or QTRS must file Form 21-101F1;<sup>4</sup> and
- An ATS must file an initial operation report using Form 21-101F2 before commencing its operations.<sup>5</sup>

The current ongoing reporting requirements are:

- All marketplaces must file amendments to Form 21-101F1 or Form 21-101F2, as the case may be, at least 45 days before implementing a significant change to a matter contained in these forms;<sup>6</sup>
- For changes other than significant changes, marketplaces must file amendments to their respective forms within 30 days after the end of the calendar quarter in which the changes took place;<sup>7</sup> and
- ATSS are also required to file Form 21-101F3 on a quarterly basis, within 30 days after the end of each calendar quarter during any part of which the ATS has carried on business.<sup>8</sup>

21-101CP provides guidance on what is considered to be a significant change. Currently, any change to certain exhibits of Form 21-101F1 and Form 21-101F2 is considered to be a significant change.<sup>9</sup>

*Proposed amendments*

In the proposed amendments to NI 21-101, we maintain the initial reporting requirements for marketplaces, as well as the requirement that marketplaces file amendments to their applicable forms at least 45 days before implementing a significant change to their operations.<sup>10</sup> We introduce, however, an exception for proposed fee changes and propose

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<sup>4</sup> Sections 3.1 and 4.1 of NI 21-101 for Exchanges and QTRSs respectively.

<sup>5</sup> Section 6.4 of NI 21-101.

<sup>6</sup> See subsections 3.2(1), 4.2(1) and 6.4(2) of NI 21-101 for Exchanges, QTRSs and ATSS, respectively.

<sup>7</sup> See subsections 3.2(2), 4.2(2) and 6.4(3) of NI 21-101 for Exchanges, QTRSs and ATSS, respectively.

<sup>8</sup> Subsection 6.4(4) of NI 21-101.

<sup>9</sup> These are Exhibits A, B, G, I, J, K, M, N, P and Q of Form 21-101F1 and Exhibits A, B, C, F, G, I and J of Form 21-101F2.

<sup>10</sup> See sections 3.1 and 3.2 of proposed amendments to NI 21-101 for the initial and ongoing filing requirements, respectively.

to require marketplaces to provide notification of such changes at least seven days before their expected implementation.<sup>11</sup> While we generally consider fee changes to be significant changes (the exception being, for example, minor modifications to the fee charged), and review them thoroughly in order to assess their impact on their marketplace participants, we acknowledge that given today's competitive environment and the need for marketplaces to be able to adjust their fees expeditiously to be able to compete, the existing 45 day notification requirement may be too long. For this reason, we only propose a seven day notification period for proposed fee changes.

In 21-101CP, we propose guidance on what is considered to be a significant change to a marketplace's operations. Generally, this would be a change that is expected to have a significant impact on the marketplace, marketplace participants, investors or the Canadian capital markets, and would include all changes to an entity's market structure, how it operates, the types of securities it trades, the types of marketplace participants, governance and fees, and significant changes to their systems and technology that support trading and, if applicable, market surveillance.<sup>12</sup> Significant changes would not include housekeeping or administrative changes to Forms 21-101F1 or 21-101F2, which would follow the filing requirements applicable to changes that are not significant and which are described below.

In the Proposed Amendments, we also revise the filing requirements for changes in marketplaces' Form 21-101F1 or 21-101F2 that do not constitute significant changes. For these, we propose that marketplaces file amendments to the information provided in Form 21-101F1 or 21-101F2 immediately prior to the implementation of changes that are not significant changes.<sup>13</sup> The proposed requirement for prior notification is different than the existing one in NI 21-101, which requires marketplaces to file amendments for non-significant changes after the end of the calendar quarter in which they occurred. We believe that the proposed reporting requirement would allow us to get notice of changes to Form 21-101F1 or 21-101F2 on a more timely basis, closer to the date of implementation of these changes.

In 21-101CP, we included a description of the process for review of marketplace filings related to significant and other changes.<sup>14</sup> We indicate that the Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the specified time periods, and in accordance with staff practices in each jurisdiction.

In proposed amendments to NI 21-101, we require that all marketplaces, including Exchanges, file a Form 21-101F3.<sup>15</sup> This would help us obtain a complete picture of the trading activities on all Canadian marketplaces. We have also revised and updated Form

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<sup>11</sup> Proposed subsection 3.2(2) of NI 21-101.

<sup>12</sup> Proposed subsection 6.1(4) of 21-101CP.

<sup>13</sup> Proposed subsection 3.2(3) of NI 21-101.

<sup>14</sup> Proposed subsections 6.1(6) and 6.1(7) of 21-101CP.

<sup>15</sup> Proposed section 3.3 of NI 21-101.

21-101F3 to include more meaningful and relevant information. A description of the proposed revisions is discussed below.

*ii. Proposed amendments to the Forms*

*Background and current requirements*

As discussed above, Part 3 of NI 21-101 outlines the reports that marketplaces must file on an initial and ongoing basis and, in the case of ATSS, when they intend to cease their operations. These are Forms 21-101F1, 21-101F2, 21-101F3 and 21-101F4 *Cessation of Operations Report for Alternative Trading Systems*. 21-101CP indicates that, where possible, all forms and exhibits required to be filed under the instrument be filed in electronic format.

The forms filed by the marketplaces have been in place since the Marketplace Rules were implemented in 2001, and have not changed significantly since their initial implementation. As part of our review of the requirements applicable to marketplaces, we reviewed the Forms to assess their continuing adequacy in light of the changes in the Canadian market. We determined that these forms should be updated to be more reflective of the existing market structure and trading activities of the marketplaces.

*Proposed amendments*

In the Proposed Amendments, we revise the Forms to:

- align the exhibits in Forms 21-101F1 and 21-101F2 and increase consistency between the information filing requirements applicable to Exchanges and ATSS;
- enhance the Forms with additional information, including information about the operations of the marketplace, outsourcing activities, or governance; and
- Remove obsolete or unduly onerous reporting requirements.

We attach a summary of the reporting requirements in existing Forms 21-101F1 and 21-101F2, as well as those in proposed amendments to these forms as **Appendix A** of this notice.

As indicated earlier, we also propose to require all marketplaces, including Exchanges, to file Form 21-101F3 and revise Form 21-101F3 as follows:

- we tailored the reporting requirements in Form 21-101F3 to the different types of marketplaces currently operating: fixed income, transparent and non-transparent equity marketplaces, and marketplaces that facilitate securities lending transactions;
- we removed the requirement to provide detailed information about the securities traded on the ATS; and
- we included information that is more reflective of the activities on existing marketplaces and the types of securities traded, such as: information on certain order types and trading activity for each; value and volume of different types of crosses; concentration of trading by marketplace participants; other services offered by the

marketplaces, such as routing and co-location; and systems information, specifically, information regarding outages.

We believe that collecting this information on a quarterly basis will provide us with an overview of the activities of marketplaces, as well as with data that will inform future policy making.

In proposed amendments to NI 21-101, we also included a requirement that marketplaces file their forms in electronic form.<sup>16</sup> We believe that this will help increase consistency between the format of the forms filed by the marketplaces and could also facilitate the filing process. We are now in the process of developing a filing system that would allow the marketplaces to submit their forms online. When that process is complete, we will notify the marketplaces and will amend 21-101CP accordingly.

### *iii. Financial reporting*

#### *Background and current requirements*

Currently, Exchanges and QTRSs are required to file, as Exhibit O of Form 21-101F1, their audited financial statements and an independent auditor's report. For new Exchanges, the financial information to be included must be future oriented. In addition, NI 21-101 requires that Exchanges and QTRSs file audited financial statements, and requires that this be done within 90 days after the end of their latest financial year.<sup>17</sup> ATSS, as dealer members of the Investment Industry Regulatory Organization of Canada (IIROC), are required by applicable IIROC dealer member rules to file financial statements in accordance with IIROC's requirements.<sup>18</sup>

#### *Proposed amendments*

In the Proposed Amendments, we maintain the requirement that Exchanges and QTRSs file financial statements.<sup>19</sup> We also include a requirement that ATSS file financial statements on an initial and an ongoing basis. In 21-101CP, we indicated that the financial statements filed by ATSS may be in the same form as those filed with IIROC, and that ATSS may file the annual audited financial statements at the same time as they are filed with IIROC.<sup>20</sup> This is because we acknowledge that ATSS already follow the financial reporting requirements established by IIROC and it is not our intention to duplicate these requirements. Rather, we intend to review the ATSS' financial statements to get a better understanding of their activities, including sources of revenue and costs.

In addition, we propose to require that the financial statements of Exchanges and QTRSs be prepared in accordance with Canadian Generally Acceptable Accounting Principles

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<sup>16</sup> Proposed section 3.5 of NI 21-101.

<sup>17</sup> Section 5.6 of NI 21-101.

<sup>18</sup> See IIROC Rule 16 *Dealer Members' Auditors and Financial Reporting*.

<sup>19</sup> See proposed sections 4.1 and 4.2 of NI 21-101.

<sup>20</sup> See proposed section 6.2 of 21-101CP.

(GAAP) applicable to publicly accountable enterprises<sup>21</sup> or with International Financial Reporting Standards (IFRS).<sup>22</sup> This approach is consistent with that taken for other market participants, which are required by National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* to follow IFRS.

***iv. Other requirements currently applicable only to ATSS***

*Background and current requirements*

A number of existing requirements in NI 21-101 apply only to ATSS. These are:

- the requirement that ATSS that trade in foreign-exchange listed securities provide their subscribers with certain disclosure;<sup>23</sup> and
- the requirement for confidential treatment of trading information by ATSS.<sup>24</sup>

*Proposed amendments*

In our view, these requirements should apply to all marketplaces, including Exchanges and QTRSs. For this reason, in proposed amendments to NI 21-101 we extended their application to all marketplaces.<sup>25</sup>

***v. Requirements applicable to all marketplaces***

*Background and current requirements*

A number of requirements in NI 21-101 are common to all marketplaces. These are:

- The initial filing and ongoing reporting requirements;<sup>26</sup> and
- The fair access requirements.<sup>27</sup>

*Proposed amendments*

In proposed amendments to NI 21-101, we combined these requirements in the same section. Specifically, proposed Part 3 of NI 21-101 contains the initial filing and ongoing reporting requirements for all marketplaces. Proposed section 5.1 of NI 21-101 includes the fair access requirements and is applicable to all marketplaces.

***vi. Marketplace rules***

*Background and current requirements*

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<sup>21</sup> The proposed definition is in section 1.1 of NI 21-101.

<sup>22</sup> At this time, Canadian GAAP applicable to publicly accountable enterprises are equivalent to IFRS.

<sup>23</sup> In section 6.10 of NI 21-101.

<sup>24</sup> In section 6.8 of NI 21-101.

<sup>25</sup> See sections 5.9 and 5.10 of proposed amendments to NI 21-101.

<sup>26</sup> In NI 21-101 the requirements applicable to Exchanges are included in sections 3.1 and 3.2, those applicable to QTRSs in sections 4.1 and 4.2, and those applicable to ATSS, in section 6.4.

<sup>27</sup> In section 5.1 of NI 21-101 for Exchanges and QTRSs and 6.13 of NI 21-101 for Exchanges and QTRSs and ATSS

Section 5.3 of NI 21-101 currently sets out the requirements applicable to the rules, policies and other similar instruments adopted by Exchanges or QTRSs. Specifically, it requires that rules, policies and other similar instruments adopted by an Exchange or QTRS not be contrary to the public interest, and that they be designed to: (i) ensure compliance with securities legislation, (ii) prevent fraudulent and manipulative acts and practices, (iii) promote just and equitable principles of trade, and (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities. Section 5.3 of NI 21-101 also requires Exchanges and QTRSs to not permit unreasonable discrimination among clients, issuers and members or among clients, issuers and users, or to impose any burden on competition that is not reasonably necessary and appropriate.

Section 5.4 of NI 21-101 establishes the additional requirements that Exchanges and QTRSs have rules that require compliance with securities legislation and that provide appropriate sanctions for violations of the rules, policies or other similar instruments of these Exchanges and QTRSs.

Section 5.5 of NI 21-101 requires Exchanges and QTRSs to file their rules, policies and other similar instruments, as well as amendments thereto. Section 7.3 of 21-101CP specifies that these filings must be done as required by the Canadian securities regulatory authorities. The review and approval process for proposed new and amendments to rules, policies and other similar instruments is set out in the rule protocols applicable to the Exchanges. The rules of the Exchanges are included in a centralized “rulebooks” which are made publicly available on their websites.

ATs, by definition, may not set requirements governing the conduct of their subscribers, other than conduct in respect of the trading by those subscribers on the marketplace. Specifically, this relates to the method of trading or trading algorithms used to execute trades in the ATS’s system, and may be described in the ATs’ trading rules, provisions in the subscriber agreements, in other policies and procedures, or various sections of Form 21-101F2. Generally, ATs publish information about these trading activities, including information regarding order types that the ATS supports, on their websites. There is no requirement for ATs to have a centralized “rulebook”.

New or changes to these requirements are reviewed by the CSA in accordance with requirements or staff practices in each jurisdiction.

### *Proposed amendments*

We maintained the requirements applicable to rules, policies and other similar instruments of Exchanges and QTRSs. We do not propose to apply these requirements to ATs which, unlike Exchanges, are not permitted to have a regulatory function and may not set conduct rules other than trading requirements on their marketplaces. We clarified this distinction in proposed amendments to 21-101CP.<sup>28</sup>

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<sup>28</sup> See section 7.5 of proposed amendments to 21-101CP.

However, in proposed amendments to 21-101CP, we clarified our expectation that the obligation of ATSS to avoid engaging in any activity that would interfere with the maintenance of fair and orderly markets applies to their trading requirements.<sup>29</sup> We are of the view that imposing this obligation, the elements of which include requirements to provide fair access to the marketplace, to be transparent regarding their operations and to have procedures to manage conflicts of interest, would subject ATSS' trading requirements to an appropriate standard.

In proposed amendments to 21-101CP, we also clarified that, since ATSS' trading requirements are incorporated in their Form 21-101F2, they would be subject to the filing requirements set out in NI 21-101 and reviewed in accordance with staff practices in each jurisdiction.<sup>30</sup>

## **2. Information transparency requirements for marketplaces dealing in exchange-traded securities**

### *Background and current requirements*

Part 7 of NI 21-101 sets out the information transparency requirements for marketplaces dealing in exchange-traded securities. One of these requirements is that a marketplace that displays orders of exchange-traded securities must provide information regarding the orders displayed on that marketplace to an information processor.<sup>31</sup> An exemption from this requirement is available for orders that are displayed to a marketplace's employees or those retained by the marketplace to assist in the operation of the marketplace.<sup>32</sup> This exemption permits marketplaces that do not offer pre-trade transparency (Dark Pools) to operate. It also permits orders to be entered with no pre-trade transparency on a transparent marketplace. We refer to these as Dark Orders.

Part 9 of 21-101CP includes additional guidance regarding these transparency requirements. In addition, Part 5 of 21-101CP provides clarification of what constitutes an "order" as defined by section 1.1 of NI 21-101, and indicates that, at a minimum, the Canadian securities regulatory authorities will consider an IOI to be an order if it can be executed without further discussion between the person or company entering the IOI and its counterparty.

CSA staff have been reviewing issues related to Dark Pools and Dark Orders. The review process started with the publication of Joint CSA/IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada*<sup>33</sup> (Consultation Paper), where we identified and sought comment on a number of issues, particularly the impact of Dark Pools, the introduction of dark order types, and the

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<sup>29</sup> See section 7.2 of proposed amendments to 21-101CP.

