

Chapter 6

Request for Comments

6.1.1 Notice of Proposed Amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules

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 for comment proposed amendments (the Proposed Amendments) to National Instrument 21-101 *Marketplace Operation* (NI 21-101), National Instrument 23-101 *Trading Rules* (NI 23-101) (together, the ATS Rules) and the related companion policies.

The key part of the Proposed Amendments deals with trade-through protection (Proposed Trade-through Protection Rule). It proposes a framework to require all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered. Other parts of the Proposed Amendments include proposals relating to clock synchronization, technology requirements for marketplaces, information processor requirements, and best execution reporting requirements.

II. BACKGROUND

On July 22, 2005, the CSA published Discussion Paper 23-403 *Market Structure Developments and Trade-through Obligations* (2005 Discussion Paper).¹ The purpose of the Discussion Paper was to discuss evolving market developments and the consequential implications for the Canadian capital market, and in particular the obligation to avoid trade-throughs (trade-through obligation).

The 2005 Discussion Paper asked a number of questions to get feedback on what values and rules were important to Canadian market participants. Because of the importance of the issues relating to the trade-through obligation and their impact on the Canadian capital market, the CSA held a public forum on October 14, 2005 to permit all interested parties to participate in discussions relating to trade-through protection.²

The CSA received feedback on a number of issues identified in the 2005 Discussion Paper where there was often no clear majority opinion and the views on either side of a given issue were split. However, the majority of commenters stated that they believed that all visible orders at a better price should trade before inferior-priced orders.

On April 20, 2007, the CSA along with Market Regulation Services Inc. or RS (now the Investment Industry Regulatory Organization of Canada or IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).³ The Joint Notice:

- outlined a proposal for a trade-through protection regime,
- proposed rule changes regarding access to marketplaces, and
- proposed rule changes regarding best execution.

The CSA published the amendments to best execution in their final form on June 20, 2008, and again on September 5, 2008, to be effective on September 12, 2008. We intend to re-examine the proposed rule amendments relating to direct market access and republish them for comment in 2009.

The Proposed Trade-through Protection Rule that is being published along with this Notice is based largely on the proposal outlined in the Joint Notice and the responses of the commenters who, for the most part, expressed support for the initiative.

¹ See (2005) 28 OSCB 6333 for background.

² The transcript of the trade-through forum is published on the OSC website at:
http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part2/rule_20051014_23-403_trade-through-forum.pdf.

³ (2007) 30 OSCB (Supp-3).

We received nineteen comment letters in response to the request for comments published in April 2007. We have considered the comments received and thank all commenters for their submissions. A list of those who submitted comments, as well as a summary of comments pertaining to the trade-through proposal and our responses, are attached as Appendix A to this Notice.

For the CSA's cost-benefit analysis of the proposed amendments, please see Appendix B – “Cost Benefit Analysis – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*” (CBA).

III. TRADE-THROUGH PROTECTION

1. What is Trade-through Protection?

Trade-through protection ensures that all immediately accessible, visible, better-priced limit orders are executed prior to inferior-priced limit orders. Commenters generally agreed that the obligation not to “trade-through” (i.e. bypass better-priced limit orders in favour of inferior-priced limit orders) is an obligation owed by all marketplace participants to the market as a whole. Unlike the obligation for best execution, the obligation not to trade-through is not a fiduciary duty and cannot be waived.⁴ It is proposed that trade-through protection would apply whenever two or more marketplaces with displayed protected orders are open for trading.

2. Why is Trade-through Protection Important?

Trade-through protection is considered to be important to maintain investor confidence and fairness in the market, especially where there is a high degree of retail participation and a historical expectation of trade-through protection. Without it, it can be argued that there may not be sufficient incentive to contribute to the price discovery process because investors who disclose their intentions will not be assured of the benefit of having their better-priced orders filled while others will be able to use that information to help in determining the prices at which they transact. This confidence encourages more liquidity in the market and a more efficient price discovery process.

3. The Current Regulatory Regime

Currently in Canada, trade-through protection is addressed as part of the best price obligation imposed by IIROC in its Universal Market Integrity Rules (UMIR), Rule 5.2 *Best Price Obligation* (UMIR Best Price Rule). The rule imposes a requirement on dealers that trade on marketplaces that have retained IIROC to use reasonable efforts to obtain the best price available. There are a number of exemptions available and the factors to be considered in determining if reasonable efforts have been used are broadly outlined.⁵

In the past, no issues arose under the UMIR Best Price Rule because:

- there had not been multiple marketplaces trading the same securities in Canada,
- the technology systems of marketplaces enforced the “best price” or trade-through obligation, and
- only dealers had direct access to the existing marketplaces.

The existence of multiple marketplaces trading the same security has refocused attention on the current rules relating to trade-through protection.

The UMIR Best Price Rule currently applies only to dealers, which results in different requirements for dealers and non-dealers who are subscribers of ATSS. In addition, the rule as it exists does not provide the necessary infrastructure to effectively prevent trade-throughs. For example, it does not provide for an inter-market sweep order that would allow marketplace participants to simultaneously route orders to various marketplaces.

When multiple marketplaces began trading TSX-listed securities, the dealers in Canada had difficulty complying with the UMIR Best Price Rule. Technology was not yet at a point where dealers could monitor multiple marketplaces and effectively route orders to where the best price was displayed. In addition, order data was not consolidated. In response, RS at the time, proposed an approach whereby the factors to be considered in determining if a dealer used “reasonable efforts” to obtain the best price were broadened. RS introduced an immediate implementation rule, effective on May 16, 2008⁶, that broadened these factors to include:

⁴ For a discussion about trade-through and best execution please see Part III 4(f) of this Notice.

⁵ See UMIR Rule 5.2 *Best Price Obligation* and the related policy.

⁶ The UMIR Best Price Rule was published for comment on May 16, 2008, MIN 2008-009.

- whether the dealer has used an order router offered by it or a marketplace,
- whether the dealer relies on another dealer to route its orders,
- the timing of the launch of the marketplace,
- whether the marketplace has had a material malfunction or interruption of services,
- whether the data being transmitted by the marketplace is easily and readily used by dealers, and
- whether the marketplace executes an inordinate proportion of orders at an inferior price or there is no fill at all.

Under the UMIR Best Price Rule, dealers are required to introduce and comply with policies and procedures outlining how they will meet their best price obligations. It was intended that this solution be an interim solution until the CSA developed and implemented a trade-through protection rule. In the coming weeks, IIROC will publish its proposed amendments to the UMIR Best Price Rule in response to the CSA's proposal of a trade-through protection rule.

