

**CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 21-309  
INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES  
OTHER THAN OPTIONS**

The purpose of this notice is to inform the public that TSX Inc. (TSX) will act as an information processor for exchange-traded securities other than options<sup>1</sup> under National Instrument 21-101 *Marketplace Operation* (NI 21-101) for a period of five years from July 1, 2009 to June 30, 2014.

**1. Regulatory Requirements**

NI 21-101 provides for the operation and regulation of an information processor. An information processor is defined as a person or company that receives and provides information under NI 21-101 and has filed Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

Part 7 of NI 21-101 requires that marketplaces that display orders of exchange-traded securities provide information regarding these orders to an information processor if one exists. Marketplaces are also required to provide trade information related to exchange-traded securities to an information processor or, in its absence, to an information vendor. The information processor has some flexibility regarding the information to be reported to it by the marketplaces.

The regulatory requirements that apply to an information processor are set out in Part 14 of NI 21-101. They include:

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

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

The information processor is designated as a market participant under the *Securities Act* (Ontario) and has been recognized as an information processor under the *Securities Act* (Québec).

---

<sup>1</sup> In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

## 2. The Need for a Consolidated Source of Data and an Information Processor

The need for an information processor is twofold: first, where there are multiple marketplaces trading the same exchange-traded security, an information processor will address information fragmentation and provide investors and market participants with at least one source of consolidated data. Second, an information processor will facilitate compliance by marketplace participants with relevant regulatory requirements in a multiple marketplace environment. It will ensure the availability of consolidated data that meets regulatory standards and which users, as well as regulators, could use to demonstrate or evaluate compliance with certain regulatory requirements like best execution, short selling and “best price” or trade-through obligations.

We recognize that there is a perception that regulatory requirements effectively mandate that marketplace participants connect to and subscribe to data from all marketplaces or to the information processor to be able to comply with their regulatory obligations. Some believe that this, in turn, may lead marketplaces to charge fees that do not reflect the value of their data, or their market share of orders and/or trades. Previous CSA notices<sup>2</sup> and Companion Policy 23-101CP specifically state that this is not the case.

Subsection 4.1(5) of the Companion Policy 23-101CP indicates that, in order to meet best execution obligations where securities trade on multiple marketplaces in Canada, dealers should consider information from all appropriate marketplaces, and not just those marketplaces where a dealer is a participant. However, considering information from all appropriate marketplaces “does not mean that a dealer must have access to real-time 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.” Guidance published relating to the “best execution” requirements established by the Investment Industry Regulatory Organization of Canada in UMIR 5.1 *Best Execution of Client Orders* echo this view as does the policy related to UMIR 5.2 *Best Price Obligation*.<sup>3</sup>

We would also like to clarify that, while we believe that consolidated data from an information processor will facilitate compliance by marketplace participants with their regulatory requirements, this is not the only source from which data can be obtained. Market participants are not required to take real-time data from the information processor and they may rely on other data sources to obtain the marketplace data that they need, such as information vendors or direct data feeds from the marketplaces.

---

<sup>2</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) 29 OSCB 9731 December 15, 2006 and CSA Staff Notice 21-306 Notice of Filing of Forms 21-101F5 – Initial Operation Report for Information Processor, published at (2007) 30 OSCB (Supp-3) (CSA Staff Notice 21-306).

<sup>3</sup> UMIR and its related guidance and policies require dealers to have policies and procedures in place to determine if orders from a marketplace should be initially considered. Part of this consideration of a marketplace for trading is whether there is a reasonable likelihood of liquidity on that marketplace.

### 3. Background and Process to Date

#### a. Request for filings of Forms 21-101F5

In July 2006, we invited entities interested in being an information processor to file Form 21-101F5, and published a separate notice for this purpose.<sup>4</sup> Bourse de Montreal Inc. (MX), CDS Inc. (CDS) and TSX applied to be an information processor for exchange-traded securities.<sup>5</sup> We published a summary of the filings received in April 2007, in CSA Staff Notice 21-306.<sup>6</sup> Since the initial filing, MX and CDS have withdrawn their applications and TSX updated its initial application. A summary of the revised proposal, prepared based on information provided by TSX, is attached at Appendix A of this notice.<sup>7</sup>

#### b. Factors and criteria considered in the review

Section 16.2 of Companion Policy to NI 21-101 states that the CSA will review Form 21-101F5 to determine whether it is contrary to the public interest for the filer to act as an information processor and also describes the factors used when evaluating the filings received. They include the performance capabilities, standards and procedures for the collection, processing, distribution and publication of order and trade information; whether all marketplaces may obtain access to the information processor on fair and reasonable terms; whether the entity applying for the role of an information processor has sufficient financial resources for the role; the qualification of its personnel; the existence of another entity performing the role of an information processor; and the independent systems review prepared as required by subsection 14.5(b) of NI 21-101.