<sup>30</sup> See section 7.5 of proposed amendments to 21-101CP.

<sup>31</sup> Subsection 7.1(1) of NI 21-101.

<sup>32</sup> Subsection 7.1(2) of NI 21-101.

<sup>33</sup> Published at (2009) 32 OSCB beginning at page 7877.

introduction of SORs. The Consultation Paper discussed these issues and their potential impact on the Canadian markets.

We received 23 response letters to the Consultation Paper and, on March 23, 2010, the CSA and IIROC hosted a forum (Forum) to further discuss the issues in the consultation paper and in the response letters. In May 2010, we published CSA/IIROC Joint Staff Notice 23-308 – *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 “Dark Pools, Dark Orders and Other Developments in Market Structure in Canada” and Next Steps* (CSA-IIROC Staff Notice 23-308), to summarize the themes discussed at the Forum and discuss next steps. They included:

- whether Dark Pools should be required to provide price improvement and, if so, what is considered meaningful price improvement;
- the use of sub-penny pricing;
- the practice of broker preferencing and dealer internalization of order flow;
- the use of IOIs by Dark Pools to attract order flow; and
- the fairness of a marketplace offering smart order router services (SORs) that use marketplace data that is not available to other marketplace participants.

In CSA-IIROC Staff Notice 23-308, we also included a discussion of ongoing initiatives, proposed next steps to address some of the issues raised in responses to the Consultation Paper and at the Forum, and a summary of the comments received in response to the Consultation Paper.

On November 19, 2010, we published Joint CSA/IIROC Position Paper 23-405 *Dark Liquidity in the Canadian Market* (Position Paper), setting out CSA and IIROC’s position on a number of these issues. The Position Paper included CSA and IIROC’s recommendations regarding:

- the circumstances under which Dark Pools or marketplaces offering Dark Orders<sup>34</sup> may be exempted from the pre-trade transparency requirements of NI 21-101;
- whether Dark Orders should be required to provide meaningful price improvement over the national best bid or national best offer and, if so, under which circumstances;
- whether visible orders should have priority over Dark Orders when they are at the same price and on the same marketplace; and
- what is considered a meaningful level of price improvement.

In the Position Paper, we recommended that the exemption from pre-trade transparency only apply to orders that meet a minimum size threshold, and requested feedback on what this minimum size should be.

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<sup>34</sup> In the Position Paper, we referred to any order on any marketplace entered with no pre-trade transparency and not required to be reported to an information processor or data vendor as Dark Orders. Reserve or iceberg orders were not included.

We received 20 comment letters to the Position Paper from marketplaces, dealers and buy-side participants. In this Notice, we deal with the exemption from the pre-trade transparency requirements included in NI 21-101. We will issue a separate notice that will address the other issues discussed in the Position Paper and will include a summary of the comments received.

Approximately a third of the respondents were in favour of limiting the exemption from pre-trade transparency requirements to orders that meet a minimum size threshold for a number of reasons, including that this approach would help preserve the value and quality of the visible order book. However, some of these respondents cautioned that there are risks associated with imposing a threshold, for example, that this would create the potential to “game” orders. The feedback on an appropriate minimum size was mixed: some respondents suggested that 50 standard trading units is appropriate. One commenter suggested that the minimum size threshold be based on a percentage of the average daily volume or a multiple of the average order size for a security.

The remainder of the respondents did not support establishing a minimum size threshold for the exemption from the transparency requirements applicable to orders in NI 21-101. Reasons given included:

- the fact that dark pools only comprise about 2% of the Canadian market and there has been no evidence of harm to market quality to justify substantial regulatory changes;
- a concern that risks of information leakage and gaming associated with a minimum size requirement might result in lower overall liquidity, due to more large orders being held rather than placed in dark venues;
- a concern that regulatory restrictions would limit the ability of marketplaces to offer innovative and new features;
- the potential that a size threshold would limit the use of dark liquidity to retail order flow, due to the fact that minimum trade size restrictions would likely be added to many resting liquidity orders to avoid gaming;
- the risk of liquidity migrating to other jurisdictions for inter-listed securities; and
- dealers need the flexibility to determine how to best execute their orders, irrespective of their size.

We acknowledge that, to date, there has been limited activity in dark pools and no evidence that dark liquidity has had a negative impact on the Canadian capital markets. However, we are of the view that it is important and timely to establish a regulatory framework so that we are in a position to respond quickly to future market developments. For this reason, in the proposed amendments to NI 21-101, we propose to introduce a requirement that orders meet a minimum size established by a regulation services provider in order to be exempt from the transparency requirements in NI 21-101. However, at this time no minimum order size is being proposed. Any size threshold that may be proposed in the future would follow a regular public comment process. The CSA and IIROC will continue to monitor the level of activity on non-transparent marketplaces and its impact on price discovery to determine whether and when to propose a specific size threshold.

We believe that introducing the amendments to the transparency requirements in NI 21-101 at this time meets the policy objectives set out in the Position Paper, which were to establish the framework within which dark liquidity can be offered without detriment to the price discovery process while acknowledging the concerns raised by the respondents to the Position Paper.

In the Position Paper, we also noted that some of the issues discussed in the Consultation Paper and at the Forum would be addressed separately. These are:

- the use of IOIs by Dark Pools to attract order flow – we indicated that we would provide clarity on when an IOI would be considered to be an order and subject to the transparency requirements of NI 21-101; and
- the practice of marketplaces offering SORs that use marketplace data that is not available to other marketplace participants – we indicated that we would clarify the expectation that marketplaces consider fair access requirements when sending marketplace data to an SOR but not to other marketplace participants.

We also cover these issues in the Proposed Amendments.

#### *Proposed Amendments*

- i. Transparency requirements applicable to marketplaces dealing in exchange-traded securities*

In proposed amendments to NI 21-101, we revise the pre-trade transparency requirements applicable to marketplaces dealing in exchange-traded securities.

As set out above, we revise the exemption from pre-trade transparency requirements to include a requirement that orders meet a size threshold in order to be exempt from the transparency requirements in addition to the existing requirement that orders only be displayed to the employees or those assisting in the operations of a marketplace.<sup>35</sup> We indicate that the size threshold would be established by a regulation services provider, currently, IIROC. At this time, no size threshold is proposed.<sup>36</sup>

In addition, we replace the existing requirement that a marketplace display order information for the orders displayed *on* that marketplace with a requirement to make transparent information relating to orders displayed *by* that marketplace; this would acknowledge that the transparency requirements should apply to all orders that are

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<sup>35</sup> See subsection 7.1(2) of proposed amendments to NI 21-101.

<sup>36</sup> It should be noted that Rule 6.3 of the Universal Market Integrity Rules that IIROC administers, commonly known as the Order Exposure Rule, currently requires that a Participant immediately enter on a marketplace that displays orders a client order to purchase or sell 50 standard trading units or less. The requirements of the Order Exposure Rule are subject to certain exceptions, including when the client has specifically instructed the Participant to deal otherwise with the particular order (e.g. authorized the entry of the order on a dark pool).

displayed or disseminated by a marketplace to external individuals or entities, including SORs.<sup>37</sup>

*ii. Use of IOIs*

In 21-101CP, we propose additional guidance on when an IOI would be considered an order and thus subject to the transparency requirements.<sup>38</sup> Specifically, we indicated that the Canadian securities regulatory authorities would consider an IOI to be “actionable” when it includes sufficient information to enable it to be executed without further discussion or negotiation between the person or entity entering the IOI and their counterparty. Furthermore, we clarified that this information may be explicitly stated, for example the IOI may include the symbol, side, size and price of the security, or may be implicit, based on the characteristics of a marketplace. For example, a marketplace may disseminate IOIs without specifying the price associated with the IOIs. However, if that marketplace is known to always offer price improvement of a certain percentage, the recipient of the IOIs may infer their price, which may render the IOI actionable and may qualify it as an order.

In 21-101CP, we also set out our expectation that marketplaces that send IOI information to a selected SOR consider the extent to which such information should be sent to other SORs in order to meet their fair access obligations.<sup>39</sup> As indicated above, if the IOIs provided meet the characteristics of an order, they would be subject to the transparency requirements of Part 7 of NI 21-101.

### **3. Transparency of marketplace operations**

*Background and current requirements*

Currently, the only disclosure requirement applicable to marketplaces in NI 21-101 is the requirement that a marketplace make its schedule of trading fees publicly available.<sup>40</sup> In Ontario, OSC Staff Notice 21-703 sets out OSC staff’s view that Exchanges and ATSS should be subject to a similar degree of transparency when proposing to carry on business and when making changes to their operations. OSC staff described some of the information that they expect would be made transparent by ATSS. It included the following information regarding the operations of an ATS that would be provided in conjunction with Form 21-101F2, filed when proposing to carry on business as an ATS:

- its access requirements;
- a description of the securities to be traded;
- the order types to be offered or features/characteristics of orders;

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<sup>37</sup> See subsections 7.1(1), 7.3(1), 8.1(1) and 8.2(1) of proposed amendments to NI 21-101 for the requirements applicable to exchange-traded, foreign exchange-traded, government debt and corporate debt securities.

<sup>38</sup> See subsection 5.1(2) of proposed amendments to 21-101CP.

<sup>39</sup> See subsection 7.1(4) of proposed amendments to 21-101CP.

<sup>40</sup> Section 10.1 of NI 21-101.

- how orders are entered, displayed (if applicable), executed and how they interact; and
- the special facilities or sessions of the marketplace (for example, pre-opening and market-on-close facilities).

OSC staff also indicated that, on an ongoing basis, certain changes filed by marketplaces would also be published. These included:

- order types (i.e. new or existing order types) or features and characteristics of orders;
- procedures governing how orders are entered, displayed (if applicable), executed and how they interact; and
- changes to the procedures relating to special facilities or sessions of the marketplace (for example, pre-opening and market-on-close facilities).

In CSA-IIROC Staff Notice 23-308, CSA and IIROC staff stated that more transparency of marketplace operations was required so that investors and industry participants understand all the trading options offered by each marketplace. We further indicated that we were considering requiring each marketplace to provide specific disclosure on its website regarding how orders entered interact with other orders on that marketplace throughout the day, including a detailed description of each order type. The proposed amendments to NI 21-101 would require the public disclosure of this information and some additional information described below.

#### *Proposed Amendments*

To address the objectives described above, in proposed amendments to NI 21-101 we require that a marketplace publicly disclose on its website information relating to its operations, including but not limited to:<sup>41</sup>

- its fees, including listing, trading, data and routing fees charged by the marketplace, an affiliate or by a third party to which the marketplace outsourced its services;
- a description of how orders are entered, interact and execute;
- all order types;
- the marketplace's access requirements;
- its policies and procedures to identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides;
- any referral arrangements between the marketplace and service providers;
- where routing is offered, how routing decisions are made; and
- when IOIs are disseminated, the information included in these IOIs and the types of recipients of such IOIs.

In addition, we enhanced the existing requirement in NI 21-101 that a marketplace make its schedule of trading fees publicly available, and required that all fees, including trading, data and routing fees, as well as listing fees, when applicable, should be made transparent on a marketplace's website.

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<sup>41</sup> See section 10.1 of proposed amendments to NI 21-101.

We note that these provisions would constitute the minimum disclosure requirements for marketplaces and that marketplaces may make other information publicly available as well.

#### **4. Other requirements applicable to marketplaces**

##### *i. Conflicts of interest*

###### *Background and current requirements*

We are of the view that it is important for marketplaces to identify and disclose existing material conflicts of interest. We would consider a conflict of interest to be any circumstance where the interests of different parties, such as the interests of a marketplace and those of a member, subscriber or user, are inconsistent or divergent.

Section 13.4 of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) imposes requirements related to identifying and responding to conflicts of interest on registered firms. These apply to ATs, but not to Exchanges or QTRSs.

###### *Proposed amendments*

To increase consistency between the requirements applicable to all marketplaces, in proposed amendments to NI 21-101 we require that marketplaces establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides.<sup>42</sup> As noted earlier, the proposed amendments would also require that each marketplace make these policies and procedures publicly available in order for all interested parties to be aware of material conflicts of interest a marketplace may have.<sup>43</sup>

##### *ii. Outsourcing*

###### *Background and current requirements*

In many instances, a marketplace may choose to have a third party or an affiliate provide certain services on its behalf. We are of the view that the quality of services provided by marketplaces must be maintained, even in instances where a service has been outsourced to a third party provider or an affiliate.

The benefits and issues associated with outsourcing, as well as principles to assist market intermediaries considering or already involved in outsourcing arrangements and the regulators are outlined in a report of a Technical Committee of the International

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<sup>42</sup> See section 5.11 of proposed amendments to NI 21-101.

<sup>43</sup> See subsection 10.1(e) of proposed amendments to NI 21-101.

Organization of Securities Commission (IOSCO Outsourcing Report).<sup>44</sup> The principles in the IOSCO Outsourcing Report apply to markets, defined as exchanges only.

In Canada, ATSS, as registered firms, are subject to Part 11 of Companion Policy 31-103CP, which sets out the expectation that registered firms be responsible and accountable for all functions that they outsource to a service provider. These expectations are consistent with the principles in the IOSCO Outsourcing Report. However, Companion Policy 31-103CP does not apply to Exchanges and QTRSs.

### *Proposed amendments*

The proposed amendments to NI 21-101 include requirements for marketplaces that outsource any of its key services or systems to a service provider, which would include affiliates or associates of the marketplace.<sup>45</sup> These proposed requirements, also consistent with the principles in the IOSCO Outsourcing Report, would require that marketplaces that outsource any of their key services establish and maintain policies and procedures for the selection of service providers and for the evaluation and approval of outsourcing arrangements. Marketplaces would also need to monitor the performance of the service provider. These outsourcing requirements would apply regardless of whether the outsourcing arrangements are with third-party services providers or affiliates or associates of the marketplace.

#### *iii. Notification of threshold by ATSS*

### *Background and current requirements*

Section 6.6 of NI 21-101 requires an ATS to notify the security regulatory authority in writing at least six months before conducting certain functions such as listing securities, market-making activities, establishing conduct requirements or establishing procedures for disciplining its subscribers other than exclusion from trading. In addition, section 6.7 of NI 21-101 requires an ATS to notify the security regulatory authority if one of three thresholds are met or exceeded.<sup>46</sup>

### *Proposed amendments*

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<sup>44</sup> Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD299.pdf>.

<sup>45</sup> See section 5.12 of proposed amendments to NI 21-101.

<sup>46</sup> An ATS is required to notify the securities regulatory authority in writing if, (a) during at least three of the preceding four calendar quarters, the average daily dollar value of the trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the average daily dollar value of the trading volume for the calendar quarter in that type of security on all marketplaces in Canada; (b) during at least three of the preceding four calendar quarters, the total trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the total trading volume in the calendar quarter in that type of security on all marketplaces in Canada; or (c) during at least three of the preceding four calendar quarters, the number of trades on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the number of trades for the calendar quarter in that type of security on all marketplaces in Canada.

In the proposed amendments to NI 21-101, we removed the requirement that an ATS notify us before conducting exchange-like functions. This is because an ATS wishing to conduct these types of activities would have to apply for recognition as an Exchange and would include this information in its application for recognition. In addition, any significant change to a marketplace's functions would be reported to us in advance, in accordance with the notification requirements in Part 3 of the proposed amendments to NI 21-101.