4. The Proposed Trade-through Protection Rule

At this time, the CSA are proposing to amend the ATS Rules to create a full depth-of-book trade-through obligation on marketplaces. We have considered the comment letters received in response to the Joint Notice and the 2005 Discussion Paper and have also reviewed international developments in the area of trade-through. Particularly, we have looked at the Order Protection Rule in Regulation NMS developed by the U.S. Securities and Exchange Commission (SEC) and its implementation, and have examined the Markets in Financial Instruments Directive (MiFID) in Europe.

(a) Key Aspects of the Proposed Trade-through Protection Rule

(i) Marketplace Obligation

The Proposed Trade-through Protection Rule would require each marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. Marketplaces would be required to regularly review and monitor the effectiveness of these policies and procedures and act promptly to remedy any identified deficiencies. The purpose of this approach is to require marketplaces to eliminate trade-throughs that can reasonably be prevented, but also provide them with flexibility about how to do so. Marketplaces may choose how to implement the obligation in various ways including, for example, voluntarily establishing direct linkages to other marketplaces, or designing specific trade execution algorithms. However, marketplaces would not be able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

Marketplaces would be required to provide their policies and procedures, and any amendments thereto, to the securities regulatory authority and their regulation services provider 45 days prior to implementation. It is expected that marketplaces would also maintain relevant information so that the effectiveness of its policies and procedures could be adequately evaluated by regulatory authorities.⁷

Placing the obligation on marketplaces was supported by a majority of the commenters to the 2005 Discussion Paper and the Joint Notice.

(ii) Protected Orders

Trade-through protection would only be applicable to certain orders ("protected orders"). A protected order would be defined as a "protected bid or protected offer." A "protected bid" or "protected offer" would be an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or information vendor.⁸ The CSA do not consider special terms orders that are not immediately executable or that trade in a special terms book, such as all-or-none, minimum fill, or cash or delayed delivery, to be orders that are protected.⁹ However, those executing against these types of orders are required to execute against all better-priced orders first. A marketplace that is considered to have "automated functionality" would have the ability to immediately and automatically:

⁷ Proposed section 6.1 of NI 23-101.

⁸ Proposed definition in section 1.1 of NI 23-101.

⁹ See subsection 5.1(3) of 21-101CP.

- permit an incoming order entered on the marketplace electronically to be marked as fill-or-kill,
- execute a fill-or-kill order,
- cancel unexecuted portions of that order,
- transmit a response to the sender indicating the action taken, and
- display information that updates the displayed order.¹⁰

A marketplace would also be required to have policies and procedures relating to the handling and display of these orders (to be included in their policies and procedures required under section 6.1 of the Instrument) and would be required to immediately inform all regulation services providers and other marketplaces when it experiences a failure, malfunction or material delay of its systems or equipment.¹¹

(iii) *Full Depth-of-book*

The Proposed Trade-through Protection Rule would be applicable to all visible parts of orders entered into the book (i.e. full depth-of-book). This means that in order to execute an order at an inferior price, the marketplace would have to ensure that all protected orders that are visible at price levels better than that price have been executed. This approach is different from the one adopted in Regulation NMS in the United States, which provides protection only to the best bid and offer on each marketplace (top-of-book). In the 2005 Discussion Paper and the Joint Notice, commenters were asked for their views on whether to impose the obligation only at the top-of-book. The majority of commenters responded by supporting trade-through protection that would apply to all visible orders regardless of where they are in the book, which is consistent with the current UMIR Best Price Rule.

(iv) *Visible Orders*

The Proposed Trade-through Protection Rule would only apply to orders or parts of orders that are visible. In other words, the orders would have to be displayed by the marketplace and information about them would have to have been provided to an information processor or information vendor.

In addition, hidden orders or those parts of iceberg orders that are not visible would not be protected. Currently, the manner by which “dark” portions of orders in an otherwise transparent order book would be avoided is by using the “bypass” marker introduced by IIROC.¹² The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity. It is intended that this marker will evolve into the marker used for an inter-market sweep order discussed below.

(b) **“Permitted” Trade-throughs**

The overall purpose of trade-through protection is to promote confidence and fairness in the marketplace where the visible portions of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new types of orders and other developments in market structure in Canada.

As a result, we have proposed a number of circumstances where trade-throughs would be permitted.¹³ These “permitted” trade-throughs or “exceptions” are primarily designed to achieve workable inter-market trade-through protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition.

Although trade-through protection is an obligation owed by all marketplace participants to the market as a whole, in certain circumstances, the marketplace can trade through better-priced orders on other marketplaces where a marketplace participant has taken certain action (for example, routing an inter-market sweep order). In these circumstances, it is important that marketplace participants create policies and procedures that will reasonably prevent trade-throughs and maintain relevant information so that the effectiveness of section 6.1 of NI 23-101 can be adequately evaluated by regulatory authorities.¹⁴

¹⁰ Proposed amendment to section 1.1 of NI 23-101.

¹¹ Proposed section 6.4 of NI 23-101.

¹² Market Integrity Notice 2008-008 approving amendment to UMIR regarding “Provisions Respecting Off Marketplace Transactions” was published on May 16, 2008.

¹³ The list of “permitted” trade-throughs is set out in proposed section 6.2 of NI 23-101.

¹⁴ Proposed subsection 6.1(3) of 23-101CP.

(i) *Failure, Malfunction or Material Delay of Systems or Equipment*

We are proposing an exception for any failure or malfunction of a marketplace's systems as well as any material delay (systems issues).¹⁵ If a marketplace repeatedly fails to respond immediately after receipt of an order, under the Proposed Trade-through Protection Rule, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing a systems problem (either of a temporary nature or a longer term issue). The marketplace that is experiencing the failure, malfunction, or delay is responsible for informing all other marketplaces, its marketplace participants, and any regulation services providers when the failure, malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by the marketplace that may be experiencing systems issues, a routing marketplace or a marketplace participant may rely on paragraph 6.2(a) of NI 23-101, in accordance with its policies and procedures that outline processes for dealing with these systems issues. The marketplace or marketplace participant must immediately notify the marketplace that may be having systems issues, its own marketplace participants (where applicable) and all regulation services providers. This notification will enable the marketplace that may be experiencing systems issues to assess whether it is in fact experiencing systems issues.