In CSA Staff Notice 21-306<sup>8</sup> we identified the following criteria to be used to evaluate applications to be an information processor: financial viability; governance requirements; the existence of processes to manage inherent conflicts of interest; system requirements; a commitment to receiving and disseminating data in order to meet the transparency requirements set out in NI 21-101; a competitive fee structure; and, where revenue is shared with contributors of data, a fair method of revenue allocation.

#### c. Review of TSX Form 21-101F5

As indicated above, since the original filing of Form 21-101F5 by TSX published in summary on April 2007, TSX revised its proposal. The following changes were made:

---

<sup>4</sup> CSA Notice 21-304 Request for Filing of Form 21-101F5 Initial Operation Report for Information Processor by Interested Information Processor, published in Ontario on July 14, 2006 at (2006) 29 OSCB 5757.

<sup>5</sup> MX and CDS also applied to be an information processor for corporate debt securities.

<sup>6</sup> See *supra* note 2.

<sup>7</sup> Please note that a detailed description of the technology to be used, including in Form 21-101F5 filed by TSX, has not been published as it is our view that it is commercial and confidential information. This is consistent with our view, also expressed in subsection 16.2(3) of Companion Policy to NI 21-101, that the forms filed by an information processor under NI 21-101 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.

<sup>8</sup> See *supra* note 2.

- TSX will establish a Governance Committee with marketplace representation to make decisions with respect to significant areas of the operations of the information processor;
- TSX updated the description of the products offered;
- TSX removed the access fees that it initially intended to charge marketplaces to connect to the IP; and
- TSX engaged a third party technology vendor.

These revisions were made not only to update the original filing by TSX to reflect the existing products and technology used by the TSX to consolidate data, but also to address CSA staff concerns regarding the proposed governance structure and the potential conflicts of interest, real or perceived, associated with TSX, a competing marketplace, acting as an information processor. These concerns, as well as concerns about the technology, were also raised by industry participants including dealers and marketplaces.

#### **4. CSA Conclusion**

##### *a. TSX as an information processor*

We are of the view that TSX's revised proposal meets all our criteria for evaluation of a potential information processor. We note that the governance structure proposed by the TSX promotes the independence of the governance of the information processor from that of TSX's business operations, and also ensures representation from each of the marketplaces contributing the data. The technology solution provides no unfair advantage to TSX, and an undertaking to this effect has been provided by TSX.<sup>9</sup> In addition, we understand that most marketplaces are satisfied with the technology solution proposed by the TSX. We are also satisfied that the fee model preserves the status quo for market data fees by passing the existing marketplaces' data fees through to the subscribers of the information. The fee model - the pass-through of data fees plus a distribution fee charged and retained by TSX - meets our criterion that an information processor have some method to share data fee revenue with the contributors of data.

Based on our review of the updated Form 21-101F5 filed by TSX, we believe that it is not contrary to the public interest for TSX to be an information processor for exchange-traded securities other than options<sup>10</sup>, for a period of five years beginning July 1, 2009 and ending June 30, 2014. In connection with Form 21-101F5 and the information represented within it, TSX agreed to a number of undertakings, listed at Appendix B of this notice.

The TSX IP will disseminate the following products:

- Consolidated Data Feed, which will provide access to pre- and post-trade market data from each contributing marketplace;
- Consolidated Last Sale, which will provide real-time last sale data from all contributing marketplaces; and

<sup>9</sup> See undertaking 2c in Appendix B.

<sup>10</sup> In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

- Canadian Best Bid and Offer, which will provide a consolidated best bid and offer for all exchange-traded securities, other than options.

The inclusion of a consolidated depth-of-book product will depend on the outcome of the discussions relating to the proposed CSA Trade-Through Protection Rule.