We maintained the requirement for notification if certain trading volumes are met, but revised it as follows<sup>47</sup>:

- we changed the notification thresholds from 20 percent to 10 percent; and
- we required that notification be provided if in a particular quarter, one of the thresholds are met for two of the preceding three months of operation.

We believe that these new notification thresholds are indicative of an ATS increasing its market presence in a type of security, which could be an indication that it may be more appropriate that the ATS be regulated as an Exchange. In 21-101CP, we clarified that if one of the proposed thresholds is met or exceeded, we would review the ATS, its structure and operations to determine whether it should be considered to be regulated as an Exchange, or whether additional terms and conditions should be placed on its dealer registration.<sup>48</sup>

#### *iv. Recordkeeping requirements*

In conjunction with the Order Protection Rule<sup>49</sup>, which became effective on February 1, 2011, we introduce a new requirement for marketplaces and dealers to indicate whether orders they receive are directed-action orders.<sup>50</sup> In proposed amendments to NI 21-101, we also require that marketplaces keep records that indicate whether a marketplace or whether a marketplace participant marked an order as a directed-action order.<sup>51</sup>

A new national instrument, to be published for comment shortly, will be introducing provisions governing electronic trading. A direct electronic access identifier will be a proposed requirement under this rule which will mandate that each direct electronic access client will need to be assigned a unique identifier. This specific identifier has been added to the list of records that would be required to be maintained in section 11.2 of NI 21-101 and the audit trail requirements in section 11.2 of NI 23-101. These sections may be further revised to incorporate definitions in the new national instrument referred to above.

#### *v. Business continuity planning*

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<sup>47</sup> See section 6.7 of proposed amendments to NI 21-101.

<sup>48</sup> Subsection 3.4(7) of proposed amendments to 21-101CP.

<sup>49</sup> See Part 6 of NI 23-101.

<sup>50</sup> See subparagraph 11.2(1)(c)(xviii) of proposed amendments to NI 21-101 and subparagraph 11.2(1)(u) of proposed amendments to NI 23-101 for the requirements applicable to marketplaces and dealers, respectively.

<sup>51</sup> See subparagraph 11.2(1)(c)(xix) of proposed amendments to NI 21-101.

Currently, subsection 12.1(a)(i) of NI 21-101 requires marketplaces to develop and maintain reasonable business continuity and disaster recovery plans. Subsection 12.1(b)(iii) requires marketplaces to test their business continuity and disaster recovery plans on a reasonably frequent basis, and in any event, at least annually.

Both these requirements are included in section 12.1 *System Requirements* of NI 21-101. We are of the view that business continuity and disaster recovery planning goes beyond systems requirements. A marketplace's business continuity plan may include, for example, maintenance of a back-up location, or alternate working arrangements for its employees.

To acknowledge this, and to highlight the great importance we place on marketplaces developing and testing business continuity plans, we maintained the existing requirements applicable to business continuity and disaster recovery planning, but set them out separately from the systems requirements.<sup>52</sup>

*vi. Independent systems review*

*Background and current requirements*

Subsection 12.2(1) of NI 21-101 requires a marketplace to engage a qualified party annually to conduct an independent systems review and prepare a report in accordance with established audit standards. The purpose of the review is to assess the adequacy of the internal controls over the systems of the marketplace, of information technology general controls, and of the marketplace's business continuity planning processes.

Part 14 of 21-101CP provides additional guidance on the requirements of an independent systems review, including who may constitute a qualified party to conduct such a review and when an exemption from the requirements of subsection 12.2(1) may be considered.

*Proposed amendments*

In 21-101CP, we provide additional guidance on the individuals or entities that may be qualified to conduct independent systems review, and indicated that these may include external auditors or third party information systems consultants.<sup>53</sup> In 21-101CP, we also provide additional clarification on the criteria we may consider in granting exemptions from the requirement to engage a qualified party to conduct an independent systems review, and also that these criteria would not only guide us in determining if the exemption is in the public interest, but also on the length of the exemption.<sup>54</sup>

**5. Definition of a marketplace**

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<sup>52</sup> See section 14.6 of proposed amendments to NI 21-101.

<sup>53</sup> See subsection 14.1(3) of proposed amendments to 21-101CP.

<sup>54</sup> See subsection 14.1(4) of proposed amendments to 21-101CP.

In 21-101CP, we provided additional clarification regarding the definition of “marketplace”.<sup>55</sup> Specifically, we clarified that a dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and which generates trade execution through the routing of both sides of a match to a marketplace as a cross would be considered to be operating a marketplace. The rationale for this clarification is that the use of technology to match orders received by the dealer electronically, in a non-discretionary, established fashion is very similar to the function performed by a marketplace. However, a dealer manually matching orders in the upstairs market would not be considered to be functioning as a marketplace.

## **6. Transparency requirements applicable to marketplaces, inter-dealer bond brokers and dealers dealing in government debt securities**

### *Background and current requirements*

Part 8 of NI 21-101 sets out the transparency requirements for marketplaces dealing in unlisted debt securities, inter-dealer bond brokers (IDBs) and dealers. The specific pre-trade and post-trade transparency requirements applicable to government debt securities are set out in section 8.1. Section 8.6 of NI 21-101 provides an exemption from these requirements until January 1, 2012. This exemption has been in place since 2003, and last renewed in 2006.

Over time, the CSA have reviewed the continuing appropriateness of this exemption and the alternatives for transparency for government fixed income securities. In proposed amendments to NI 21-101 published in 2006,<sup>56</sup> we presented a number of options to deal with transparency for government debt securities. One of these options included an incremental approach to transparency. Based on feedback received through the public comment process, the CSA decided not to mandate transparency for government debt, but rather to extend the exemption until December 31, 2011. We indicated, at the time, that the level of transparency in the government debt market had increased and that it was our expectation that it would continue to increase. We also noted that we would continue to monitor the fixed income market to determine whether regulation or further guidance will be needed in the future.<sup>57</sup>

We have been monitoring the fixed income markets and related developments, including regulatory developments regarding government debt transparency. We found that, while no jurisdiction has established mandatory transparency requirements for government debt, there has been progress towards additional transparency in the fixed income market internationally. For example, in the United States, the Securities and Exchange Commission (SEC) approved amendments to certain rules of the Financial Industry

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<sup>55</sup> See subsection 2.1(8) of proposed amendments to 21-101CP.

<sup>56</sup> Published at (2006) 29 OSCB beginning at (2006) 29 OSCB 5735.

<sup>57</sup> Notice of Amendments to NI 21-101 *Marketplace Operation*, Companion Policy 21-101CP, NI 23-101 *Trading Rules* and Companion Policy 23-101CP, published at (2006) OSCB beginning at (2006) 29 OSCB 9731.

Regulatory Authority (FINRA) that would expand the scope of securities reportable to the Trade Reporting and Compliance Engine (TRACE). These rule amendments, approved by the SEC in September 2001 and effective as at March 1, 2010, expanded TRACE to include Agency debt securities to the securities for which trade information is reported by FINRA members (U.S. broker-dealers).<sup>58</sup> The rationale for the change was that it would increase transparency in the bond market and foster developments such as improved pricing, narrower bid-ask spreads, and reduced investor costs.

In Europe, recent technical advice by the Committee of European Securities Regulators (CESR) to the European Commission<sup>59</sup> recommended a post-trade transparency regime for non-equity securities, including corporate and public bonds.<sup>60</sup> A recent review of the Markets in Financial Instruments Directive (MiFID) by the European Commission<sup>61</sup> indicates an intention to amend the MiFID framework directive to require pre- and post-trade transparency for all trades in certain non-equity products, including all bonds with a prospectus or which are admitted to trading either on regulated markets or multilateral trading facilities.

We have also seen the emergence, in Canada and abroad, of facilities offering prices for selected securities, including government debt securities.<sup>62</sup> In Canada, a number of marketplaces are offering price information regarding government debt securities and CanPX, the information processor for corporate debt securities, provides quotations for certain government bonds. As a result, we believe that there has been some progress towards additional government debt transparency.

### *Proposed amendments*

In light of developments regarding transparency for government debt securities, we extended the exemption from the transparency requirements in NI 21-101 until December 31, 2014.<sup>63</sup> This would allow us to review international regulatory developments and progress towards additional transparency made in Canada in order to determine what, if any, mandatory requirements are needed in this area.

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<sup>58</sup> The definition of a TRACE-eligible security in FINRA Rule 6710 was amended to include securities issued or guaranteed by an agency or a government-sponsored enterprise (except securities issued by the U.S. Treasury). The rule is available at [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=4400](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4400)

<sup>59</sup> CESR Technical Advice to the European Commission in the Context of the MiFID Review: Non-equity Markets Transparency, available at [http://www.cesr-eu.org/index.php?page=contenu\\_groups&id=61&docmore=1](http://www.cesr-eu.org/index.php?page=contenu_groups&id=61&docmore=1)

<sup>60</sup> Under CESR's proposed definition, public bonds would generally include transferable debt securities excluding those with a maturity below 12 months and treasury bills issued by a Member State's general government, monetary authorities of one of the Member States; international bodies of which one or more Member States are members; and the European Central Bank.

<sup>61</sup> Available at [http://ec.europa.eu/internal\\_market/securities/isd/mifid\\_en.htm](http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm).

<sup>62</sup> For example, PC Bond Analytics in Canada, see <http://www.canadianbondindices.com>, Canadian Fixed Income (provided by Perimeter CBID), see <http://www.pfin.ca/canadianfixedincome/Default.aspx>, xtrakter in Europe, see <http://www.bondmarketprices.com/default.aspx>.

<sup>63</sup> See section 8.6 of proposed amendments to NI 21-101.

## **7. Locked or crossed markets**

### *Background and current requirements*

A “locked market” occurs when there are multiple marketplaces trading the same security and a bid (offer) on one marketplace is at an identical price level to an offer (bid) on another marketplace. Had both orders been entered onto the same marketplace the bid and the offer would have matched and a trade would have been executed. A “crossed market” occurs when a bid (offer) on one marketplace is higher (lower) than another offer (bid) on a different marketplace. Currently, section 6.5 of NI 23-101 prohibits a marketplace participant from intentionally locking or crossing a market.

### *Proposed amendments*

Proposed section 6.5 of NI 23-101 would provide that marketplaces, in addition to marketplace participants, shall not intentionally lock or cross a market when the marketplace routes or reprices orders. Specifically, marketplaces that route or re-price orders will be required to ensure that their routing or re-pricing activities do not lock or cross markets. In proposed section 6.4 of 23-101CP, we are giving additional guidance regarding situations that would be considered to be an unintentional locking or crossing of the market.

## **8. Requirements for information processors**

### *Background and current requirements*

Part 14 of NI 21-101 sets out the initial and ongoing filing requirements for an information processor. It also sets out other requirements applicable to an information processor, which include data, access and system requirements.

There are two information processors operating in Canada: the information processor for exchange-listed securities other than options (TSX IP) is operated by the Toronto Stock Exchange, and the information processor for corporate debt securities is CanPX.<sup>64</sup> At the time that the CSA made a determination that it was not against the public interest for these two entities to act as information processors, TSX IP and CanPX signed a number of undertakings that they would meet certain conditions which included governance, financial and other requirements in order to become and continue to act as information processors.<sup>65</sup>

### *Proposed amendments*

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<sup>64</sup> In Québec, these entities are recognized as information processors under the *Securities Act*.

<sup>65</sup> The undertakings signed by TSX IP are available at [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20090605\\_21-309\\_processor-exchange.jsp](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20090605_21-309_processor-exchange.jsp). The undertakings signed by CanPX are available at [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20090626\\_21-310\\_debt-securities.pdf](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20090626_21-310_debt-securities.pdf)

We are of the view that some of the requirements applicable to marketplaces are equally relevant to an information processor. As a result, in proposed amendments to NI 21-101 we added the following requirements applicable to marketplaces to the information processors:

- A requirement to file annual audited financial statements;
- A requirement to file a financial budget on an annual basis;
- A requirement for confidential treatment of trading information;
- A requirement to publicly disclose certain information relating to an information processor's operations; and
- A requirement to develop and maintain reasonable business continuity plans, including disaster recovery plans.

We note that the existing information processors already meet these requirements, either as required by their undertakings or as part of their prudent business practices. However, we thought it was important to formalize them, and included them in proposed amendments to NI 21-101.<sup>66</sup>

In 21-101CP, we clarified the ongoing filing requirements and, similar to our approach for marketplaces, gave guidance on what we would consider a significant change.<sup>67</sup>

#### **IV. ANTICIPATED COSTS AND BENEFITS**

The following is a description of the costs and benefits that marketplaces may encounter in complying with the Proposed Amendments. Omitted from the cost discussion are Proposed Amendments that would clarify existing requirements, consolidate existing similar requirements applicable to all marketplaces, or extend the time provision of existing requirements (such as the extension of the exemption from transparency requirements applicable to government debt securities) because we anticipate these changes will not result in any costs.

All marketplaces will incur a one-time cost of:

- reviewing the Proposed Amendments;
- determining the regulatory compliance gaps that exist and the actions required to address any gaps that are found;
- implementing new compliance measures; and
- training staff on the new requirements.

The magnitude of these costs will be dictated by the needs of each marketplace. The initial compliance costs are applicable to all the Proposed Amendments examined below. For brevity, we have omitted discussion of these compliance costs from the analysis, unless a particular type of compliance cost was deemed significant. For example, initial costs associated with the implementation of systems that would accommodate the proposed reporting requirements set out in Form 21-101F3, initial costs to adjust a

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<sup>66</sup> See section 14.4 of proposed amendments to NI 21-101.

<sup>67</sup> See section 16.3 of proposed amendments to 21-101CP.

marketplace's system in case a minimum size threshold from the transparency requirements of Part 7 of NI 21-101 is established, or costs to upgrade a marketplace's information technology infrastructure to prevent intentional locked and crossed markets may be significant and were highlighted separately.

## **COSTS**

### **1. Regulatory and reporting requirements of marketplaces**

#### *i. Proposed forms*

Of the Proposed Amendments, we anticipate that the proposed requirement for quarterly reporting of marketplace activities will have the greatest impact on marketplaces. We anticipate that required upgrades to the information technology infrastructure of marketplaces will be the compliance activity that would entail the greatest costs. The magnitude of this cost will vary depending on the marketplace's information technology infrastructure. We anticipate these costs to be a one-time cost.

However, ongoing annual costs of complying with quarterly reporting requirements will vary depending on information technology and workflow designs, in particular the level of automation, that a marketplace has chosen in fulfilling its reporting requirements.

We anticipate the ongoing annual costs will remain unchanged based on the assumption that the new administrative requirements imposed by the Proposed Amendments will be offset by the elimination of an equivalent amount of administrative burden created by the existing reporting requirements (holding all other variables constant). In the long run, it is highly likely that ongoing workflow related cost savings can be realized. These savings can be attributed to the experience curve effect, whereby the learning that results from the repetitious performance of a task leads to a reduction in the cost of undertaking that task.

#### *ii. Financial reporting*

We anticipate negligible costs associated with the new rule pertaining to financial filings. ATSS already file annual financial statements with IIROC and these IIROC filings can be used to fulfill the proposed financial reporting requirements in Proposed NI 21-101; therefore, the proposed rule will not create any new on-going annual costs for ATSS.