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

(ii) *Inter-market Sweep Order*

We are proposing an exception to allow the execution of inter-market sweep orders. An inter-market sweep order (ISO) is an order that is marked to inform the receiving marketplace that it can be immediately executed without delay or regard to any other better-priced orders displayed by another marketplace.¹⁶ It may be marked "ISO" by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one ISO in order to execute against protected orders. In addition, marketplace participants may send a single ISO to execute against the best protected bid or best protected offer. An ISO may enable participants to execute large block orders, provided that they simultaneously route one or more ISO's to execute against better-priced orders. This would facilitate compliance with the trade-through obligation.

(iii) *Flickering Orders*

With the growth of algorithmic and computer-generated trading, there has been a substantial increase in the number of short term orders generated (often generated and cancelled within seconds) for every trade executed. This has subsequently increased the number of times a better-priced order may be displayed. Given the speed with which orders change, there may be technical occurrences of trade-throughs, even though all reasonable precautions were taken and there was a legitimate attempt to execute a trade at the best available price. As a result, we are allowing for a transaction that occurs when the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of a trade that resulted in a trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction.¹⁷

(iv) *Non-Standard Orders*

Non-standard orders have been included on the list of "permitted" trade-throughs. A non-standard order refers to an order for the purchase or sale of a security that is subject to non-standard terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted.¹⁸ 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 so that it qualifies for an exception from the Proposed Trade-through Protection Rule.

(v) *Calculated Price Order*

We are proposing to include an exception for orders where the price is not known at the time of order entry and is to be calculated based on, but will not necessarily be equal to, the price of the security at the time of execution.¹⁹ Orders that would be included under this definition are:

- call market orders – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace,
- volume-weighted average price orders – where the price of a trade is determined by a formula that measures a weighted average price on one or more marketplaces,

¹⁵ Proposed paragraph 6.2(a) of NI 23-101.

¹⁶ Proposed paragraphs 6.2(b) and (c) of NI 23-101.

¹⁷ Proposed paragraph 6.2(d) of NI 23-101.

¹⁸ Proposed subparagraph 6.2(e)(i) of NI 23-101.

¹⁹ Proposed subparagraph 6.2 (e)(ii) of NI 23-101.

- opening orders – where each marketplace may establish its own formula for the determination of opening prices,
- closing orders – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known, and
- basis orders – an order that must be approved by a regulation services provider to ensure that the price of the order is based on one or more derivative transactions executed in conjunction with securities where the securities transaction comprises at least 80% of the underlying interest of the derivative instruments.²⁰

(vi) *Closing Price Order*

We are proposing to also include an exception for an order entered on a marketplace for the purchase or sale of an exchange-traded security that would execute at the established closing price on that marketplace for that trading day for that security.²¹ Some marketplaces provide an after-hours trading session at a price established by that marketplace during its regular hours for marketplace participants who are required to benchmark to a certain closing price. Therefore, we propose to allow for trade-throughs resulting from the execution of transactions in these circumstances so that a better-priced order on another marketplace would not need to be accessed.

(vii) *Crossed Market*

We are proposing an exception for a transaction that occurred where the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer (crossed market).²² Without this exception, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. The CSA recognize that crossed markets may occur as a result of trade-through protection only applying to displayed orders or parts of orders, and not to hidden or reserve orders. Intentionally crossing the market to take advantage of this exception would be a violation of proposed section 6.5 of NI 23-101.

Question 3: Are any additional exceptions necessary?

(c) ***Access to Marketplaces***

The Joint Notice asked a number of questions on the issue of access, including:

- whether there should be a threshold that would require ATs to permit access to all groups of marketplace participants, and
- whether specialized marketplaces should not prohibit access to non-members/subscribers or should provide direct order access to non-members/subscribers if members/subscribers do not provide this service.

Many commenters were supportive of a threshold that would require marketplaces to provide access. Rather than setting a threshold for ATs to permit access to all marketplace participants, we have proposed amendments to 21-101CP to enhance the fair access provisions in NI 21-101.²³ These provisions require marketplaces to provide fair access to all of their services. As well, marketplaces should permit fair and efficient access to their services for the purpose of complying with the proposed trade-through requirements. At this time, we think that the provisions relating to fair access and the proposed amendments to 21-101CP are sufficient to address fair access to a marketplace whether directly or indirectly. We will continue to monitor this issue.

With respect to issues relating to access to marketplaces by non-members/subscribers to a marketplace, we do not believe that a marketplace should be required to provide direct access to non-members/subscribers. It would be left to the marketplaces to determine how best to meet their trade-through obligations. We intend to further discuss access issues with the industry implementation committee (described below).

²⁰ Proposed section 2.3 of NI 23-101CP.

²¹ Proposed subparagraph 6.2(e)(iii) of NI 23-101.

²² Proposed paragraph 6.2(f) of NI 23-101.

²³ Proposed amendments to sections 7.1 and 8.2 of 21-101CP.

Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

(d) Trading Fee Limitation

In the Joint Notice, we considered whether there should be a specified limit that a marketplace could charge for trade-through purposes. A number of commenters expressed concern about proposing a specified trading fee limit imposed on a trade-by-trade basis. They preferred a principle-based approach that would require marketplaces to set reasonable trading fees.

The CSA think it is important to prevent marketplaces from raising their fees substantially to try to take advantage of the trade-through protection regime. Consequently, we are proposing a rule that would prohibit a marketplace from imposing (i) a fee charged for the execution of an order to comply with the trade-through requirement that is equal to or greater than the minimum price increment that is described in IROC Universal Market Integrity Rule 6.1, as amended, or (ii) terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace.

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IROC Universal Market Integrity Rule 6.1 as this limit?

(e) Locked and Crossed Markets

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. In a locked market situation, there are two ways to unlock the markets:

- typically, more buyers and sellers appear resulting in subsequent trades and immediate correction; or
- one of the participants involved in the lock removes their order and places the order on another marketplace to immediately execute the trade.

A “crossed market” occurs when one participant’s bid (offer) on one marketplace is higher (lower) than another participant’s offer (bid) on a different marketplace. A crossed market condition between marketplaces usually does not last for a long period of time as someone will usually take advantage of the arbitrage opportunity.

Proposed section 6.5 of NI 23-101 prohibits a marketplace participant from intentionally locking or crossing a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order intentionally to lock or cross a particular marketplace or the market as a whole. It is not intended to prohibit the use of marketable limit orders. An exception from the Proposed Trade-through Protection Rule has been provided to allow for the resolution of crossed markets that occur unintentionally. An exception is not necessary to resolve locked markets.