*b. Obligations of the marketplaces*

We remind the marketplaces of the requirement in Part 7 of NI 21-101 to provide their data to TSX, as an information processor. In order to comply with this requirement, the marketplaces must, if they have not done so already, work with TSX, as an information processor, to establish the necessary connections on a timely basis. Upon publication of this notice, we expect marketplaces to immediately begin working with the TSX to establish connections and facilitate testing of those connections and the incorporation of that data into the existing TSX products. We acknowledge that providing information to the information processor and incorporating it into the feeds may take a number of months.

*c. Review of marketplace data fees*

Recently, concerns were raised regarding the existing levels of fees charged by marketplaces, and the potential for a pass-through model to lead to an increase of those fees. Some thought that an information processor could be used to set data fees and even control marketplace fees.

The CSA will be undertaking a review of market data fees. This may entail reviewing the regulatory requirements relating to data fees globally; looking at fee models used by data consolidators, vendors and marketplaces in Canada and in other jurisdictions; understanding what steps other markets have taken to ensure that the cost (including data fees) and benefits of marketplace participation are aligned; and reviewing the options available to correct or mitigate potential abuses. Once this review is completed, we will consider what, if any, steps should be taken in this area. Such steps may include further regulation or other mechanisms to correct or mitigate any potential issues.

It is our view, however, that the critical need for consolidated data in a multiple marketplace environment, and the important fact that the TSX IP fee model maintains the status quo, both mean that we should proceed with the current information processor initiative before our review of market data fees is complete. We confirm our expectation that the distribution of a marketplace's data through an information processor will not lead that marketplace to charge unjustified or excessive fees for its data. We would like to remind marketplaces and marketplace participants that, currently, NI 21-101 provides us with a way to take action if the fees charged by marketplaces unreasonably prohibit, condition or limit access to the services of the marketplaces.<sup>11</sup> Such fees would include data fees charged through an information processor.

---

<sup>11</sup> Subsection 5.1(b) of NI 21-101 states that “[a] recognized exchange ... shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it”. Similarly, subsection 6.13(b) of NI 21-101 states that “[a]n ATS shall not unreasonably prohibit, condition or limit access by a person or company to services offered by it”.

## 5. Questions

Questions may be referred to:

Ruxandra Smith  
Ontario Securities Commission  
(416) 593-2317

Jonathan Sylvestre  
Ontario Securities Commission  
(416) 593-2378

Lorenz Berner  
Alberta Securities Commission  
(403) 355-3889

Elaine Lanouette  
Autorité des marchés financiers  
(514) 395-0337 ext. 4356

Doug Brown  
Manitoba Securities Commission  
(204) 945-0605

Tracey Stern  
Ontario Securities Commission  
(416) 593-8167

Paul Redman  
Ontario Securities Commission  
(416) 593-2396

Serge Boisvert  
Autorité des marchés financiers  
(514) 395-0337 ext. 4358

Anne Hamilton  
British Columbia Securities Commission  
(604) 899-6716

## APPENDIX A

### SUMMARY OF TSX'S PROPOSAL FOR AN INFORMATION PROCESSOR FOR EXCHANGE-TRADED SECURITIES OTHER THAN OPTIONS

#### 1. Corporate Governance

TSX Inc. (TSX) is wholly-owned by TMX Group Inc. (TMX Group), which is a publicly held company. TSX operates the Toronto Stock Exchange, and wholly owns TSX Venture Exchange Inc. Pursuant to NI 21-101, Toronto Stock Exchange and TSX Venture Exchange are required to contribute data to an information processor, if one is in place.

The TSX Information Processor (TSX IP) will be operated by the TMX Datalinx division of TSX. TMX Datalinx is the market data division of TMX Group. TMX Datalinx currently distributes equity market data for most equity marketplaces in Canada who contribute their data on a voluntary commercial basis. TMX Datalinx also obtains other data from a variety of marketplaces and partners which it distributes to downstream clients.

Personnel that would be involved in the operations of the TSX IP include staff from various TMX Group divisions representing data product management, sales, administration, vendor and customer support services, technologies, as well as staff from support functions such as finance and legal. Staff from independent, third party technology providers will also contribute to the operations of the TSX IP in accordance with documented service standards that are set out in the agreements that TSX has entered into with these third party providers. TMX Datalinx staff in particular will oversee the TSX IP's business and product development and manage operational priorities as well as any new policies and procedures related to enhancements and operational support.