#### *iii. Other requirements currently applicable only to ATSS*

It is our understanding that exchanges already have in place measures related to risk disclosure for foreign exchange-listed securities and confidential treatment of trading information as part of their prudent business practices; therefore, the new rules will not create any new ongoing annual costs.

### **2. Information transparency requirements for marketplaces dealing in exchange-traded securities**

As we indicated in Position Paper 23-405, we anticipate that the proposal to establish a size threshold for an exemption from the transparency requirements in Part 7 of NI 21-101 would impact the business models and systems of marketplaces that do not currently have a size threshold. At this time, no threshold has been proposed, and we do not foresee additional costs to the marketplaces in the near future. Costs to marketplaces that are expected to incur when a size threshold will be imposed would be evaluated against the expected benefits of establishing limits to what may trade away from the transparent marketplaces. These are the maintenance of the price discovery mechanism and, more generally, preservation of the quality and integrity of the Canadian capital market.

### **3. Transparency of marketplace operations**

Many marketplaces already publicly disclose most, if not all, the information that we are requiring, generally on their websites. For this reason, we do not anticipate additional costs to comply with the proposed transparency requirements in Part 10 of NI 21-101.

### **4. Other requirements applicable to marketplaces**

#### *i. Outsourcing*

We expect that marketplaces, as part of their due diligence and prudent business practices, already have in place procurement policies related to outsourcing and monitor the performance of entities to which they outsourced services, although these policies and procedures may not be codified. For this reason, we do not expect the proposed requirements in section 5.12 of proposed amendments to NI 21-101 to create significant additional costs to marketplaces.

### **5. Locked or crossed markets**

We anticipate that some marketplaces will incur one-time costs in upgrading their information technology infrastructure to prevent intentional locked and crossed markets, if they presently do not have these measures in place. On-going annual costs will be incurred in keeping this program running; however, we expect these costs to be minimal since any program that is created will be automated.

## **BENEFITS**

The Proposed Amendments will promote a competitive balance in the industry by requiring marketplaces, regardless of their designation, to operate under an equivalent set of rules.

Harmonizing and clarifying the regulatory requirements that apply to all marketplaces will create a more transparent environment regarding regulatory expectations, and facilitate fairer and more efficient operations of the capital market.

The new reporting and transparency requirements will provide the CSA with timely and adequate information to understand the trading activities on the marketplaces, monitor market trends, and inform future policy making. The Proposed Amendments aim to strike a balance between protecting the confidential business activities undertaken by marketplaces and marketplace participants and the need to make this information available to facilitate a fair capital market. This would benefit other industry participants and investors, who will be provided with additional information regarding the marketplace's features and operations, and would help in making decisions on how and where to trade.

## **V. AUTHORITY FOR THE PROPOSED AMENDMENTS**

In those jurisdictions in which the amendments to the Marketplace Rules 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.

## **VI. APPENDICES**

The appendices with this Notice are organized as follows:

- A table summarizing the changes to Form 21-101F1 and Form 21-101F2 and a summary of changes to NI 21-101 (Appendix A);
- The Proposed Amendments (Appendix B);
- A blackline of 21-101CP, revised with the proposed amendments, against the existing 21-101CP (Appendix C); and
- A blackline of 23-101CP, revised with the proposed amendments, against the existing 23-101CP (Appendix D).

## **VII. COMMENTS AND QUESTIONS**

We invite all interested parties to make written submissions with respect to the Proposed Amendments. Please send your comments electronically in Word, Windows format. We will consider submissions received by June 16, 2011.

Please address your submissions to all of the Canadian securities regulatory authorities, as follows:

Alberta Securities Commission

Autorité des marchés financiers  
 British Columbia Securities Commission  
 Manitoba Securities Commission  
 New Brunswick Securities Commission  
 Nova Scotia Securities Commission  
 Ontario Securities Commission  
 Saskatchewan Financial Services Commission  
 Securities Commission of Newfoundland and Labrador  
 Superintendent of Securities, Northwest Territories  
 Superintendent of Securities, Yukon Territory  
 Superintendent of Securities, Nunavut  
 Superintendent of Securities, Prince Edward Island

Please deliver your comments **only** to the two addresses that follow. Your comments will be distributed to the other participating CSA member jurisdictions.

c/o John Stevenson, Secretary  
 Ontario Securities Commission  
 20 Queen Street West  
 Suite 1900, Box 55  
 Toronto, Ontario M5H 3S8  
 e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

and

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  
 e-mail : [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions may be referred to any of:

Ruxandra Smith Ontario Securities Commission (416) 593-2317	Sonali GuptaBhaya Ontario Securities Commission (416) 593-2331
Tracey Stern Ontario Securities Commission (416) 593-8167	Serge Boisvert Autorité des marchés financiers (514) 395-0337 ext.4358
Élaine Lanouette Autorité des marchés financiers	Doug Brown Manitoba Securities Commission

(514) 395-0337 ext.4356	(204) 945-0605
Gabrielle Kaufmann Alberta Securities Commission (403) 297-5303	Michael Brady British Columbia Securities Commission (604) 899-6561
Jason Alcorn New Brunswick Securities Commission (506) 643-7857	

**APPENDIX A**

**COMPARISON OF FORMS 21-101F1 AND 21-101F2 AND SUMMARY OF PROPOSED AMENDMENTS**

- Column 1 sets out the subject area.
- Columns 2 and 3 contain the full text of Form 21-101F1 and 21-101F2, respectively. The exhibits and items have been matched up to facilitate comparison.
- Column 4 includes a summary of the Proposed Amendments.

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
<b>Identification and contact information</b>	1. Full name:	A. Full name of alternative trading system (if sole proprietor, last, first and middle name):	Adopt same provision. See Item 1 in both forms.
		B. Name(s) under which business is conducted, if different from item A:	Adopt same provision. See Item 2 in both forms.
		C. If this filing makes a name change on behalf of the alternative trading system in respect of the name set out in Item A or Item B, enter the previous name and the new name. Previous name: New name:	Adopt same provision. See Item 3 in both forms.
	2. Main street address (do not use a P.O. box):	D. Alternative trading system's main street address:	See item 4 in both forms.
	3. Mailing address (if different):	E. Mailing address (if different):	No change. See item 5 in both forms.
4. Address of head office (if different from address in item 2):	F. Address of head office (if different from address in item D):	See item 6 in both forms.	

	Form 21-101F1	Form 21-101F2	Summary of changes
	5. Business telephone and facsimile number: (Telephone) (Facsimile)	G. Business telephone and facsimile number: (Telephone) (Facsimile)	Delete, as already provided above.
	6. Website address:	H. Website address:	No change. See Item 7 in both forms.
	7. Contact employee: (Name and Title) (Telephone Number) (Facsimile) (E-mail address)	I. Contact Employee: (Name and Title) (Telephone Number) (Facsimile) (E-mail address)	No change. See Item 8 in both forms.
	8. Counsel: (Firm Name) (Contact Name) (Telephone Number) (Facsimile) (E-mail address)	<b>Exhibit D</b> The name, address, telephone number, facsimile number and e-mail address of counsel for the alternative trading system.	See Item 9 in both forms.
	9. Date of financial year-end:		Deleted – financial year-end can be found in the annual financial statements
	10. Legal status:  <input type="checkbox"/> Corporation <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other (specify): Except where the exchange or quotation and trade reporting system is a sole proprietorship, indicate the date and place where the exchange or quotation and trade reporting system obtained its legal status (e.g., place of		Adopted uniform requirement and included them in <b><i>Exhibit A – Corporate Governance.</i></b>

	Form 21-101F1	Form 21-101F2	Summary of changes
	<p>incorporation, place where partnership agreement was filed or where exchange or quotation and trade reporting system entity was formed):</p> <p>(a) Date (DD/MM/YYYY):</p> <p>(b) Place of formation:</p> <p>(c) Statute under which exchange or quotation and trade reporting system was organized:</p>		
	<p>11. Market Regulation is being conducted by:</p> <p><input type="checkbox"/> the exchange</p> <p><input type="checkbox"/> the quotation and trade reporting system</p> <p><input type="checkbox"/> regulation services provider other than the filer (see exhibit O)</p>	<p>L. The ATS has contracted with [regulation services provider] to perform market regulation for the ATS and its subscribers.</p>	Moved to <i>Exhibit M – Regulation</i> in both forms.
		<p>J. The ATS is</p> <p><input type="checkbox"/> a member of [name of the recognized self-regulatory entity]</p> <p><input type="checkbox"/> a registered dealer</p>	Unchanged. See item 10 in Form 21-101F2.
		<p>K. If this is an initial operation report, the date the alternative trading system expects to commence operation:</p>	
<b>Exhibits</b>			Added requirement in both forms for filing to be

	Form 21-101F1	Form 21-101F2	Summary of changes																																													
			<p>blacklined. Inserted instructions for filing of exhibits.</p> <p>Added requirement to notify CSA of expected date of implementation of changes. Form 21-101F3 will include a section listing the changes implemented during the reporting period.</p> <p>Proposed exhibits are set out in chart following.</p> <table border="1"> <thead> <tr> <th>Exhibit</th> <th>Form 21-101F1</th> <th>Form 21-101F2</th> </tr> </thead> <tbody> <tr> <td>A - Corporate Governance</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>B - Ownership</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>C - Organization</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>D - Affiliates</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>E - Operations of the Marketplace</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>F - Outsourcing</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>G - Systems and Contingency Planning</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>H - Custody of Assets</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>I - Securities</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>J - Access</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>K - Marketplace Participants</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>L - Fees</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>M - Regulation</td> <td>✓</td> <td>✓</td> </tr> <tr> <td>N - Acknowledgements</td> <td></td> <td>✓</td> </tr> </tbody> </table>	Exhibit	Form 21-101F1	Form 21-101F2	A - Corporate Governance	✓	✓	B - Ownership	✓	✓	C - Organization	✓	✓	D - Affiliates	✓	✓	E - Operations of the Marketplace	✓	✓	F - Outsourcing	✓	✓	G - Systems and Contingency Planning	✓	✓	H - Custody of Assets	✓	✓	I - Securities	✓	✓	J - Access	✓	✓	K - Marketplace Participants	✓	✓	L - Fees	✓	✓	M - Regulation	✓	✓	N - Acknowledgements		✓
Exhibit	Form 21-101F1	Form 21-101F2																																														
A - Corporate Governance	✓	✓																																														
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M - Regulation	✓	✓																																														
N - Acknowledgements		✓																																														
Corporate	Exhibit A	Exhibit E	Item for legal status moved from cover page to this																																													

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
<b>Governance</b>	A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.	A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.	exhibit.  See <i>Exhibit A – Corporate Governance</i> .
<b>Outsourcing</b>	<p><b>Exhibit B</b> For each affiliated entity of the exchange or quotation and trade reporting system, and for any person or company with whom the exchange or quotation and trade reporting system has a contractual or other agreement relating to the operation of an electronic trading system (the “System”) to be used to effect transactions on the exchange or quotation and trade reporting system, provide the following information:</p> <ol style="list-style-type: none"> <li>1. Name and address of person or company.</li> <li>2. Form of organization (e.g., association, corporation, partnership, etc.).</li> <li>3. Location and statute citation under which organized. Date of incorporation in present form.</li> <li>4. Brief description of nature and extent of affiliation or contractual or other agreement</li> </ol>	<p><b>Exhibit F</b> The name of any person or company, other than the alternative trading system, that will be involved in the operation of the alternative trading system, including the execution, trading, clearing and settling of transactions on behalf of the alternative trading system. Provide a description of the role and responsibilities of each person or company.</p> <p><b>Exhibit K</b> A description of all material contracts executed by the alternative trading system.</p>	<p>Outsourcing of key services to an affiliate is included in <i>Exhibit D - Affiliates</i>.</p> <p>Outsourcing of key services an arms-length third party is included in <i>Exhibit F – Outsourcing</i>.</p>

	Form 21-101F1	Form 21-101F2	Summary of changes
	<p>with exchange or quotation and trade reporting system.</p> <p>5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance, or settlement of transactions in connection with operation of the System.</p> <p>6. If a person or company has ceased to be an affiliated entity of the exchange or quotation and trade reporting system during the previous year or ceased to have a contractual or other agreement relating to the operation of a System during the previous year, provide a brief statement of the reasons for termination of the relationship.</p>		
<b>Affiliates</b>	<p><b>Exhibit B</b></p> <p>For each affiliated entity of the exchange or quotation and trade reporting system, and for any person or company with whom the exchange or quotation and trade reporting system has a contractual or other agreement relating to the operation of an electronic trading system (the</p>		Adopt substantially similar requirements for Forms 21-101F1 and 21-101F2 and included in <i>Exhibit D – Affiliates</i> .

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	<p>“System” ) to be used to effect transactions on the exchange or quotation and trade reporting system, provide the following information:</p> <ol style="list-style-type: none"> <li>1. Name and address of person or company.</li> <li>2. Form of organization (e.g., association, corporation, partnership, etc.).</li> <li>3. Location and statute citation under which organized. Date of incorporation in present form.</li> <li>4. Brief description of nature and extent of affiliation or contractual or other agreement with exchange or quotation and trade reporting system.</li> <li>5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance, or settlement of transactions in connection with operation of the System.</li> <li>6. If a person or company has ceased to be an affiliated entity of the exchange or quotation and trade reporting system during the previous year or ceased to have a</li> </ol>		

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	<p>contractual or other agreement relating to the operation of a System during the previous year, provide a brief statement of the reasons for termination of the relationship.</p> <p><b>Exhibit D</b>  For each affiliated entity of the exchange or quotation and trade reporting system, provide the following information:</p> <ol style="list-style-type: none"> <li>1. A copy of the constating documents, including corporate by-laws and other similar documents.</li> <li>2. A copy of existing by-laws or corresponding rules or instruments.</li> <li>3. The name and title of the present officers, governors, members of all standing committees or persons performing similar functions.</li> <li>4. For the latest financial year of the affiliated entity, unconsolidated financial statements, which may be unaudited. If the affiliated entity is required by securities legislation to file annual financial statements, a statement to that</li> </ol>		

	Form 21-101F1	Form 21-101F2	Summary of changes
	effect with a reference to the relevant securities legislation may be provided instead of the financial statements required here.		
<b>Organization</b>	<p><b>Exhibit C</b>  A list of partners, directors, officers, governors, members of all standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:</p> <ol style="list-style-type: none"> <li>1. Name.</li> <li>2. Title.</li> <li>3. Dates of commencement and expiry of present term of office or position and length of time position held.</li> <li>4. Type of business in which each is primarily engaged (e.g., sales, trading, market making, etc.) and current employer.</li> <li>5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.</li> <li>6. Whether the person is considered to be an independent</li> </ol>		Adopted same requirements in both forms, and included in <i>Exhibit C - Organization</i> .

	Form 21-101F1	Form 21-101F2	Summary of changes
	director.		
<b>Ownership</b>	<p><b>Exhibit E</b> This Exhibit is applicable only to exchange or quotation and trade reporting systems that have one or more owners, shareholders, or partners that are not also marketplace participants. If the exchange or quotation and trade reporting system is a corporation, please provide a list of each shareholder that directly owns five percent or more of a class of a voting security of the exchange or quotation and trade reporting system. If the exchange or quotation and trade reporting system is a partnership, please provide a list of all general partners and those limited partners that have the right to receive upon dissolution, or have contributed, five percent or more of the partnership's capital. For each of the persons listed in this Exhibit, please provide the following:</p> <ol style="list-style-type: none"> <li>1. Full legal name.</li> <li>2. Title or status.</li> <li>3. Date title or status was acquired.</li> <li>4. Approximate ownership</li> </ol>	<p><b>Exhibit J</b> A list of the full legal name of registered holders and beneficial owners of securities of the alternative trading system.</p>	Adopted the same requirements in both forms, and included in <i>Exhibit B – Ownership</i> .