Question 6: Should there be a prohibition against intentionally creating a “locked market”?

(f) Trade-through and Best Execution

There has long been debate about the interplay between the obligations of best execution and “best price” or trade-through protection. In addition, there is some concern that trade-through and best execution obligations may conflict. This section addresses these issues.

The rationale for a dealer’s best execution obligation and the obligation to prevent trade-throughs is different. The obligation of best execution is based on the fiduciary duty that a dealer or adviser has to its client. This duty has its origins in common law and is codified in securities laws and UMIR. As discussed above, trade-through protection is based on the obligation of a participant to the market as a whole. It is grounded in the desire to protect visible and accessible limit orders and to ensure that those who decide to display the prices they are willing to pay or receive for a particular security will obtain the benefit of that decision. The requirement to achieve best execution can be waived or overwritten by direction of a client, however the trade-through obligation would always have to be met except in the specific circumstances outlined in Part III 4(b) above.

Having a trade-through obligation does not diminish the obligation to achieve best execution, including having policies and procedures to look at data from multiple marketplaces to determine whether or not to access to those marketplaces. The decision of how and where to trade (best execution) is determined by the particulars of the order and needs of the client. However, all better-priced orders must be honoured at the time of execution (trade-through obligation).

The Proposed Trade-through Protection Rule does not propose to address trading on foreign markets. However, we reiterate that marketplace participants should consider foreign markets when addressing best execution. We have also included an anti-avoidance provision that prohibits a person or company from routing orders to foreign marketplaces only for the purpose of avoiding the trade-through protection regime in Canada.²⁴

There may be some additional costs associated with trading on multiple marketplaces and dealers may determine to take on those costs or pass them onto their clients as part of their commissions. These commissions are part of the factors considered in obtaining best execution. We think that these costs are balanced against the need to protect displayed limit orders and the need to ensure that the risks taken by those that display those limit orders are rewarded.

(g) Other Jurisdictions

(i) U.S. Approach

On April 6, 2005, the SEC implemented the Order Protection Rule in Regulation NMS.²⁵ It requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs, and, if relying on one of the exceptions, these policies and procedures must be reasonably designed to assure compliance with the exception. To be protected, a quotation must be immediately and automatically accessible. Trade-through protection will apply to the best bid and offer from every type of participant on all marketplaces. One of the impacts of this order protection is increased linkages between trading centers. Regulation NMS includes a number of exceptions from "order protection" obligations, such as exemptions for opening or closing orders, crossed markets, benchmark orders where the material terms are not known, inter-market sweep orders, delays in responses caused by systems problems, and flickering quotes.

(ii) European developments

The European Union (EU) implemented MiFID on November 1, 2007 to replace the existing Investment Services Directive as part of its Financial Services Action Plan designed to create a single market in financial services for EU member states.²⁶ MiFID does not impose a trade-through obligation that prohibits the by-passing of better priced quotes when executing transactions. Instead, MiFID introduces a best execution standard that requires firms to take "all reasonable steps to obtain the best possible result" for their clients, taking into consideration not only execution price, but also the cost, speed, size and nature of the order, the likelihood of execution and settlement when trading and any other factors deemed relevant to the execution of the order.

(h) Next Steps

Upon the publication of this Notice and the Proposed Amendments, we will establish an industry committee to discuss the implementation issues relating to the introduction of the Proposed Trade-through Protection Rule. The role of the committee will be to raise operational issues associated with implementing this rule and develop recommendations to be considered by the CSA and where appropriate, IIROC. The committee will be chaired by an industry representative and facilitated by the Investment Industry Association of Canada. It will be an open committee, made up of interested parties representing marketplaces, dealers, and buy-side investors.

If you are interested in participating on the committee, please send an e-mail to: marketregulation@osc.gov.on.ca.

IV. ADDITIONAL AMENDMENTS

Along with the Proposed Trade-through Protection Rule, we are also proposing some additional amendments to NI 21-101 and NI 23-101.

1. Reporting Requirements for Marketplaces and Dealers

In April 2007, we proposed reporting requirements for marketplaces and dealers that would require:

- a marketplace to report certain information on a monthly basis, including: number of orders, number of trades, and speed of execution, and

²⁴ Proposed section 6.7 of NI 23-101.

²⁵ "SEC Adopts Regulation NMS and Provisions Regarding Investment Advisers Act of 1940", online: U.S. Securities and Exchange Commission, <http://www.sec.gov/news/press/2005-48.htm> on July 15, 2008.

²⁶ "Markets in Financial Instruments Directive – Background Information", online: Financial Services Authority, <http://www.fsa.gov.uk/pages/about/what/international/pdf/MiFID.pdf> on July 8, 2008.

- a dealer to report certain information on a quarterly basis: percentage of orders executed at a location determined by the dealer, identity of marketplaces and percentage of orders routed to each marketplace, and disclosure of any material arrangements with a marketplace.

The comments that we received on the proposed requirements published in April 2007 were generally mixed. There was some feedback on specific aspects of the reporting requirements, such as spread-based statistics and securities traded on only one marketplace. A summary of the comments received on the best execution reporting requirements and our responses is included in Appendix A of this Notice.

When finalizing the best execution amendments in June 2008, the CSA decided to postpone the implementation of the proposed best execution reporting requirements for marketplaces and dealers due to intervening market developments. However, we are of the view that it is appropriate to republish them for comment with this package of amendments. A cost-benefit analysis of the implementation of reporting requirements for marketplaces and dealers was published with the Joint Notice.

The CSA continue to be of the view that this information is important to provide tools for assessing and complying with the best execution obligation. With respect to the proposed marketplace reporting requirement, we think this information would be useful for a dealer or adviser to assess best execution based on marketplace quality (for example, speed and certainty of execution). For the proposed dealer reporting, we think the reports would provide useful information to clients about order execution.

We have made a number of changes to the best execution reporting requirements from when they were published in April 2007, based on the comments received to further streamline the requirements. Specifically, we have removed the requirement for dealers to provide the percentage of total client orders and percentages that were market orders, limit orders and other order types as part of their report. In addition, we are proposing that marketplaces report by security only and not also by order type.

As the CSA understand that technology changes will be necessary to comply with these requirements, we are proposing that there would be a six month transition period after the instrument becomes effective.

We have set out below some questions on which we are specifically requesting feedback.

- Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?**
- Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?**
- Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?**
- Question 10: Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?**
- Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States?²⁷ What price increment away from the quote would be appropriate to use for the Canadian market?**
- Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?**
- Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?**
- Question 14: In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:**
- (a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);**
 - (b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;**

²⁷ A "near-the-quote order" is defined by the SEC as non-marketable buy orders with limit prices that are lower by \$0.10 or less than the consolidated best bid at the time of order receipt, and non-marketable sell orders with limit prices that are higher by \$0.10 or less than the consolidated best offer at the time of order receipt.

- (c) **the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?**

2. Marketplace Systems

A number of changes are proposed to the systems requirements for a marketplace in Part 12 of NI 21-101. Most update the technical descriptions of the requirements and modify the requirements to better reflect what is taking place in practice.

Currently, Part 12 of NI 21-101 requires a marketplace to address specific issues related to capacity management, system development and testing, system vulnerabilities and business continuity. The defined scope of the annual independent systems review (ISR) is to provide assurance on these same issues. The proposed amendments broaden the requirement for a marketplace to develop and maintain and, for an independent review, assess the more comprehensive and integrated concept of a system of internal control.

Currently, NI 21-101 provides for an exemption from the independent review of an ATS that is below a certain trading volume threshold. The proposed amendments remove this threshold. ATSs will now be required to perform an ISR in accordance with established audit standards, unless granted an exemption under Part 15 of NI 21-101.

3. Transparency

Amendments are being proposed to Parts 9 and 10 of 21-101CP for the purposes of clarifying the requirements under sections 7.1, 7.2, 8.1 and 8.2 of NI 21-101 for marketplaces, inter-dealer bond brokers and dealers to provide accurate and timely order and trade information to an information processor, or to an information vendor that meets the standards set by a regulation services provider.

4. Information Processor Requirements and Systems

The CSA are continuing to work toward the selection of an information processor based on the applications received (for equity and debt securities). A summary of these applications was published with the Joint Notice as CSA Staff Notice 21-306. We note that on July 14, 2008, the Bourse de Montréal withdrew its application to be the information processor for debt and equity securities.

It is our view that the information processor for equity securities should disseminate a full depth-of-book market-by-price data feed and consolidated trade information for all marketplaces trading equity securities.

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

We are proposing some amendments to Part 16 of 21-101CP to clarify the requirements under subsections 14.4(2) and (5) of NI 21-101 regarding certain obligations that an information processor has towards its users and providers of order and trade information, in relation to the collection, processing, distribution and publication of that information. In addition, we have proposed changes to the systems requirements applicable to an information processor that are outlined in Part 14 of NI 21-101. The changes mirror those described above for a marketplace. However, an information processor will be required to conduct an annual independent systems review, unless an exemption is sought and granted.

5. Amendments to Sections 7.2, 7.4, and 8.3 of NI 23-101 – Agreement Between a Marketplace and a Regulation Services Provider

We have amended subsections 7.2(c), 7.4(c), and 8.3(d) to require that the agreement between a regulation services provider and a marketplace mandates that the marketplace provide the regulation services provider with the information that the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants and if applicable, the marketplace. This amendment in no way changes the existing relationship between an exchange or quotation and trade reporting system and the regulation services provider that it has retained. Instead, it clarifies our expectations that the regulation services provider will be provided with the information it needs to effectively monitor trading on multiple marketplaces and to ensure that certain standards, such as clock synchronization, and use of markers, are uniformly met by all marketplaces that the regulation services provider surveils.

V. AUTHORITY FOR THE PROPOSED AMENDMENTS

In those jurisdictions in which the amendments to the ATS 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 are being made under the following provisions of the *Securities Act* (Ontario) (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)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)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.

VI. COMMENTS AND QUESTIONS

We invite all interested parties to make written submissions on the Proposed Amendments. We will consider submissions received by January 15, 2009. If you do not submit your comments by email, provide a diskette containing the submissions in Microsoft Word format.

Please address your comments to all of the CSA member commissions, as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Department of Justice, Northwest Territories
Registrar of Securities, Government of Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Registrar of Securities, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission

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

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

Request for Comments

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:

Tracey Stern
Ontario Securities Commission
(416) 593-8167

Susan Greenglass
Ontario Securities Commission
(416) 593-8140

Sonali GuptaBhaya
Ontario Securities Commission
(416) 593-2331

Matthew Thompson
Ontario Securities Commission
(416) 593-8223

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

Doug Brown
Manitoba Securities Commission
(204) 945-0605

Lorenz Berner
Alberta Securities Commission
(403) 355-3889

Mark Wang
British Columbia Securities Commission
(604) 899-6658

Meg Tassie
British Columbia Securities Commission
(604) 899-6819

Cassie Scanlan
British Columbia Securities Commission
(604) 899-6766

APPENDIX A

**SUMMARY OF PUBLIC COMMENTS ON PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING
RULES REGARDING THE TRADE-THROUGH PROPOSAL AND CANADIAN SECURITIES ADMINISTRATORS
RESPONSES**

General Comments*Framework for Trade-Through Proposal*

General support was expressed by a number of commenters for the proposal that responsibility for trade-through protection should lie with marketplaces.

Two commenters did not favour a trade-through rule. One of these commenters stated that it did not believe a trade-through rule was necessary, particularly for institutional orders.

A couple of commenters urged Canadian regulators to implement a consistent system with that of the U.S.

Finally, another commenter remarked that marketplaces must be responsible for ensuring accessibility on a consistent and reliable basis prior to launch involving the dealers, the marketplaces and the vendors. This commenter further stated that since the Canadian marketplace relies on third party vendor technology for access to marketplaces and post-trade processing, coordinated and successful industry-wide testing is a critical success factor to the introduction of new marketplaces in Canada.

Need for Data Consolidation and Smart Order Routers

Some commenters expressed the view that a centralized data consolidator and order routers are necessary to comply with a trade-through rule.

Requests for Clarification

One commenter highlighted the lack of guidance for how the specific needs of institutional investors would be addressed in the trade-through proposal. Specifically, this commenter called for accommodation for institutional investors as the proposed system would inhibit the legitimate trading and price discovery activities of this element of the Canadian capital markets.

The Canadian Securities Administrators (CSA or we) believe that a trade-through protection rule will help in maintaining investor confidence and fairness in our markets. In addition, imposing the obligation on marketplaces would allow flexibility in determining how to best implement the trade-through protection rule.

Where appropriate, the CSA have endeavoured to make the proposed trade-through protection regime consistent with the system used in the U.S.