The TSX IP will have a Governance Committee (IP Governance Committee). The IP Governance Committee will contribute to the development of a clear information processor strategy that is open, transparent and accountable. The IP Governance Committee will promote fair and impartial treatment for members and stakeholders and evaluate, on an ongoing basis, the IP Governance Committee's effectiveness.

Each marketplace that contributes data to the TSX IP will be entitled to nominate one representative on the IP Governance Committee. In addition, an individual who is independent of all marketplaces and TMX Group will sit on the IP Governance Committee in a non-voting capacity and act as Committee Chair. Each marketplace will have one voting seat.

The IP Governance Committee will have decision making authority with respect to scope of service, operational priorities and enhancements, bandwidth and capacity planning, criteria and methods for monitoring performance. Within the scope of service, the IP Governance Committee will establish the means in which to ensure the data set and quality of the TSX IP services are maintained and evaluated. As referenced above, TSX will appoint an independent, non-voting, Committee Chair of the IP Governance Committee.



The TSX IP will also establish a sub-committee of the IP Governance Committee (IP Advisory Sub-Committee), which will include additional representation from at least one data vendor, and one market participant from each of a buy and sell side firm. The IP Advisory Sub-Committee will have input into, and be a forum for raising issues on, TSX IP matters, and will be advisory in nature and non-voting. The IP Governance Committee will help determine the composition, structure and meeting frequency of the IP Advisory Sub-Committee.

To further address any perceived conflicts of interest, the TSX IP will implement policies and procedures to ensure that TSX staff who are not involved in operating the TSX IP do not acquire knowledge of, or access to, competitor data or client information. As well, TSX will enter into a universal information processor agreement with each contributing marketplace which will include detailed service level terms and change management and operational procedures which will ensure, on a commercial basis, that data transmitted to the TSX IP will not be inappropriately manipulated by TSX. Perceived conflicts of interest will also be mitigated by the use of a third party technology solution, as is described below under “Systems and Operations”.

## **2. Systems and Operations**

TMX Datalinx uses a range of in-house and independent, third party technologies to distribute Canadian equity, news, fixed income, derivatives, and foreign exchange decision support content to capital markets participants globally. In 2007, TMX Datalinx selected a global, market-leading independent technology provider to deploy and manage the TSX IP solution, the consolidated data feed (CDF) suite of products. The CDF solution is intended to offer an exchange independent solution by deploying third party technology and operational/technical support while leveraging existing TSX hosting infrastructure with connectivity to over 100 market data vendors, 7,000 clients, and over 153,000 subscriptions.

The CDF solution simultaneously distributes real-time consolidated data (running hot/hot) from two production environments in separate physical locations providing clients with flexible connectivity options (in terms of location) and redundancy. Either location can be accessed as the primary site. Information from a contributing marketplace can be transmitted to the TSX IP in its native format and will be normalized and consolidated by the TSX IP, saving marketplaces the one time and ongoing costs of building and supporting a new format for the TSX IP.

The CDF solution has been designed to provide timestamps when the data first touches its platform and timestamps when the data exits the platform, so that each marketplace and customer can monitor latency in real time, on a continuous basis.

TSX and its third party providers have procedures in place to add capacity to the TSX IP as required. The current technology is scalable through additional infrastructure, which is commoditized servers and operating systems. The TSX IP benefits from this independence while leveraging TMX Group’s exchange grade data centers. Independent third party providers monitor system performance, manage capacity, and provide managed services for the CDF software applications and physical infrastructure while TMX Group staff provides infrastructure management for the facilities, network, and environmentals.



The TSX IP's technology providers will provide real-time and ongoing development support and 24/7 monitoring of software, hardware and helpdesk support.

The TSX IP will also rely on TMX Group's business continuity planning and disaster recovery planning model, which includes infrastructure investments and a detailed framework for operating markets and recovery from disasters, detailed planning procedures and 24/7 support. The CDF uses the TMX Datalinx distribution network of data distributors. With the recent combination with the Bourse de Montréal Inc., TMX Group now has its own network connectivity and points of presence in London, New York and Chicago, in addition to its existing network of major telecommunications carriers. Through these and other established connections, delivery of the data feed products are accessible almost anywhere in the world.