	Form 21-101F1	Form 21-101F2	Summary of changes
	interest. 5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 Marketplace Operation).		
<b>Rules</b>	<b>Exhibit F</b> A copy of all rules, policies and other similar instruments of the exchange or quotation and trade reporting system that are not included in Exhibit A.	None.	Adopted the same requirements in both forms, and included in <i>Exhibit E – Operation of the Marketplace</i> .
<b>Operations of the Marketplace</b>	<b>Exhibit G</b> Describe the manner of operation of the System. This description should include the following: 1. A detailed description of the market, including how orders will be entered and trades executed (e.g., call market, auction market, dealer market). If more than one method of order entry or trade execution is being used, please describe. 2. The means of access to the System. 3. Procedures governing entry and display of quotations and orders in the System. 4. Detailed description of the procedures governing the execution, reporting, clearance	<b>Exhibit C</b> A detailed description of the market structure of the alternative trading system (e.g., call market, auction market, dealer market).  <b>Exhibit G</b> The following information: 1. The manner of operation of the alternative trading system. 2. Procedures governing entry of orders into the alternative trading system. 3. The means of access to the alternative trading system. 4. Fees charged by the alternative trading system. 5. The procedures governing execution, reporting, clearance and settlement of transactions effected through the	Adopted the same requirement in both forms and included in <i>Exhibit E – Operation of the Marketplace</i> .  The section on fees in Exhibit G of Form 21-101F2 moved to <i>Exhibit L – Fees</i> .

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	<p>and settlement of transactions in connection with the System.</p> <p>5. The hours of operation of the System, and the date on which the exchange or quotation and trade reporting system intends to commence operation of the System.</p> <p>7. Description of training provided to users of the System and any materials provided to the users.</p>	<p>alternative trading system. Where applicable, the description should include, at a minimum: the parties involved in settling the trades; the trades being settled; and the procedures to manage counterparty and settlement risk.</p> <p>6. Procedures for ensuring subscriber compliance with requirements of the alternative trading system.</p> <p>7. A description of safeguards and procedures implemented by the alternative trading system to protect subscribers' trading information.</p> <p>8. Description of the training to be provided to users of the System and a copy of any materials provided.</p> <p><b>Exhibit O</b> Description of the training to be provided to subscribers relating to the requirements set by the regulation services provider and a copy of any materials provided.</p>	
<b>Custody of Assets</b>	<p><b>Exhibit G</b></p> <p>6. If the exchange or quotation and trade reporting system proposes to hold funds or securities on a regular basis, a description of the controls that</p>	<p><b>Exhibit I</b></p> <p>If any other person or company, other than the alternative trading system, will hold or safeguard subscriber funds or securities on a regular basis, attach the name of the person or</p>	<p>Adopted the same requirement in both forms, and included in <i>Exhibit H – Custody of Assets</i>.</p>

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	will be implemented to ensure the safety of those funds or securities.	company and a brief description of the controls that will be implemented to ensure the safety of the funds and securities.	
<b>Systems</b>	<b>Exhibit G</b> 8. Description of current and future capacity estimates, contingency and business continuity plans and the procedures to review and test methodology of the system and to perform stress testing.	<b>Exhibit H</b> A brief description of the alternative trading system's procedures for reviewing system capacity, security and contingency planning procedures.	Adopted the same requirement in both forms, and included in <i>Exhibit G – Systems and Contingency Planning</i> .
<b>Securities</b>	<b>Exhibit H</b> Provide a schedule for each of the following: 1. The securities listed on the exchange or quoted on the quotation and trade reporting system, indicating for each the name of the issuer and a description of the security and whether or not the issuer is suspended from trading. After the initial filing of this form, please provide a list of the changes to the securities listed on the exchange or quoted on the quotation and trade reporting system on a quarterly basis. 2. Other securities traded on the marketplace including, for each, the name of the issuer and a	<b>Exhibit B</b> 1. A list of the types of securities the alternative trading system trades (e.g., equity, debt) or if this is an initial operation report, the types of securities it expects to trade. 2. A list of each of the securities the alternative trading system trades, or if this is an initial operation report, the securities it expects to trade.	Removed the requirement to list every single security and replaced with a requirement to provide information regarding the types of securities traded and, in the case of exchange and QTRSs, also listed and quoted. Included in <i>Exhibit I – Securities</i> .

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	description of the security.		
<b>Access</b>	<p><b>Exhibit I</b> A complete set of all forms pertaining to:</p> <ol style="list-style-type: none"> <li>1. Filing required for participation in the exchange or quotation and trade reporting system.</li> <li>2. Any other similar materials.</li> </ol>	<p><b>Exhibit M</b> The form of contract executed between the ATS and its subscribers.</p>	Adopted the same requirement and included in <i>Exhibit J – Access to Services</i> .
	<p><b>Exhibit J</b> A complete set of all forms, reports or questionnaires required of marketplace participants relating to financial responsibility or minimum capital requirements or other eligibility requirements for such marketplace participants. Provide a table of contents listing the forms included in this Exhibit and a narrative of the requirements.</p>	None.	Deleted – this information would be relevant for regulation of the marketplace participant and not the marketplace.
	<p><b>Exhibit K</b> Describe the exchange's or quotation and trade reporting system's criteria for participation in the exchange or quotation and trade reporting system. Describe conditions under which</p>	None.	Included in <i>Exhibit J – Access to Services</i> .

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	marketplace participants may be subject to suspension or termination with regard to access to the exchange or quotation and trade reporting system. Describe any procedures that will be involved in the suspension or termination of a member.		
<b>Marketplace Participants / Subscribers</b>	<p><b>Exhibit L</b> Provide an alphabetical list of all marketplace participants, including the following information:</p> <ol style="list-style-type: none"> <li>1. Name.</li> <li>2. Date of becoming a marketplace participant.</li> <li>3. Principal business address and telephone number.</li> <li>4. If a marketplace participant is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (e.g., partner, officer, director, employee, etc.).</li> <li>5. Describe the type of trading activities primarily engaged in by the marketplace participant (e.g., agency trader, proprietary trader, registered trader, market maker).</li> </ol> <p>A person shall be "primarily engaged" in an activity or</p>	<p><b>Exhibit A</b> A description of classes of subscribers (e.g., dealer, institution, or retail). Also describe any differences in access to the services offered by the alternative trading system to different groups or classes of subscribers.</p>	<p>Adopted same requirements in both forms and included them in <i>Exhibit K – Marketplace Participants</i>.</p> <p>Notes:</p> <ol style="list-style-type: none"> <li>1. The information included in Exhibit A of existing Form 21-101F2 (i.e. the description of classes of subscribers and the differences in access) is now included in proposed <i>Exhibit J – Access to Services</i>.</li> <li>2. Form 21-101F3 will include quarterly updates on new and deleted marketplace participants, and a requirement to provide an up-to-date list.</li> </ol>

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	<p>function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the activities or functions enumerated in this item, identify each type (e.g., agency trades, registered trader and market maker) and state the number of marketplace participants in each.</p> <p>6. The class of participation or other access.</p>		
<b>5. Listing Criteria</b>	<p><b>Exhibit M</b> A complete set of documents comprising the exchange's or quotation and trade reporting system's listing or quotation filings, including any agreements required to be executed in connection with listing or quotation and a schedule of listing or quotation fees. If the exchange or quotation and trade reporting system does not list securities, provide a brief description of the criteria used to determine what securities may be traded on the exchange or quotation and trade reporting system. Provide a table of</p>	None.	Deleted – the criteria for listing on an exchange or quoting on a QTRS are set out in their rules.

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	contents listing the forms included in this Exhibit and a narrative description of the listing requirements.		
<b>Fees</b>	<b>Exhibit N</b> A description of all fees to be paid by members to the exchange, including fees relating to connection to the system, access, data, regulation (if applicable) and how such fees are set.	<b>Exhibit G(4)</b> The following information: ... 4. Fees charged by the alternative trading system.	Adopted the same requirement in both forms and included in <i>Exhibit L - Fees</i> .
<b>Financial Statements</b>	<b>Exhibit O</b> For the latest financial year of the exchange or quotation and trade reporting system, audited financial statements of the exchange or quotation and trade reporting system and a report prepared by an independent auditor.	None.	Deleted – all marketplaces are required to file financial statements under the instrument.
<b>Regulation</b>	<b>Exhibit P</b> A description of the regulation performed by the exchange or quotation and trade reporting system, including the structure of the department performing regulation, how the department is funded, policies and procedures	None.	See <i>Exhibit M – Regulation</i> of Form 21-101F1.

	<b>Form 21-101F1</b>	<b>Form 21-101F2</b>	<b>Summary of changes</b>
	in place to ensure confidentiality and the management of conflicts of interest, and policies and procedures relating to conducting an investigation.		
	<b>Exhibit Q</b> If market regulation is conducted by a regulation services provider other than the filer, provide the contract between the filer and the regulation services provider.	<b>Exhibit L</b> A copy of the contract executed between the ATS and the regulation services provider.	See <i>Exhibit M – Regulation</i> of Form 21-101F2.
	<b>Exhibit R</b> If more than one entity is performing regulation services for a type of security and if the filer is conducting market regulation for itself and its members, provide the contract between the filer and the regulation services provider providing for co-ordinated monitoring and enforcement under section 7.5 of National Instrument 23-101.	None.	No change. See <i>Exhibit M – Regulation</i> of Form 21-101F1.
<b>Miscellaneous</b>		<b>Exhibit N</b> The form of acknowledgement required by subsections 6.10(2) and 6.11(2) of National Instrument 21-101.	No change for ATSS. See <i>Exhibit N – Acknowledgement</i> of Form 21-101F2. Adopted a requirement for an acknowledgement relating to risk disclosure for trades in foreign exchange-traded securities in <i>Exhibit N – Acknowledgement</i> of Form 21-101F1.

**NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION  
SUMMARY OF CHANGES**

<b>EXISTING SECTION</b>	<b>NEW PROVISION IN PROPOSED AMENDMENTS TO NI 21-101</b>	<b>COMMENTS</b>
<b>PART 3</b>		
3.1 Application for Recognition	3.1 Initial Filing of Information	Combined with requirement in section 4.1 Application for Recognition
3.2 Change in Information After Recognition	3.2 Change in Information	Combined with requirement in sections 4.2 Change in Information After Recognition and subsections 6.4(2), 6.4(3) and 6.4(4)
<b>PART 4</b>		
4.1 Application for recognition	3.1 Initial Filing of Information	See Comment 1.
4.2 Change in Information after Recognition	3.2 Change in Information	See Comment 2.
<b>PART 5</b>		
5.1 Access Requirements	5.1 Access Requirements	Combined with section 6.13 Access Requirements
5.2 No Restrictions on Trading on Another Marketplace	5.2 No Restrictions on Trading on Another Marketplace	Combined with section 6.12 No Restrictions on Trading on Another Marketplace
5.6 Filing of Annual Audited Financial Statements	Subsection 4.2(1)	

<b>PART 6</b>		
6.5 Ceasing to Carry on Business as an ATS	3.4 Ceasing to Carry on Business as an ATS	
6.8 Confidential Treatment of Trading Information	5.10 Confidential Treatment of Trading Information	Requirement extended to all marketplaces
6.10 Risk Disclosure for Trades in Foreign Exchange-Traded Securities	5.9 Risk Disclosure for Trades in Foreign Exchange-Traded Securities	Requirement extended to all marketplaces
6.12 No Restrictions on Trading on Another Marketplace	5.2 No Restrictions on Trading on Another Marketplace	See Comment 6.
6.13 Access Requirements	5.1 Access Requirements	See Comment 5.
<b>PART 10</b>		
10.1 Disclosure of Trading Fees by Marketplaces	10.1 Disclosure by Marketplaces	Combined with additional disclosure requirements for marketplaces
10.3 Discriminatory Terms	5.8 Discriminatory Terms	Requirement maintained, but included in Part 5 of proposed amendments to NI 21-101.
<b>PART 12</b>		
12.1(a)(i) and 12.1(b)(iii) [requirements that a marketplace develop, maintain	12.4 Business Continuity Planning	

and test reasonable business continuity and disaster recovery plans]		
<b>PART 14</b>		
14.5(a)(i) and 14.5(b)(iii) [requirements that an information processor develop, maintain and test reasonable business continuity and disaster recovery plans]	14.6 Business Continuity Planning	

## APPENDIX B

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

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

2. *Part 1 is amended by:*

(a) *adding the following definitions in alphabetical order in section 1.1:*

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

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

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

(b) *adding “or municipal body” after “municipal corporation” in paragraph (b) of the definition of “government debt security”;*

(c) *replacing paragraph (c) of the definition of “government debt security” in section 1.1 with the following:*

“(c) a debt security issued or guaranteed by a crown corporation or public body,”;

(d) *adding the following after section 1.4:*

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

3. *Part 3 is replaced with the following:*

#### **“PART 3 MARKETPLACE INFORMATION**

##### **3.1 Initial Filing of Information**

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

### **3.2 Change in Information**

- (1) Subject to subsection (2), a marketplace must not implement a significant change to a matter set out in Form 21-101F1 or in Form 21-101F2 unless the marketplace has filed an amendment to the information provided in Form 21-101F1 or in Form 21-101F2 in the manner set out in the Form at least 45 days before implementing the change.
- (2) A marketplace must file an amendment to the information provided in Exhibit L – Fees of Form 21-101F1 or Exhibit L – Fees of Form 21-101F2, as applicable, at least seven business days before implementing a change to the information provided in Exhibit L – Fees.
- (3) Immediately before implementing a change to a matter set out in Form 21-101 F1 or Form 21-101F2 other than a change referred to in subsection (1) or (2), a marketplace must file an amendment to the information provided in the Form.

### **3.3 Reporting Requirements**

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

### **3.4 Ceasing to Carry on Business as an ATS**

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

### **3.5 Forms Filed in Electronic Form**

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

4. *Part 4 is replaced with the following:*

**“PART 4 MARKETPLACE FILING OF AUDITED FINANCIAL STATEMENTS**

**4.1 Filing of Initial Audited Financial Statements**

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

**4.2 Filing of Annual Audited Financial Statements**

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

5. *Part 5 is amended by:*

- (a) *replacing the portion before section 5.2 with the following:*

**“ PART 5 MARKETPLACE REQUIREMENTS**

**5.1 Access Requirements**

- (1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (2) A marketplace must

- (a) establish written standards for granting access to each of its services; and
  - (b) keep records of
    - (i) each grant of access including the reasons for granting access to an applicant, and
    - (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.
- (3) A marketplace must not
- (a) permit unreasonable discrimination among clients, issuers and marketplace participants; or
  - (b) impose any burden on competition that is not reasonably necessary and appropriate.”;
- (b) replacing “recognized exchange or recognized quotation and trade reporting system” in section 5.2 with “marketplace”;*
- (c) replacing “member or user” in section 5.2 with “marketplace participant”;*
- (d) repealing subsection 5.3(2);*
- (e) repealing section 5.6;*
- (f) adding the following after section 5.6:*

**“ 5.7 Fair and Orderly Markets**

A marketplace must not engage in any activity that interferes with fair and orderly markets.