We have updated existing provisions to require a marketplace to publicly make available its technology requirements in their final form for at least three months immediately prior to operations and to provide public testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations. However, industry-wide testing is not being proposed at this time.

While we are of the view that a centralized data consolidator is not critical for compliance with a trade-through obligation, the CSA are working towards the introduction of an information processor to facilitate data consolidation. In addition, we expect that information vendors will respond to market demand and make consolidated data available. With respect to smart order routers, there are a number of ways in which a marketplace can implement its policies and procedures. Providing a smart order router is one such mechanism. It is the CSA's understanding that many of the marketplaces carrying on business in Canada do or plan to offer routing services to their participants.

The CSA are of the view that all marketplace participants should respect better-priced limit orders already displayed. However, the ability to use an inter-market sweep order has been included to facilitate block trading.

Question 1: In addition to imposing a general obligation on marketplaces to establish, maintain and enforce written policies and procedures to prevent trade-throughs, would it also be necessary to place an obligation on marketplace participants to address trade execution on a foreign market?

Comments	CSA Responses
<p>An overwhelming majority of commenters were not supportive of imposing an obligation on marketplace participants to address trade execution on a foreign market.</p>	<p><i>The CSA agree that the trade-through obligation should not apply to protect better-priced orders displayed on a foreign market. However, we note that currently, best execution would require marketplace participants to consider foreign markets when executing a trade. We have also proposed an anti-avoidance provision (section 6.7 of NI 23-101) to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.</i></p>

Question 2: What factors should we consider in developing our cost-benefit analysis for the trade-through proposal?

Comments	CSA Responses
<p>Commenters recommended the following factors should be considered when developing a cost-benefit analysis for the trade-through proposal:</p> <ul style="list-style-type: none"> • Total cost to the marketplace of imposing trade-through obligations on various marketplace participants; • Total industry costs; • Access fees, settlement and clearing fees, cost of surveillance and monitoring of trading on each marketplace; • Costs of a system that is inconsistent with the U.S.; • Benefits of maintaining strict trade-through protection; • Net measurement of the benefit to the client; • Aggregate cost to the industry rather than on a dealer by dealer basis; • Cost of surveillance and monitoring within the dealers' compliance units; • Regulatory costs of the market regulator(s); • Impact of latency – missed opportunities, information leakage and high transaction and clearing costs if orders must travel to many destinations before they are filled; and • Look at the cost-benefits for trade-through on a portfolio or multiple order basis in addition to a single stock basis. <p>One commenter stated that it is important to view all of the limit orders at the bid or ask in the aggregate in order and to consider the contribution made by retail orders.</p>	<p><i>The CSA thank all commenters for their input. We are publishing a cost-benefit analysis which examines the anticipated incremental impact of the proposed amendments. The comments received have, where appropriate, informed that analysis. For example the current participant level obligation, removing current requirements and applying the trade-through obligation at the marketplace level were considered in the CBA.</i></p>

Question 3: Would you like to participate in the cost-benefit analysis by providing your input?	
Comments	CSA Responses
<p>Seven commenters expressed an interest in providing input into the cost-benefit analysis.</p>	<p><i>The CSA thank these commenters for their interest in participating in the cost-benefit analysis. We are publishing a cost-benefit analysis along with the proposed amendments and invite all interested parties to provide comments and estimates of the anticipated costs and benefits of the proposal. We will be considering conducting targeted consultation in the future.</i></p>
Question 4: Should trade-through protection apply only during “regular trading hours”? If so, what is the appropriate definition of “regular trading hours”?	
Comments	CSA Responses
<p>Ten commenters believe that trade-through protection should only apply during “regular trading hours”. Many of these commenters suggested that 9:30 a.m. to 4 p.m. ET should be the appropriate definition of “regular trading hours”.</p> <p>Some commenters did not believe that trade-through protection should be limited to a portion of a trading day.</p> <p>A few of these commenters cited that trade-through protection should apply when two or more marketplaces are open simultaneously however trade-throughs of marketplaces that are closed should be allowed.</p> <p>Some reasons cited for this stance included:</p> <ul style="list-style-type: none"> • Applying trade-through protection at all times would prevent liquidity to migrate to hours when trade-through obligations do not apply; and • Will avoid the confusion that may arise from different interpretations of “regular trading hours”. 	<p><i>The CSA are of the view that trade-through protection should apply across markets whenever two or more marketplaces with displayed protected orders are open for trading. Consequently, we have not defined “regular trading hours” but have provided some guidance in 23-101CP.</i></p>
Question 5: Should the consolidated feed (and, by extension, trade-through obligations) be limited to the top five levels? Would another number of levels (for example, top-of-book) be more appropriate for trade-through purposes? What is the impact of the absence of an information processor to provide centralized order and trade information?	
Comments	CSA Responses
<p>Most commenters believe that that all visible, better-priced orders should be protected and that the trade-through obligation should extend through the whole depth-of-book.</p> <p>One commenter remarked that trade-through protection for the top five levels would be an onerous requirement and concurs with the U.S. approach that trade-through protection should extend to top-of-book quotations only.</p> <p>Another commenter was of the view that a trade-through rule is only appropriate where a consolidated quote is available.</p>	<p><i>The CSA agree that the trade-through obligation should apply to the full depth-of-book. Under the proposed trade-through protection rule, all visible, better-priced orders displayed on marketplaces with automated functionality would be protected, subject to certain “permitted” trade-throughs as described in our response to comments in Question 9 below.</i></p> <p><i>The CSA agree that a consolidated quote would assist in meeting the trade-through obligation but this is not a necessity to effectively meet this requirement. As stated above, we are currently working towards the introduction of an information processor.</i></p>

Question 6: Should there be a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes?

Comments	CSA Responses
<p>The majority of commenters responding to this question indicated that they are not supportive of imposing a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes. Many of these commenters cited that fees should be determined by competition.</p> <p>Six commenters did favour fee caps. Some reasons for this position included:</p> <ul style="list-style-type: none"> • The playing field for all participants would be level and memberships to an ATS may increase; • Prices would be easily comparable across marketplaces; • Dealers would be protected from becoming captive to unreasonable marketplace fees; and • Investors would not have to indirectly bear a disproportionate amount of the costs for accessing quotes under the trade-through obligations. 	<p><i>In response to the comments received, we are proposing not to impose a specific limit on the fees charged but to refer to the minimum price increment outlined in IIROC Universal Market Integrity Rule 6.1. We have also prohibited a marketplace from imposing terms that have the effect of discriminating between orders routed to the marketplace to prevent trade-throughs and orders that originate on that marketplace. We have requested further comment as to whether it is appropriate to set a cap with a specified dollar amount.</i></p>

Question 7: Should the CSA establish a threshold that would require an ATS to permit access to all groups of marketplace participants? If so, what is the appropriate threshold?