In addition to these resources, TMX Datalinx has a Senior Product Manager, Consolidated Data Feeds and a Services Analyst to provide business development and business support for the TSX IP. Users and marketplaces will also have access to TMX Vendor Services front line support.

### **3. Fees and Revenue Sharing**

The TSX IP will operate a pass-through fee model, which TSX asserts is the global data feed standard used by most exchanges, specialist data services and data distributors. Under this model, contributing marketplaces enter into contractual agreements with data vendors and subscribers directly, allowing each marketplace's fees and policies to be passed along to the end users.

The TSX IP will not charge marketplaces any fees to connect or contribute to the TSX IP. The TSX IP will not charge end users any fees for the CDF, the Canadian Best Bid and Offer (CBBO) or the Consolidated Last Sale (CLS) (The CDF and CBBO are already in use by market participants.) The TSX IP will charge a nominal monthly IP distribution fee only applicable to data vendors and dealers that receive the CDF, CBBO and CLS data feeds for the purpose of redistributing the CDF, CBBO or CLS data. These monthly fees will be \$500 per month for the CDF, \$300 per month for the CBBO, and \$300 per month for the CLS. Any significant changes to fees proposed by the TSX IP would be reviewed and approved by the Canadian Securities Administrators.

The TSX IP data feeds are designed to provide the full data sets required to meet regulatory trade through obligations while also lowering overall costs by economizing telecommunication, network and support expenditures.

### **4. Access**

TSX anticipates that a variety of data vendors and dealers will want to access and/or re-distribute the CDF, CBBO, and/or CLS. All interested parties who execute the requisite data distribution agreement or addendum with TSX (as the information processor) and with each marketplace will be permitted to access and/or re-distribute data from the TSX IP. Individual subscribers will need to contract directly with a contributing marketplace in order to receive that marketplace's data.

There are a variety of telecommunication options for industry constituents to access the TSX IP hosted facilities, and in the vast majority of cases, those constituents will be able to access the

TSX IP system using their existing communications links. Marketplaces can report their data to the TSX IP in their existing format and the TSX IP will disseminate in a widely used and adopted data format.

## **5. Selection of Securities Reported to the Information Processor and Services Provided by the Information Processor**

The TSX IP will consolidate data for all exchange-traded securities other than options, as required under NI 21-101. As required, the TSX IP will work with the marketplaces and Canadian Securities Administrators to determine if there is a regulatory reason to expand the type or scope of securities. The TSX IP will use the Symbol Status message sent out daily in each of the CDF services to communicate all symbols in each service.

The scope of services to be offered by the TSX IP to permit market participants to address their regulatory trade through protection obligations are the CDF, CBBO and CLS. Details about each service are provided below.

### *a. Consolidated Data Feed (CDF)*

The CDF feed provides access to pre- and post-trade market data from each contributing marketplace, through existing telecommunications links to TSX. As a multicast feed of consolidated data, where each marketplace is a permissionable data stream, CDF allows for a scalable solution for end users to acquire market data from the TSX IP for one or more marketplaces.

The TSX IP receives, normalizes, captures, and publishes all business content from the marketplaces contributing to the TSX IP including all data fields, markers, and tags for pre-and post-trade content. Specifically, this collection, processing, validation and publication of information captures all trade, order, cancellations, business content, market state and stock state messages. All messages have a consolidation of timestamps added indicating the time the message was received and published, enabling market participants to measure CDF performance. Each CDF message will contain the following mandatory fields:

- Attributed marketplace (Source)
- Timestamp from Source
- Timestamp received by the CDF
- Timestamp published by the CDF
- Business Class (order, cancel, trade)
- Business Action (buy, sell, trade, cancel)
- Broker Number
- Order Number
- Trade Number
- Volume
- Price
- Symbol
- Special Terms Markers

*b. Canadian Best Bid and Offer (CBBO)*

The CBBO feed provides real-time access to the consolidated Canadian best bid and offer for exchange-traded securities other than options, as required under NI 21-101. The TSX IP aggregates all business content from the marketplaces contributing to the TSX IP including all data fields, markers, and tags for pre-trade messages. This collection, processing, validation and publication of a consolidated best bid and best offer include the attributed marketplace(s), aggregated volume and price. Each CBBO message will contain the following mandatory fields:

- Attributed marketplace (“Source”)
- Timestamp received by the CDF
- Timestamp published by the CDF
- Business Action (bid, ask)
- Aggregated Volume
- Price
- Symbol

*c. Consolidated Last Sale (CLS)*

The CLS feed provides real-time last sale data from contributing marketplaces commingled in a normalized consolidated feed. Each CLS message will contain attributed data for each trade and trade cancellation message including the following mandatory fields:

- Attributed marketplace (Source)
- Timestamp from Source
- Timestamp received by the CDF
- Timestamp published by the CDF
- Business Action (trade, trade cancellation)
- Broker Number (buyer and seller)
- Order Number
- Trade Number
- Volume
- Price
- Symbol
- Crosstype (Basis, Contingency, VWAP, Cash, Delayed Delivery, etc.)

*d. Other service capabilities of the TSX IP*

The CDF includes a software application which consumes the normalized market data and can publish a single consolidated view of the order book. The CDF technology permits the inclusion of a consolidated depth of book product at such time that the requirements and guidelines for a product that allows market participants to meet their regulatory trade through protection obligation has been determined by the Canadian Securities Administrators.

## APPENDIX B

### UNDERTAKINGS PROVIDED BY TSX

**In connection with the updated Form 21-101F5 (F5) filed by TSX Inc. (TSX) on April 24, 2009 and revised on May 21, 2009 and its role as the information processor (TSX IP) for exchange-traded securities other than options<sup>12</sup> TSX undertakes the following:**

#### **1. Changes to Form 21-101F5**

- a. As required by section 14.2 of National Instrument 21-101 *Marketplace Operation* (NI 21-101), TSX will file with the CSA amendments to the information provided in Form 21-101F5. The significant changes referred to in section 14.2(1) of NI 21-101 will be reviewed and approved by CSA staff prior to their implementation. These significant changes include:
  - changes to the governance of the TSX IP, including the structure of its Governance Committee (IP Governance Committee) and the IP Advisory Sub-Committee,
  - significant changes to the fees related to the services provided by the TSX IP, including subscriber access fees and distribution fees,
  - changes to the fee structure and fee / revenue sharing model related to the services provided by the TSX IP,
  - changes to the data products offered by the TSX IP,
  - significant changes to the systems and technology used by the TSX IP, including those affecting capacity, or
  - changes that would have the effect of increasing the TSX IP's level of dependence on TMX Group Inc. proprietary technology.
- b. TSX IP will notify CSA staff of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.

#### **2. Governance and Conflicts of Interest**

- a. The Boards of Directors of TMX Group Inc. and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to the TSX IP.
- b. By July 31, 2009, the TSX IP will establish policies and procedures to separate TSX's marketplace business operations from the TSX IP operations and manage inherent conflicts of interest and provide them to CSA staff for review and approval.
- c. The technology used by the TSX IP will not give the Toronto Stock Exchange or TSX Venture Exchange an unfair advantage with respect to their data as compared to other marketplaces.

---

<sup>12</sup> In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

### **3. IP Products**

- a. The TSX IP will only distribute the following products which are described in Form 21-101F5 (together, the Consolidated Data Products):
  - the Consolidated Data Feed (CDF);
  - the Canadian Best Bid and Offer (CBBO);
  - the Consolidated Last Sale (CLS); and
  - the Consolidated Depth of Book Feed.
- b. The TSX IP will not distribute any additional products using the data provided to it under Part 7 of NI 21-101 unless it obtains prior approval from CSA staff.
- c. TSX will submit the final specification related to the CLS and the Consolidated Depth of Book Feed products to CSA staff for review and approval prior to the launch of the CLS and Consolidated Depth of Book Feed.
- d. The TSX IP will use reasonable efforts to launch<sup>13</sup> the CLS product within 3 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. The TSX IP will use reasonable efforts to launch the CLS product with data from those marketplaces that are not currently contributing their data within 4 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. For greater certainty, the TSX IP will not be responsible for delays to the launch of the CLS product that are attributable to factors outside of the reasonable control of the TSX IP, including the timely performance of necessary activities by marketplaces and other third parties.
- e. The TSX IP will use reasonable efforts to launch the Consolidated Depth of Book Feed within 6 months of the later of (i) July 1, 2009, and (ii) the date of receipt of the CSA approval as required in paragraphs 3c and 4b. For greater certainty, the TSX IP will not be responsible for delays to the launch of the Consolidated Depth of Book Feed that are attributable to factors outside of the reasonable control of the TSX IP, including the timely performance of necessary activities by marketplaces and other third parties.
- f. As provided by the TSX IP, each data product comprising the Consolidated Data Products is permitted to be bundled for sale to Data Purchasers<sup>14</sup>, but will also be made available as separately permissionable feeds.
- g. If TSX, or any affiliate (as defined in the *Securities Act* (Ontario)), intends to create and distribute products, using the data provided to the TSX IP under Part 7 of NI 21-101, through its commercial distribution channels and not through the TSX IP:

---

<sup>13</sup> For purposes of paragraphs 3(d) and 3(e), a “launch” is achieved when the respective Consolidated Data Product is available for beta testing by market participants.

<sup>14</sup> For the purposes of this reference and any subsequent reference, the term Data Purchaser includes subscribers, vendors, and any other party that purchases any data product offered by the TSX IP.

- i. the data required to be provided to the TSX IP by Data Contributors<sup>15</sup> will not be used for such other products without the permission of the Data Contributors; and
- ii. the additional products will be made available for purchase separately from, and will not be bundled with, the Consolidated Data Products and any other products approved under paragraph 3b.

TSX will not provide an associate (as defined in the *Securities Act* (Ontario)) with the underlying data which is provided by the Data Contributors to the TSX IP for the purposes of creating the Consolidated Data Products without the permission of the Data Contributors.

- h. The TSX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an information processor under NI 21-101, provided that the TSX IP can perform normal course recycle, batch and maintenance operations. TSX IP will provide customer support between the hours of 7:30 -17:30 and 24/7 technical support of the TSX IP.

#### **4. Agreements with Data Contributors**

- a. The TSX IP will ensure that all Data Contributors are given access to the TSX IP on fair and reasonable terms.
- b. The standard agreements or contracts to be entered into between TSX IP and Data Contributors in connection with the TSX IP services will be provided to CSA staff for review and approval prior to their execution. In addition, any proposed material changes to these standard agreements or contracts will be provided to CSA staff for review and approval.

#### **5. Fees / Fee structure / Revenue sharing**

- a. TSX will make the fee schedule for the Consolidated Data Products available on its website.
- b. If any adjustment or modification is proposed to fees, fee structure, or the fee / revenue sharing model relating to the services of the TSX IP, the TSX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
- c. The TSX IP will report annually to CSA staff, in writing, whether TSX has fully recovered its costs (including cost of capital and cost associated with reporting requirements under subsections 14.4(2), (4), and (5) of NI 21-101) associated with offering the TSX IP services and will review and report on whether the profit margin received from the TSX IP services is in line with industry standards.

---

<sup>15</sup> For the purposes of this reference and any subsequent reference, the term Data Contributor includes marketplaces and any other party that provides data to the TSX IP under requirements in NI 21-101 to provide order and trade information to an information processor.



- d. If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of the TSX IP, the TSX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. The TSX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to the TSX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to CSA staff within 30 days of the IP Governance Committee having received the analysis and recommendations.
- e. As of July 1, 2012 (Review Initiation Date), the TSX IP will conduct a review of the 'pass-through' fee model. Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will also consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. The TSX IP will ask the IP Governance Committee to review the report and provide its views in writing to the TSX IP. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the Review Initiation Date.

## **6. Non-exclusivity**

- a. TSX acknowledges that the selection of an information processor does not grant that information processor exclusive rights to consolidating and disseminating order and trade data. The TSX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

## **7. Self-assessment**

- a. In addition to arranging for an annual independent system review referred to in section 14.5 of NI 21-101, the TSX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4), and (5) of NI 21-101 and with its performance with respect to the undertakings provided to the CSA. A report on the self-assessment will be provided to the IP Governance Committee promptly upon its completion. The TSX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the end of the TSX IP's fiscal year.

## **8. Financial Viability**

- a. TSX will provide the TSX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

## **9. Term and Notice**

- a. TSX will act as an information processor for exchange traded securities other than options<sup>16</sup> for a period of five years starting from July 1, 2009 (5-year term). TSX will provide CSA staff with at least one year notice should it determine that it does not wish to continue to act as an information processor upon the expiry of the 5-year term.

---

<sup>16</sup> In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.