**5.8 Discriminatory Terms**

A marketplace must not impose terms that have the effect of discriminating between orders that are routed to the marketplace and orders that are entered on that marketplace for execution.

**5.9 Risk Disclosure for Trades in Foreign Exchange-Traded Securities**

- (1) When opening an account for a marketplace participant, a marketplace that is trading foreign exchange-traded securities must provide that

marketplace participant with disclosure in substantially the following words:

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

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

#### **5.10 Confidential Treatment of Trading Information**

- (1) A marketplace must not release a marketplace participant’s order or trade information to a person or company other than the marketplace participant, a securities regulatory authority or a regulation services provider unless
  - (a) the marketplace participant has consented in writing to the release of the information;
  - (b) the release of the information is required by this Instrument or under applicable law; or
  - (c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.
- (2) A marketplace must not carry on business unless it has implemented reasonable safeguards and procedures to protect a marketplace participant’s order or trade information, including
  - (a) limiting access to order or trade information of marketplace participants to
    - (i) employees of the marketplace, or
    - (ii) persons or companies retained by the marketplace to operate the system or to be responsible for compliance by the marketplace with securities legislation; and
  - (b) implementing standards controlling trading by employees of the marketplace for their own accounts.

- (3) A marketplace must not carry on business as a marketplace unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

### **5.11 Management of Conflicts of Interest**

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

### **5.12 Outsourcing**

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

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

- (h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.”

**7. Part 6 is amended by:**

- (a) *repealing sections 6.4 to 6.6;*
- (b) *replacing section 6.7 with the following:*

**“ 6.7 Notification of Threshold**

- (1) An ATS must notify the securities regulatory authority in writing if,
  - (a) during at least two of the preceding three months of operation, the total dollar value of the trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total dollar value of the trading volume for the month in that type of security on all marketplaces in Canada;
  - (b) during at least two of the preceding three months of operation, the total trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total trading volume for the month in that type of security on all marketplaces in Canada; or
  - (c) during at least two of the preceding three months of operation, the number of trades on the ATS for a month in any type of security is equal to or greater than 10 percent of the number of trades for the month in that type of security on all marketplaces in Canada.
- (2) An ATS must provide the notice referred to in subsection (1) within 30 days after the threshold referred to in subsection (1) is met or exceeded.”;
- (c) *repealing sections 6.8, 6.10, 6.12, and 6.13.*

**8. Part 7 is amended by:**

- (a) *replacing “displayed on” with “displayed by” in subsection 7.1(1);*
- (b) *replacing “of the marketplace” with “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” in subsection 7.1(2);*
- (c) *replacing “displayed on” with “displayed by” in subsection 7.3(1);*

- (d) *replacing* “of the marketplace” *with* “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” *in subsection 7.3(2)*;
- (e) *replacing* “A marketplace” *with* “A marketplace that is subject to this Part” *in section 7.6*.

9. *Part 8 is amended by:*

- (a) *replacing* “displayed on” *with* “displayed by” *in subsection 8.1(1)*;
- (b) *replacing* “displayed on” with “displayed by” *in subsection 8.2(1)*;
- (c) *repealing subsection 8.5*;
- (d) *replacing* “2012” *with* “2015” *in section 8.6*.

10. *Part 10 is amended by:*

- (a) *replacing the portion before section 10.2 with the following:*

**“PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS**

**10.1 Disclosure by Marketplaces**

A marketplace must publicly disclose on its website information reasonably necessary to enable a person or company to understand the marketplace’s operations or services it provides, including but not limited to information related to:

- (a) all fees, including any listing fees, trading fees, data fees, and routing fees charged by the marketplace, an affiliate or by a third party to which services have been outsourced;
- (b) how orders are entered, interact and execute;
- (c) all order types;
- (d) access requirements;
- (e) the policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides;
- (f) any referral arrangements between the marketplace and service providers;

- (g) where routing is offered, how routing decisions are made; and
- (h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest.”;

**(b) *repealing section 10.3.***

**11. *Part 11 is amended by the following:***

**(a) *replacing subparagraph 11.2(1)(c) with the following:***

“ (c) a record of each order which must include

- (i) the order identifier assigned to the order by the marketplace,
- (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
- (iii) the identifier assigned to the marketplace where the order is received or originated,
- (iv) each unique client identifier assigned to a client accessing the marketplace using direct electronic access,
- (v) the type, issuer, class, series and symbol of the security,
- (vi) the number of securities to which the order applies,
- (vii) the strike date and strike price, if applicable,
- (viii) whether the order is a buy or sell order,
- (ix) whether the order is a short sale order, if applicable,
- (x) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
- (xi) the date and time the order is first originated or received by the marketplace,
- (xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account,

- (xiii) the date and time the order expires,
- (xiv) whether the order is an intentional cross,
- (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
- (xvi) the currency of the order,
- (xvii) whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order was routed,
- (xviii) whether the order is a directed-action order, and
- (xix) whether the marketplace or a marketplace participant has marked the order as a directed-action order, and”;

**(b) replacing “transaction” with “trading” in subparagraph 11.2(1)(d)(ix);**

**(c) replacing “.” with “, and” at the end of subparagraph 11.2(1)(d)(ix);**

**(d) adding “(x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.” after subparagraph 11.2(1)(d)(ix);**

**(e) deleting “or 6.13” in subparagraph 11.3(1)(b);**

**(f) adding “and 12.4” after “12.1” in subparagraph 11.3(1)(c);**

**(g) replacing “6.10(2)” with “5.9(2)” in subparagraph 11.3(1)(e);**

**(h) replacing subparagraphs 11.3(2)(b), 11.3(2)(c) and 11.3(2)(d) with the following:**

“(b) copies of all forms filed under Part 3; and

(c) in the case of an ATS, copies of all notices given under section 6.7.”

**(i) repealing section 11.4.**

**12. Part 12 is amended as follows:**

**(a) replacing the title with “PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING”;**

**(b) replacing subsection 12.1(a) with the following:**

“(a) develop and maintain

- (i) an adequate system of internal control over those systems; and
- (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;”;

(c) *replacing subsection 12.1(b) with the following:*

“(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

- (i) make reasonable current and future capacity estimates;
- (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and”;

(d) *replacing “paragraph 12.1(a)” with “paragraph 12.1(a) and section 12.4” in subsection 12.2(1);*

(e) *adding the following after section 12.3:*

**“12.4 Business Continuity Planning**

- (1) A marketplace must develop and maintain reasonable business continuity plans, including disaster recovery plans.
- (2) A marketplace must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.”.

**13. Part 13 is amended by:**

(a) *replacing the title with “PART 13 MARKETPLACE CLEARING AND SETTLEMENT”;*

(b) *replacing “through an ATS” with “on a marketplace” in subsection 13.1(1);*

(c) *replacing “reported” with “reported to” in subsection 13.1(1).*

**14. Part 14 is amended by:**

**(a) repealing subsection 14.1(2);**

**(b) replacing “interdealer” with “inter-dealer” in subsection 14.4(1);**

**(c) adding the following after subsection 14.4(5):**

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

(a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,

(b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

(c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor’s report.

(7) An information processor must file its financial budget within 30 days after the start of a financial year.

(8) An information processor must file, within 30 days after the end of each calendar quarter, the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.

(9) An information processor must file, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information required by the Instrument, including where the list of designated securities can be found.”;

**(d) replacing subsection 14.5(a) with the following:**

“(a) develop and maintain

(i) an adequate system of internal controls over its critical systems; and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems

operations, information security, change management, problem management, network support, and system software support;”;

- (e) *replacing “;” with “; and” at the end of subparagraph 14.5(b)(i);*
- (f) *replacing “; and” with “;” at the end of subparagraph 14.5(b)(ii);*
- (g) *deleting paragraph 14.5.(b)(iii);*
- (h) *adding “and section 14.6” after “paragraph (a)” in subsection 14.5(c);*
- (i) *adding the following after section 14.5:*

#### **“14.6 Business Continuity Planning**

- (1) An information processor must develop and maintain reasonable business continuity plans, including disaster recovery plans.
- (2) An information processor must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.

#### **14.7 Confidential Treatment of Trading Information**

An information processor must not release order and trade information to a person or company other than the marketplace, inter-dealer bond broker or dealer that provided this information in accordance with this Instrument, or other than a securities regulatory authority, unless:

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

#### **14.8 Transparency of Operations of an Information Processor**

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

- (a) all fees charged by the information processor for the consolidated data;

- (b) a description of the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities;
- (c) access requirements; and
- (d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor.”

**15. *This Instrument comes into force on* •**

**PROPOSED AMENDMENTS TO FORM 21-101F1 – INFORMATION STATEMENT EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM**

**1. Form 21-101F1 – Information Statement Exchange or Quotation and Trade Reporting system is replaced with the following:**

**“FORM 21-101F1  
INFORMATION STATEMENT  
EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM**

**Filer:**             **EXCHANGE**                       **QUOTATION AND TRADE  
REPORTING SYSTEM**

**Type of Filing:**         **INITIAL**                                       **AMENDMENT**

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

Previous name:

New name:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):

6. Other offices

Address:

Telephone:

Facsimile:

7. Website address:

8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:

9. Counsel:

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

10. Market Regulation is being conducted by:

- the exchange
- the quotation and trade reporting system
- regulation services provider other than the filer (see Exhibit M)

## **EXHIBITS**

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

If the filer, recognized exchange or recognized quotation and trade reporting system files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer, recognized exchange or recognized quotation and trade reporting system, must, in order to comply with subsections 2.2(1), 2.2(2) or 2.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer should provide a clean and a blacklined version showing changes from the previous filing.

***Exhibit A – Corporate Governance***

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

***Exhibit B – Ownership***

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the exchange or recognized quotation and trade reporting system. For each of the persons listed in the Exhibit, please provide the following:

1. Name
2. Principal business or occupation and title
3. Ownership interest

4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest
5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*)

In the case of an exchange or quotation and trade reporting system that is publicly traded, if the exchange or quotation and trade reporting system is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a voting security of the exchange or quotation and trade reporting system.

### ***Exhibit C - Organization***

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

### ***Exhibit D - Affiliates***

1. For each affiliated entity of the exchange or quotation and trade reporting system provide the name, head office address and describe the principal business of the affiliate.
2. Provide the information below for each affiliated entity of the exchange or quotation and trade reporting system to which the exchange or quotation and trade reporting system has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – Operation of the Marketplace, including order entry, trading, execution, routing and data, or with which the

exchange or quotation and trade reporting system has any other material business relationship, including loans, cross-guarantees, etc.:

- i. Name and address of the affiliate
- ii. The name and title of the directors and officers, or persons performing similar functions, of the affiliate
- iii. A description of the nature and extent of the contractual and other agreement with the exchange and quotation and trade reporting system, and the roles and responsibilities of the affiliate under the arrangement
- iv. A copy of each material contract relating to any outsourced functions or other material relationship
- v. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents
- vi. For the latest financial year of the affiliated entity, financial statements, which may be unaudited, prepared in accordance with:
  - a. Canadian GAAP applicable to publicly accountable enterprises;  
or
  - b. Canadian GAAP applicable to private enterprises; or
  - c. IFRS.

Where the affiliated entity is incorporated or organized under the laws of a foreign jurisdiction, such financial statements may also be prepared in accordance with:

1. U.S. GAAP; or
2. accounting principles of a designated foreign jurisdiction as defined under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

### ***Exhibit E – Operation of the Marketplace***

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

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.

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

The filer should provide all policies, procedures and trading manuals related to the operation of the marketplace and, if applicable, the order router. If the marketplace is already filing these documents pursuant to section 14.3 of the Instrument, these need not be filed again.

### ***Exhibit F – Outsourcing***

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

1. Name and address of person or company to which the function has been

outsourced.

2. A description of the nature and extent of the contractual or other agreement with the exchange or quotation and trade reporting system and the roles and responsibilities of the arms-length party under the arrangement.
3. A copy of each material contract relating to any outsourced function.

### ***Exhibit G- Systems and Contingency Planning***

For each of the systems that support order entry, order routing, execution, trade reporting, trade comparison, data feed, market surveillance, and trade clearing, describe:

1. Current and future capacity estimates.
2. Procedures for reviewing system capacity.
3. Procedures for reviewing system security.
4. Procedures to conduct stress tests.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.
6. Procedures to test business continuity and disaster recovery plans.

### ***Exhibit H – Custody of Assets***

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

### ***Exhibit I- Securities***

1. List the types of securities listed on the exchange or quoted on the quotation and trade reporting system. If this is an initial filing, list the types of securities the Filer expects to list or quote.

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

***Exhibit J – Access to Services***

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

***Exhibit K – Marketplace Participants***

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

1. Name.
2. Date of becoming a marketplace participant.
3. Describe the type of trading activities primarily engaged in by the marketplace participant (*e.g.*, agency trader, proprietary trader, registered trader, market maker). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the activities or functions enumerated in this item,

identify each type (*e.g.*, agency trades, registered trader and market maker) and state the number of marketplace participants in each.

4. The class of participation or other access.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each:
  - (i) whether they were denied or limited access;
  - (ii) the date the marketplace took such action;
  - (iii) the effective date of such action; and
  - (iv) the nature and reason of any denial or limitation of access.

#### ***Exhibit L - Fees***

A description of the fee model and all fees charged by the marketplace, or by a third party to whom services have been outsourced, including fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, and how such fees are set.

#### ***Exhibit M - Regulation***

Market Regulation is being conducted by:

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

#### ***Exhibit N – Acknowledgement***

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

**CERTIFICATE OF EXCHANGE OR QUOTATION AND TRADE REPORTING  
SYSTEM**

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

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

(Name of exchange or quotation and trade reporting system)

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

(Signature of director, officer or partner)

(Official capacity - please type or print)

[Amended ]”.

**PROPOSED AMENDMENTS TO FORM 21-101F2 – INITIAL OPERATION  
REPORT ALTERNATIVE TRADING SYSTEM**

1. *Form 21-101F2 – Initial Operation Report Alternative Trading System is replaced with the following:*

**“FORM 21-101F2  
INITIAL OPERATION REPORT  
ALTERNATIVE TRADING SYSTEM**

**TYPE OF FILING:**

**INITIAL OPERATION REPORT**  **AMENDMENT**

Identification:

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

Previous name:

New name:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):
6. Other offices

Address:

Telephone:

Facsimile:

7. Website address:

8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:

9. Counsel:

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

10. The ATS is

a member of ..... (name of the recognized self-regulatory entity)

a registered dealer

11. If this is an initial operation report, the date the alternative trading system expects to commence operation:

12. The ATS has contracted with [regulation services provider] to perform market regulation for the ATS and its subscribers.

## **EXHIBITS**

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

If the ATS files an amendment to the information provided in its Initial Operation Report and the information relates to an Exhibit filed with the Initial Operation Report or a subsequent amendment, the ATS must, in order to comply with subsection 2.2(1), 2.2(2) or 2.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The ATS should provide a clean and blacklined version showing changes from the previous filing.

### ***Exhibit A – Corporate Governance***

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

### ***Exhibit B – Ownership***

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the ATS. For each of the persons listed in the Exhibit, please provide the following:

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

In the case of an ATS that is publicly traded, if the ATS is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a voting security of the ATS.