Comments	CSA Responses
<p>Most commenters responding to this question were in favour of establishing a threshold that would require an ATS to permit all groups of marketplace participants. Suggested appropriate thresholds included: 20%, 10%, and 5% of market share. One commenter stated that ATSS should provide access to all groups of market participants when they have been deemed to be a relevant marketplace.</p> <p>Another commenter was of the belief that marketplaces should not unduly restrict access and that all categories of marketplace participants should be allowed to trade.</p> <p>Another commenter was unsure of an appropriate threshold in the absence of a fully competitive environment. This commenter suggested that this concept be revisited after a year of the operation of multiple marketplaces to assess the feasibility of establishing a suitable threshold for Canadian marketplaces.</p> <p>Five commenters did not support a legislated threshold that would require ATSS to allow access to all groups of marketplace participants. Some of these commenters believed that:</p> <ul style="list-style-type: none"> • The CSA practice of looking at this issue on a case by case basis from the broad public interest point of view is appropriate; and 	<p><i>Rather than requiring that a marketplace provide direct access to all groups of participants when it meets a certain threshold, we have instead provided additional guidance regarding fair access in 21-101CP. We will continue to monitor this issue.</i></p>

<ul style="list-style-type: none"> It is unclear whether exchanges are complying with the U.S. fair access rule since only dealers can be members. 	
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Question 8: Should it be a requirement that specialized marketplaces not prohibit access to non-members so they can access, through a member (or subscriber), immediately accessible, visible limit orders to satisfy the trade-through obligation?

- Should an ATS be required to provide direct order execution access if no subscriber will provide this service?
- Is this solution practical?
- Should there be a certain percentage threshold for specialized marketplaces below which a trade-through obligation would not apply to orders and/or trades on that marketplace?

Comments	CSA Responses
<p><i>Access of Non-members to Specialized Marketplaces</i></p> <p>Many commenters responding to this question supported the requirement of specialized marketplaces allowing access to non-members so that they can access immediately accessible, visible limit orders to satisfy the trade-through obligation.</p> <p>Some reasons cited for this position included:</p> <ul style="list-style-type: none"> the trade-through obligation is a duty owed by all marketplace participants to the capital markets in general and therefore all marketplace participants with such an obligation should have fair access to all better-priced orders; and such a prohibition creates a powerful disincentive to join new marketplaces as compliance burdens will increase. <p>Other commenters not in favour of this requirement submitted that:</p> <ul style="list-style-type: none"> marketplaces that limit membership contain, by definition, orders that are not immediately accessible, visible limit orders (by virtue of the fact that excluded members cannot see or execute against orders in this type of marketplace) and therefore these orders should be deemed "excluded orders"; and it is not appropriate or necessary to force a specialized marketplace to change its technology or by-laws merely to allow the occasional and otherwise non-qualifying market participant to displace a quote for trade-through purposes. <p><i>Direct Order Execution Access</i></p> <p>The majority of commenters responding to this question did not believe an ATS should be required to provide direct order execution access if no other subscriber would provide this service.</p>	<p><i>With respect to issues relating to access to marketplaces by non-members/subscribers to a marketplace, we are not proposing that a marketplace provide direct access to non-members/subscribers. Under the proposed amendments, marketplaces would be given the discretion to determine how best to meet their trade-through obligations. This issue will be discussed with the industry implementation committee.</i></p>

<p>A few commenters, however, were in support of such a requirement.</p> <p><i>Practicality of Direct Order Execution Access</i></p> <p>Some commenters responding to this question believe that it is practical to require an ATS to provide direct order execution access if no subscriber will provide this service. One of the reasons provided in support of this stance is that ATSs are registered brokers and they should be able to handle inbound order flow as client flow.</p> <p>Two commenters did not believe this is a practical solution.</p> <p><i>Threshold Limits for Trade-Through Obligation</i></p> <p>Suggested thresholds for which a trade-through obligation would not apply to orders and/or trades on a marketplace ranged from 5% (after one year of continuous trading) to 10% of trading volume of a Canadian issuer.</p>	<p><i>The CSA have not set a threshold at which the trade-through obligation would apply and believe that the obligation should apply to all visible limit orders on a marketplace.</i></p>
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Question 9: Are there any types of special terms orders that should not be exempt from trade-through obligations?

Comments	CSA Responses
<p>Many commenters remarked that the exemption of special terms orders listed in the joint notice is appropriate.</p> <p>One commenter cited that special terms orders that are used to establish the last sale price should not be exempt from the trade-through obligation.</p> <p>Another commenter contended that all special terms orders should be exempted.</p> <p>Another commenter specified that the ability for a “fill” term order (all-or-none, minimum fill) to trade-through a better-priced order on another marketplace should be consistent with how it is treated in a market and any exemptions for marketplaces with larger minimum order sizes. This commenter also added that “settlement” terms such as cash, delayed delivery etc. and odd lots should also be exempt from the trade-through rule.</p> <p>One commenter stated that the exclusion of special terms orders should be consistent with UMIR.</p>	<p><i>We have not proposed a general exemption for all special terms orders. However, subsection 5.1(3) of Companion Policy 21-101 CP outlines that special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none or minimum fill orders, are not required to be provided to an information processor or an information vendor. Therefore, these types of orders would not fall under the definition of “protected orders” under the proposed rule and hence would not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first.</i></p> <p><i>In addition, orders with special settlement terms and “calculated price orders” have been included in the list of “permitted” trade-throughs in paragraph 6.2(e) of NI 23-101.</i></p> <p><i>As well, certain marketplaces provide an after-hours 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, a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.</i></p>

Question 10: Are there current technology tools that would allow monitoring and enforcement of a flickering quote exception?