### ***Exhibit C - Organization***

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

### ***Exhibit D - Affiliates***

1. For each affiliated entity of the ATS provide the name, head office address and describe the principal business of the affiliate.
2. Provide the information below for each affiliated entity of the ATS to which the ATS has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – Operation of the Marketplace, including order entry, trading, execution, routing and data, or with which the ATS has any other material business relationship, including loans, cross-guarantees, etc.:
  - i. Name and address of the affiliate
  - ii. The name and title of the directors and officers, or persons describing similar functions, of the affiliate
  - iii. A description of the nature and extent of the contractual and other agreement with the ATS and the roles and responsibilities of the affiliate under the arrangement
  - iv. A copy of each material contract relating to any outsourced functions or other material relationship
  - v. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents

### ***Exhibit E – Operation of the Marketplace***

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

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.
3. The hours of operation.
4. A description of the services offered by the marketplace including, but not limited to order entry including co-location, trading, execution, routing and data.
5. A list of the types of orders offered, including a description of the features

and characteristics of orders.

6. Procedures regarding the entry, display and execution of orders. If indications of interest are used, please describe the information they include and list the types of recipients.
7. Description of how orders interact, including how priority is allocated between orders.
8. Description of order routing procedures.
9. Description of order and trade reporting procedures.
10. Description of procedures for clearance and settlement of transactions.
11. The safeguards and procedures of the marketplace to protect trading information of marketplace participants.
12. Training provided to participants and a copy of any materials provided both with respect to systems of the marketplace, the requirements of the marketplace, and the rules of the regulation services providers, if applicable.
13. Steps taken to ensure that marketplace participants have knowledge of and comply with the requirements of the marketplace.

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

#### ***Exhibit F – Outsourcing***

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

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

#### ***Exhibit G- Systems and Contingency Planning***

For each of the systems that support order entry, order routing, execution, trade reporting, trade comparison, data feed, market surveillance, and trade clearing, describe:

1. Current and future capacity estimates
2. Procedures for reviewing system capacity
3. Procedures for reviewing system security
4. Procedures to conduct stress tests
5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation
6. Procedures to test business continuity and disaster recovery plans

***Exhibit H – Custody of Assets***

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

***Exhibit I- Securities***

A list of the types of any other securities that are traded on the ATS, indicating the exchange(s) on which such securities are listed. If this is an initial operation report, the types of securities it expects to trade

***Exhibit J – Access to Services***

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the marketplace described in Exhibit E.4, including trading on ATS.
2. Describe the classes of marketplace participants (i.e. dealer, institution, or retail).
3. Describe the ATS's criteria for access to the services of the marketplace.
4. Describe any differences in access to the services offered by the marketplace to different groups or classes of marketplace participants.

5. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the services of the ATS.
6. Describe any procedures that will be involved in the suspension or termination of a marketplace participant.
7. Describe the ATS's arrangements for permitting clients of marketplace participants to have access to the marketplace. Provide a copy of any agreements or documentation relating to these arrangements.

### ***Exhibit K – Marketplace Participants***

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

1. Name.
2. Date of becoming a marketplace participant.
3. Describe the type of trading activities primarily engaged in by the marketplace participant (*e.g.*, agency trader, proprietary trader, registered trader, market maker). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the activities or functions enumerated in this item, identify each type (*e.g.*, agency trades, registered trader and market maker) and state the number of marketplace participants in each.
4. The class of participation or other access.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each:
  - (i) whether they were denied or limited access;
  - (ii) the date the marketplace took such action;
  - (iii) The effective date of such action; and
  - (iv) The nature and reason of any denial or limitation of access.

### ***Exhibit L - Fees***

A description of the fee model and all fees charged by the marketplace, or by a third party to whom services have been outsourced, including fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, and how such fees are set.

***Exhibit M – Regulation***

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

***Exhibit N – Acknowledgement***

The form of acknowledgement required by subsections 6.10(2) and 6.11(2) of National Instrument 21-101.

**CERTIFICATE OF ALTERNATIVE TRADING SYSTEM**

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

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Name of alternative trading system)

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

(Signature of director, officer or partner)

(Official capacity - please type or print)”.  
”

**PROPOSED AMENDMENTS TO FORM 21-101F3 *QUARTERLY REPORT OF  
ALTERNATIVE TRADING SYSTEM ACTIVITIES***

1. *Form 21-101F3 Quarterly Report of Alternative Trading System Activities is replaced with the following:*

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

**A. General Marketplace Information**

1. Marketplace Name:
2. Period covered by this report:
3. Identification:
  - A. Full name of marketplace (if sole proprietor, last, first and middle name):
  - B. Name(s) under which business is conducted, if different from item A:
  - C. Marketplace main street address:
4. Attach as **Exhibit A** a current list of all marketplace participants at the end of the period covered by this report, identifying those marketplace participants that are using the marketplace’s co-location services, if any. For each marketplace participant, indicate the number of trader IDs that may access the marketplace.
5. Attach as **Exhibit B** a list of all marketplace participants granted, denied or limited access to the marketplace during the period covered by this report, indicating for each marketplace participant: (a) whether they were granted, denied or limited access; (b) the date the marketplace took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access.
6. 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, including the date filed and amendment number.
7. 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 not implemented, including a description of the reason for which they were not implemented. The list should include the amendments filed during the period covered by the report, and cumulatively, as at the end of the period covered by the report.

8. 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 and reason for the outage.

**B. Marketplace Activity Information**

***Section 1 –Marketplaces Trading Exchange-Listed Securities***

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

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

Category of Securities	Volume		Value		Number of Trades	
	Transparent	Non-transparent	Transparent	Non-transparent	Transparent	Non-transparent
<b>Exchange-Traded Securities</b>						
1. Equity (includes preferred shares)						
2. Exchange-traded funds (ETFs)						
3. Debt securities						
4. Options						
<b>Foreign Exchange-Traded Securities</b>						
1. Equity (includes preferred shares)						
2. ETFs						
3. Debt securities						
4. Options						

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

**Chart 2 – Crosses**

Types of Crosses	% Volume	% Value	% Number of Trades
<b>% of exchange-traded securities that are</b>			
1. Intentional Crosses <sup>1</sup>			
2. Internal crosses			
3. Other crosses			

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

**Chart 3 – Order Information**

Types of Orders	% Volume	% Value	% Orders Executed	% Orders Cancelled <sup>2</sup>
1. Anonymous <sup>3</sup>				
2. Fully transparent				
3. Pegged Orders				
4. Fully hidden				
-Separate dark facility				
-Transparent Market				
5. Partially hidden (reserve)				

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

1 See definition of an Internal and Intentional Cross in Section 1.1 of the Universal Market Integrity Rules.  
 2 By cancellations, we mean "pure" cancellations, i.e. cancellations that do not result in a new and amended order.  
 3 Orders executed under ID 001.

**Chart 4 – Most traded securities**

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

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

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

**Chart 5 – Concentration of trading by Marketplace Participant**

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

**6. Routing Activities** - Indicate the percentage of marketplace participants that used marketplace-owned or third-party or affiliated routing services during the reporting period in **Chart 6** below.

**Chart 6 – Routing of marketplace orders**

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

**7. Co-location** - Indicate the percentage of marketplace participants that are using the marketplace’s co-location services, if any.

**Section 2 – Fixed Income Marketplaces**

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

**Chart 7 – Fixed Income Activity**

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

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

**2. Trading by security** – Provide the details requested in the form set out in **Chart 2** below for the 10 most traded fixed income securities on the marketplace (based on the value of the volume traded) for trades executed during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

**Chart 8 – Most traded fixed income securities**

<b>Category of Securities</b>	<b>Value Traded</b>	<b>Number of Trades</b>
Domestic Unlisted Debt Securities - Government 1. Federal [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Federal Agency [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9.		

Category of Securities	Value Traded	Number of Trades
10.		
3. Provincial and Municipal [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Domestic Unlisted Debt Securities – <b>Corporate</b> [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Domestic Unlisted Debt Securities – <b>Other</b> [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign Unlisted Debt Securities – <b>Government</b> [Enter issuer, maturity, coupon] 1. 2.		

Category of Securities	Value Traded	Number of Trades
3. 4. 5. 6. 7. 8. 9. 10.		
Foreign Unlisted Debt Securities – <b>Corporate</b> [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign Unlisted Debt Securities – <b>Other</b> [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		

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

**Chart 9 – Concentration of Trading by Marketplace Participant**

Marketplace Participant Name	Value Traded
1.	

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

**Section 3 – Securities Lending Marketplaces**

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

**Chart 10 – Lending Activity**

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

Securities (please specify)		
-----------------------------	--	--

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

**Chart 11 – Concentration of Activity by Borrower**

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

**Chart 12 – Concentration of Activity by Lender**

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

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

**Chart 13 – Most Loaned Securities**

Category of Securities	Quantity of Securities Lent During the	Aggregate Value of Securities Lent
------------------------	--	------------------------------------

	<b>Quarter</b>	<b>During the Quarter</b>
Domestic		
1. Common Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Preferred Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
3. Non-Corporate Equity Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
4. Government Debt Securities [Name of Security] 1. 2. 3. 4.		

5. 6. 7. 8. 9. 10.		
<b>5. Corporate Debt Securities</b> [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
<b>6. Other Fixed Income Securities</b> [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
<b>Foreign</b>		
<b>1. Common Shares</b> [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
<b>2. Preferred Shares</b>		

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

7.		
8.		
9.		
10.		
6. Other Fixed Income Securities [Name of Security]		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

**Section 4 – Derivatives Marketplaces in Quebec**

**1. General trading activity** – For each category of contracts traded on the marketplace, provide the details (where appropriate) requested in the form set out in **Chart 14** below. The information should be provided for transactions executed at the opening of the market, during regular trading hours, and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

**Chart 14 – General trading activity**

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

long term			
2. Index			
3. ETF			
4. Equity			
5. Currency			
6. Energy			
7. Others, please specify			

**2. Crosses** - Provide the aggregate information (where appropriate) requested in the form set out in **Chart 15** below by category of contract and for each type of cross executed on the marketplace. The information should be provided for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

**Chart 15 – Crosses**

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

**3. Order information** – Provide the aggregate information (where appropriate) requested in the form set out in **Chart 16** below by category of contract and for each type of order in exchange traded contracts executed on the marketplace. The information

should be provided for orders entered at the opening of the market, during regular trading and after hours during the quarter. Enter “none”, or “0” where appropriate.

**Chart 16 – Order Information**

Type of Orders	% Volume	% Number of Trades
I. Anonymous		
II. Fully transparent		
III. Peg orders		
IV. Fully hidden		
-Separate dark facility		
-Transparent market		
V. Partially hidden (reserve, for example iceberg orders)		

**4. Trading by category of contracts** – Provide the aggregate information requested in the form set out in **Chart 17** below for the 3 most traded contracts on the marketplace (based on the volume of contract traded). The information should be provided for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

**Chart 17 – Most traded contracts**

Category of Contracts	Volume	Number of Trades	Open Interest (Number/End of Quarter)
1(a). Interest rate derivatives – short term [Name of contracts] 1. 2. 3.			
1(b). Interest rate derivatives – short term [Name of contracts] 1. 2. 3.			
2. Index derivatives 1. 2. 3.			

3. ETF derivatives 1. 2. 3.			
4. Equity derivatives 1. 2. 3.			
5. Currency derivatives 1. 2. 3.			
6. Energy derivatives 1. 2. 3.			
7. Others, please specify 1. 2. 3.			

**5. Trading by marketplace participant** - Provide the aggregate information requested in the form set out in **Chart 18** below for each category of contracts and for the top 3 marketplace participants on the marketplace (based on the volume of contracts traded). The information should be provided for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

**Chart 18 – Concentration of trading per marketplace participant**

<b>Futures</b>	
<b>Marketplace Participant Name</b>	<b>Volume</b>
1(a). Interest rate - short term 1. 2. 3.	
1(b). Interest rate - long term 1. 2. 3.	
2. Index 1. 2. 3.	
3. ETF	

1. 2. 3.	
4. Equity 1. 2. 3.	
5. Currency 1. 2. 3.	
6. Energy 1. 2. 3.	
7. Others, please indicate 1. 2. 3.	
<b>Options</b>	
<b>Marketplace Participant Name</b>	<b>Volume</b>
1(a). Interest rate - short term 1. 2. 3.	
1(b). Interest rate - long term 1. 2. 3.	
2. Index 1. 2. 3.	
3. ETF 1. 2. 3.	
4. Equity 1. 2. 3.	
5. Currency 1. 2. 3.	

6. Energy 1. 2. 3.	
7. Others, please specify 1. 2. 3.	

**6. Co-location**

Indicate the percentage of marketplace participants that are using the marketplace’s co-location services, if any.

**C. Certificate of Marketplace**

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

DATED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
 (Name of Marketplace)

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

\_\_\_\_\_  
 (Signature of director, officer or partner)

\_\_\_\_\_  
 (Official capacity – please type or print)”

**PROPOSED AMENDMENTS TO FORM 21-101F5 INITIAL OPERATION  
REPORT FOR INFORMATION PROCESSOR**

1. *Form 21-101F5 Initial Operation Report for Information Processor is replaced with the following:*

**FORM 21-101F5  
INITIAL OPERATION REPORT FOR INFORMATION PROCESSOR**

**TYPE OF FILING:**

- INITIAL FORM        
AMENDMENT

**GENERAL INFORMATION**

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

Previous name:

New name:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):

6. Other offices

Address:

Telephone:

- Facsimile:
7. Website address:
8. Contact employee:
- Name and title:
- Telephone number:
- Facsimile:
- E-mail address:

9. Counsel:
- Firm name:
- Contact name:
- Telephone number:
- Facsimile:
- E-mail address:

10. List of all marketplaces, dealers or other parties for which the information processor is acting or for which it proposes to act as an information processor. For each marketplace, dealer or other party, provide a description of the function(s) which the information processor performs or proposes to perform.

11. List all types of securities for which information will be collected, processed, distributed or published by the information processor. For each such marketplace, dealer or other party, provide a list of all securities for which information with respect to quotations for, or transactions in, is or is proposed to be collected, processed, distributed or published.

**Exhibits**

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

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

### ***Exhibit A - Corporate Governance***

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

### ***Exhibit B - Ownership***

List any person or company who owns 10 percent or more of the information processor's outstanding shares or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the information processor.

Provide the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis through which such person exercises or may exercise such control or direction.

***Exhibit C - Organization***

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

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

***Exhibit D - Staffing***

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

***Exhibit E - Affiliates***

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

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

***Exhibit F - Services***

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

***Exhibit G – System and Operations***

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

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

***Exhibit H – Outsourcing***

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

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

***Exhibit I - Financial Viability***

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

***Exhibit J - Fees and Revenue Sharing***

1. Provide a complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the information processor for its information services. This would include all fees to provide data and fees to receive the data from the information processor.
2. Where arrangements exist to share revenue from the sale of data disseminated by the information processor with marketplaces, inter-dealer bond brokers and dealers that provide data to the information processor in accordance with National Instrument 21-101, a complete description of the arrangements and the basis for these arrangements.

***Exhibit K – Reporting to the Information Processor***

1. List all persons and entities that provide data to the information processor in accordance with the requirements of National Instrument 21-101.
2. Provide a complete set of all forms, agreements and other materials pertaining to the provision of data to the information processor.
3. A description of any specifications or criteria required of marketplaces, inter-dealer bond brokers or dealers who provide securities information to the information processor for collection, processing for distribution or publication. Identify those specifications or criteria which limit, are interpreted to limit or have the effect of limiting access to or use of any services provided by the information processor and state the reasons for imposing such specifications or criteria.

4. For each instance during the past year in which any person or entity has been prohibited or limited to provide data by the information processor, indicate the name of each such person or entity and the reason for the prohibition or limitation.

***Exhibit L - Access to the Services of the Information Processor***

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

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

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

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

**CERTIFICATE OF INFORMATION PROCESSOR**

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

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

(Name of information processor )

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

(Signature of director, officer or partner)

(Official capacity - please type or print)".

**PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES***

1. *National Instrument 23-101 Trading Rules is amended by this Instrument.*
2. *Part 6 is amended by:*
  - (a) *replacing “The following are the trade-throughs referred to in paragraph 6.1(1)(a)” with “For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are” in section 6.2;*
  - (a) *replacing “marketplace participant” with “marketplace participant or a marketplace that routes or reprices orders” in section 6.5.*
3. *Part 11 is amended by:*
  - (a) *replacing “this Part” with “the requirements in section 11.2” in subsection 11.1(2);*
  - (b) *replacing “record” with “record in electronic form” in subsection 11.2(1);*
  - (c) *replacing “; and” with “;” in paragraph 11.2(1)(r);*
  - (d) *replacing “.” with “;” in paragraph 11.2(1)(s);*
  - (e) *adding the following after paragraph 11.2(1)(s):*

“(t) each unique client identifier assigned to a client accessing the marketplace using direct electronic access; and

(u) whether the order is a directed-action order.”;
  - (f) *replacing “records” with “records in electronic form” in subsection 11.2(7).*
4. *This Instrument comes into force on ●*

## APPENDIX C

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

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

**PART 1 INTRODUCTION**

~~1.1 Introduction – Traditionally, the Canadian securities regulatory authorities have regulated securities markets by regulating dealers, exchanges and, in some jurisdictions, quotation and trade reporting systems. In recent years, particularly in the United States, new types of markets have emerged that take different forms and trade securities in a different manner than on those markets. These entities are referred to as alternative trading systems. While the existing regulatory system will generally apply to the activities of these markets, there are instances where the existing regulatory system needs to be supplemented. Accordingly, the Canadian securities regulatory authorities have adopted National Instrument 21-101 Marketplace Operation (the "Instrument") to create an appropriate regulatory regime to deal with these new types of markets and to supplement the regime applicable to exchanges and quotation and trade reporting systems.~~

~~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.~~

1.1 Introduction – Exchanges, quotation and trade reporting systems and ATs are marketplaces that provide a market facility or venue on which securities can be traded. The areas of interest from a regulatory perspective are in many ways similar for each of these marketplaces since they may have similar trading activities. The regulatory regime for exchanges and quotation and trade reporting systems arises from the securities legislation of the various jurisdictions. Exchanges and quotation and trade reporting systems are recognized under orders from the Canadian securities regulatory authorities, with various terms and conditions of recognition. ATs, which are not recognized as exchanges or quotation and trade reporting systems, are regulated under [National Instrument 21-101 Marketplace Operation](#) (the Instrument) and [National Instrument 21-101 Trading Rules](#) (NI 23-101). The Instruments, 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 NI 21-101 and NI 23-101. 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, and is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of "foreign exchange-traded security".~~

1.2 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](http://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) and (d) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders of 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:

~~1.(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.

~~2.(b)~~ A system that merely routes orders for execution to a facility where the orders are executed.

~~3.(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 ~~trading for the purposes of securities legislation and 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 IROC Rule 2100, but will be subject to all other IROC requirements applicable to a dealer.

(8) A dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and generates trade execution through the routing of both sides of a match to a marketplace as a cross, would be considered by the Canadian securities regulatory authorities to be operating a marketplace under paragraph (c) of the definition of "marketplace".

### **PART 3 CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSS**

#### **3.1 Exchange**

- (1) ~~Canadian s~~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) ~~Canadian s~~Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under ~~Canadian s~~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 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 subsection 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 Canadian 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 subsection 6.1(a) and all other requirements in the Instrument and in NI23-101 of the Instrument 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) Subsection 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, 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. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having market dominance over 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) and section 12.2 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, preferred securities, debt securities or options.~~

(7) Subsection 6.7 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, 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.
- (9) Subsections ~~6.10(2) and 6.11(2)~~6.11(2) of the Instrument requires an ATS to obtain an acknowledgement from its subscribers. The acknowledgement may be obtained in a number of ways, including requesting the subscriber's signature or requesting that the subscriber 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 subscriber has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the ATS to ensure that an acknowledgement is obtained from the subscriber in a timely manner.

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

##### **a.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, exercising this discretion, 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; ~~and~~
  - (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; ~~;~~
  - (~~ee~~) 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;
  - (~~fe~~) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and
  - (~~gf~~) 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; ~~and.~~

##### **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 label put on a transaction is not determinative of whether the transaction 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. 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 price, based on understandings or past dealings, will be viewed as 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 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 FORMS FILED BY MARKETPLACES**

### **6.1 Forms Filed by Marketplaces**

- ~~(1) Subsection 3.1(1) of the Instrument requires an applicant for recognition as an exchange to file Form 21-101F1. This subsection does not apply to an exchange that was recognized before the Instrument came into force.~~
- ~~(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 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 the forms be available for public inspection.~~
- ~~(3) Under subsection 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to the information provided in Form 21-101F1, in each case, in the manner set out in Form 21-101F1. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, C, I, J, K, M, N, P and Q of Form 21-101F1. This is also applicable to recognized quotation and trade reporting systems under subsection 4.2(1) of the Instrument.~~
- ~~(4) A recognized exchange or recognized quotation and trade reporting system that files amendments to the information provided~~

in Form 21-101F1 should number each filing consecutively.

- (5) ~~Securities legislation or the terms and conditions of the recognition of the exchange or quotation and trade reporting system may require that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority.~~
- (6) ~~Under subsection 6.4(2) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F2, an ATS is required to file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2. The Canadian securities regulatory authorities consider that a significant change includes a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.~~
- (7) ~~Subsection 6.4(4) of the Instrument requires an ATS to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).~~
- (8) ~~If an ATS files notice of its intention to carry on exchange activities pursuant to section 6.6 of the Instrument, and the ATS intends to begin to carry on business as an exchange, the ATS is required to file Form 21-101F1.~~

~~6.2 Forms Filed in Electronic Format—The Canadian securities regulatory authorities request that all forms and exhibits required to be filed under the Instrument be filed in electronic format, where possible.~~

## **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, marketplace participants, investors, or the Canadian capital markets. The Canadian securities regulatory authorities would consider significant changes to include:
- (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) changes to the services provided by the marketplace, including the hours of operations, or the introduction of new services;
  - (c) changes to the means of access to the market or facility and its services;
  - (d) changes to or new order types;
  - (e) changes to or new types of securities traded on the marketplace;
  - (f) changes to or new types of securities listed on exchanges or quoted on quotation and trade reporting systems;

- (g) changes to or new types of marketplace participants;
- (h) changes to the systems and technology used by the marketplace that support trading and, if applicable, market surveillance, including those affecting capacity;
- (i) 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) changes in control over marketplaces;
- (k) changes in affiliates;
- (l) changes in and new outsourcing arrangements for key services or systems;
- (m) changes in and new -custody arrangements; and
- (n) changes in fees and the fee model of the marketplace.

These would not include housekeeping or administrative changes to information in Form 21-101F1 or Form 21-101F2, such as changes in the routine processes, practice or administration of the marketplace, changes due to standardization of terminology, or minor system or technology changes that would not significantly impact the system or its capacity. Such changes would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument.

- (5) 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.
- (6) 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.
- (7) 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) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).

## **6.2 Filing of Financial Statements**

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

## **PART 7 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS**

### **7.1 Access Requirements**

- (1) Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not restrict the authority of a recognized exchange or recognized quotation and trade reporting system to maintain reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, fees and practices of the exchange or quotation and trade reporting system do not unreasonably create barriers to access to the services provided by the exchange or quotation and trade reporting system.

- (2) ~~For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access to~~
- (a) ~~a member or user that directly accesses the exchange or quotation and trade reporting system,~~
  - (b) ~~a person or company that is indirectly accessing the exchange or quotation and trade reporting system through a member or user, or~~
  - (c) ~~a marketplace routing an order to the exchange or quotation and trade reporting system.~~

~~The reference to “a person or company” in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a member or user.~~

- (3) ~~The reference to “services” in paragraph 5.1(b) 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 and data.~~
- (4) ~~Recognized exchanges and recognized quotation and trade reporting systems 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 recognized exchange or recognized quotation and trade reporting system 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 exchange or quotation and trade reporting system, 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 recognized exchange or recognized quotation and trade reporting system unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IROC’s Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a recognized exchange’s or recognized quotation and trade reporting system’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 recognized exchange’s or recognized quotation and trade reporting system’s services when taking into account factors including those listed above.~~

**7.2 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.~~

**7.3 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. It is the intention of the securities regulatory authority to 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.~~

## **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 and data.
- (4) Marketplaces that send indications of interest to a selected smart order router should consider the extent to which such information should be sent to other smart order routers 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 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 applicable 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 – Section 5.7 of the Instrument establishes the requirement that a marketplace operate 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.

### **7.7** Confidential Treatment of Trading Information

- (1) Subsection 5.10 (2) of the Instrument provides that a marketplace shall not carry on business as a marketplace unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's trading information. These include
- (a) limiting access to the trading information of marketplace participants, such as the identity of marketplace participants and their orders, to those employees of, or persons or companies retained by, the marketplace to operate the system or to be responsible for its compliance with securities legislation; and
  - (b) having in place procedures to ensure that employees of the marketplace cannot use such information for trading in their own accounts.
- (2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the marketplace, whether or not they have direct responsibility for the operation of the marketplace.
- (3) Nothing in section 5.10 of the Instrument prohibits a marketplace from complying with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. This statement is necessary because an investment dealer that operates a marketplace may be an intermediary for the purposes of National Instrument 54-101, and may be required to disclose information under that Instrument.

**7.8** Management of Conflicts of Interest - 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, and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.

**7.9** 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. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facility. 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.

## **PART 8**            **REQUIREMENTS ONLY APPLICABLE TO ATSS**

### **8.1** Confidential Treatment of Trading Information by ATSS

- (1) Subsection 6.8(2) of the Instrument provides that an ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information. These include
- (a) limiting access to the trading information of subscribers, such as the identity of subscribers and their orders, to those employees of, or persons or companies retained by, the ATS to operate the system or to be responsible for its compliance with Canadian securities legislation; and
  - (b) having in place procedures to ensure that employees of the ATS cannot use such information for trading in their own accounts.

- ~~(2) — The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ATS, whether or not they have direct responsibility for the operation of the ATS.~~
- ~~(3) — Nothing in section 6.8 of the Instrument prohibits an ATS from complying with National Policy 41 Shareholder Communication, or its successor instrument. This statement is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Policy 41, or its successor instrument, and may be required to disclose information under that Instrument~~

**8.1 Risk disclosure to non-registered subscribers** - Subsection 6.11(2) of the Instrument requires an ATS to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature or 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 ~~Access Requirements~~**

- ~~(1) — Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. The purpose of these access requirements is to ensure that the policies, procedures, fees and practices of the ATS do not unreasonably create barriers to access to the services provided by the ATS.~~
- ~~(2) — For the purposes of complying with the order protection requirements in section 6 of NI 23-101, an ATS should permit fair and efficient access to~~
- ~~(a) — a subscriber that directly accesses the ATS,~~
  - ~~(b) — a person or company that is indirectly accessing the ATS through a subscriber, or~~
  - ~~(c) — a marketplace routing an order to the ATS.~~

~~In addition, the reference to “a person or company” in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a subscriber that is a dealer.~~

- ~~(3) — The reference to “services” in paragraph 6.13(b) of the Instrument means all services that may be offered to a person or company and includes all services related to order entry, trading, execution, routing and data.~~
- ~~(4) — ATSs are responsible for ensuring that the fees they set are in compliance with section 6.13 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, an ATS 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 ATS, 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 an ATS unreasonably condition or limit access to its services. With respect to trading fees, our view is that a trading fee equal to or greater than the minimum trading increment as defined in IROC’s Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to an ATS’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 an ATS’s services when taking into account factors including those listed above. **[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 or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, 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.~~

(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]

(4) [Repealed]

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

9.2 [Repealed]

## PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

### 10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) The 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. 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 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

~~(ii)(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:

~~4.(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+".

~~2.(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.

~~3.(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]

11.2 [Repealed]

11.3 [Repealed]

11.4 [Repealed]

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

## **PART 12 — DISCLOSURE OF TRADING FEES FOR MARKETPLACES**

**12.1 — Disclosure of Trading Fees by Marketplaces** — Section 10.1 of the Instrument requires that each marketplace make its schedule of trading fees publicly available. The schedule should include all trading fees and provide the minimum and maximum fees payable for certain representative transactions. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose trading fees does not require a combined price calculation by each marketplace.

**12.2 — Discriminatory Terms** — Section 10.2 of the Instrument prohibits a marketplace from imposing terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.

## **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) Subsection 10.1(a) requires marketplaces to disclose publicly their fee schedule, including listing, trading, data and routing fees charged by the marketplace. The trading fees should provide the minimum and maximum fees payable for certain representative transactions. 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. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose trading fees does not require a combined price calculation by each marketplace.
- (3) Subsection 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of how orders are prioritized for execution 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) Subsection 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 conflicts of interest.
- (5) Subsection 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.
- (6) Subsection 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 ~~Canadian~~ securities legislation, the ~~Canadian~~ 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 ~~CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS~~ 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.
- (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' from the IT Governance Institute.
- (2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, ~~business continuity~~ 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.
- (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. 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. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.~~ 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. 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) 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 scope that would have applies 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, 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, and changes to systems or staff of the marketplace.~~ 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 Technology Specifications and Testing Facilities

- (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.
- (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.
- (3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

## 14.3 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 a disaster recovery plan, it test it on a periodic basis, and at least annually.

## PART 15 CLEARING AND SETTLEMENT

- 15.1 Clearing and Settlement** - Subsection 13.1(1) of the Instrument requires that ~~all trades executed through an ATS~~ all trades executed through a marketplace shall 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.

## 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 relating 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,

~~8.(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;

~~9.(b)~~ whether all marketplaces may obtain access to the information processor on fair and reasonable terms;

~~10.(c)~~ personnel qualifications;

~~11.(d)~~ whether the information processor has sufficient financial resources for the proper performance of its functions;

~~12.(e)~~ the existence of another entity performing the proposed function for the same type of security;

~~13.(f)~~ the systems report referred to in subsection ~~14.5(b)~~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 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. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, F, G, H, O, P, Q, R and S and Item 10 of Form 21-101F5.~~

**16.3 Change to 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
- (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 **System Requirements** – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.~~

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

## APPENDIX D

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

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**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 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.

**1.1.4 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 IROC’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.

**1.1.5 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.

**1.1.6 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.

## **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 an ATS marketplace in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the ATS 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 ~~or an exchange or quotation and trade reporting system that has been recognized for the purposes of the Instrument and NI 21-101~~. 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, the recognized quotation and trading reporting system or the exchange or quotation and trade reporting system recognized for the purposes of the Instrument and NI 21-101 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, recognized quotation and trading reporting system or exchange or quotation and trade reporting system recognized for the purposes of the Instrument and NI 21-101.

## **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 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. ~~The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It~~ 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.

(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. 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.

**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).