Comments	CSA Responses
<p>While commenters responding to this question were not aware of any technology tools available to allow for the monitoring and enforcement of a flickering quote exception, some suggested an “inter-market sweep order” to address this issue.</p>	<p><i>It is expected that a marketplace will conduct periodic reviews to test the effectiveness of its policies and procedures for reasonably preventing trade-throughs and ensuring compliance with Part 6 of NI 23-101. We are of the view that a marketplace must retain relevant information so that the effectiveness of its policies and procedures can be</i></p>

<p>Another commenter stated that it would be possible to develop a non-real time monitor at RS that would compare time stamps of orders and trades.</p> <p>Some commenters stated that it would be impractical to monitor for flickering order exceptions.</p> <p>Commenters offered the following alternative suggestions to a flickering order exception:</p> <ul style="list-style-type: none"> • dealers should demonstrate that their trading policies and procedures are designed to minimize instances of trade-through caused by “flickering orders”; • initially monitor the reality of a multi-market operating environment in order to ascertain if this will actually be a material issue that warrants development work; • dealers to keep a log book that documents the instances and rationale as to why an order was non-executable, and if appropriate, the Participant could send an exception report to RS when this occurs; and • use “pattern” based regulation so that if a participant demonstrates a consistent pattern of abusing the exception it would be dealt with by regulators at that time. 	<p><i>adequately evaluated by regulatory authorities. In certain circumstances, such as sending an inter-market sweep order, it may be appropriate for marketplace participants to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.</i></p>
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Question 11: Should the exception only apply for a specified period of time (for example, one second)? If so, what is the appropriate period of time?

Comments	CSA Responses
<p>A number of commenters responding to this question believe that a specified time period may not be practical. One commenter suggested that instead of a specific period of time after the trade that would provide a safe harbour from trade-throughs, dealers should be required to demonstrate through either system documentation or through their audit trail that, at the time of order entry their orders were routed to the best priced marketplace given their current view of market data.</p> <p>Other commenters suggested that the appropriate duration should vary given the nature of the order, time of day and transaction load and one commenter suggested that it may be appropriate to have several time periods based on the nature of the order entered. One commenter suggested a quote which lasts for less than 5 seconds should not be subject to trade-through protection.</p>	<p><i>We have allowed for the provision of “flickering orders” where a marketplace displaying the best price was traded through but had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. We have asked a specific question as to what length of time should be considered an “immediate” response by a marketplace to a received order in the attached Notice. In our view, because of the high speed of trading, one second may be too long.</i></p>

Question 12: Should this exception only be applicable for trades that must occur at a specific marketplace’s closing price? Are there any issues of fairness if there is no reciprocal treatment for orders on another marketplace exempting them from having to execute at the closing price in a special facility if that price is better?

Comments	CSA Responses
<p>Three commenters specifically stated that they support the exemption from trade-through obligations of Market-On-Close (MOC) orders.</p>	<p><i>As mentioned above, if a marketplace is operating a special trading facility with a set closing price, under paragraph 6.2(e of NI 23-101), a marketplace could execute closing price orders and would not be required to take steps to</i></p>

<p>One commenter requested further clarification on what factors will be used to determine what the opening and closing price is for a security.</p> <p>One commenter referred to its position that trade-through protection should apply to all marketplaces that are open for continuous trading at any given time.</p>	<p><i>reasonably prevent trade-throughs of orders on another marketplace. Otherwise, if two marketplaces with displayed protected orders are open for trading in their regular trading session, the trade-through protection rule would apply.</i></p>
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Question 13: Should a last sale price order facility exception be limited to any residual volume of a trade or should it apply for any amount between the two original parties to a trade? What is the appropriate time limit?

Comments	CSA Responses
<p>While five commenters were in support of a last sale price order facility exception they varied in their stances as to how this exception should be applied. One commenter stated that the last sale price exemption should be limited to the residual volume while others argued for the exception to be limited to the volume traded during the session the trade in question took place. Another commenter cited that trades should be encouraged to take place in the current context of the market and would not be supportive of a last sale price order facility exception being granted for residual volume of a trade.</p> <p><i>Appropriate Time Limit</i></p> <p>Suggestions for the duration of the exception ranged from 60 seconds to two minutes. Another commenter deferred to the expertise of the marketplace to determine volumes and time limits.</p> <p><i>Opposition to Last Sale Price Order Facility Exception</i></p> <p>Five commenters were of the view that there should not be a special exception for a last sale price order facility. One of these commenters, while not in favour of an exception for a last sale price order facility that operates during a market's normal trading hours, was supportive of the idea of allowing trades to continue at the closing price of a marketplace.</p>	<p><i>We have not allowed for trade-throughs by transactions resulting from the execution of residual volumes of a trade within a last sale price order facility. We believe that better displayed prices should be honoured by all marketplace participants.</i></p>

Question 14: Should trade-throughs be allowed in any other circumstances? For example, are there specific types or characteristics of orders that should be subject to an exemption from the trade-through obligation?

Comments	CSA Responses
<p>The following exemptions from trade-through protection were suggested by commenters:</p> <ul style="list-style-type: none"> • specialty price crosses (including basis, VWAP, contingent and special trading session crosses); • special settlement terms; • Market-On-Close orders; • Derivative-related trades; • All-or-none orders (re: orders that are already in the special terms book where the trade is triggered by the marketplace algorithm); 	<p><i>As mentioned above, the current proposal permits trade-throughs for orders containing special settlement terms, closing price orders and orders where the trade price is not known at the time of order entry and is to be calculated based on, but will not necessarily be equal to, the price of the security at the time of execution.</i></p> <p><i>All-or-none, minimum fill and other special terms orders that are not immediately executable or that trade in special terms books are not required to be provided to an information processor or information vendor under subsection 5.1(3) of 21-101CP. Therefore these types of orders would not fall under the definition of "protected orders" under the proposed rule and would not receive trade-through protection.</i></p>

<ul style="list-style-type: none"> • Minimum size orders; and • Stop orders and short orders where pricing is managed by an exchange. <p>Another commenter is of the view that trade-throughs should not be allowed in any circumstance other than those listed in the joint notice.</p> <p>One commenter supported trade-through exemptions for situations where the trade price is not known at the time of order entry.</p> <p>Two commenters called for the CSA to maintain flexibility with respect to trade-through exemptions.</p>	
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Comments to Questions 15 to 18 and the corresponding CSA responses were published on June 20, 2008 in the Ontario Securities Commission Bulletin at (2008) 31 OSCB 6306.

Question 19: Please comment on whether the proposed reporting requirements for marketplaces and dealers would provide useful information. Is there other information that would be useful? Are there differences between the U.S. and Canadian markets that make this information less useful in Canada?

Comments	CSA Responses
<p>Four commenters suggested that multiple marketplaces should be in operation for some time before determining the usefulness of reporting information.</p> <p>The majority of commenters responding to this question supported the proposed information requirements placed on marketplaces. One commenter suggested that the marketplace reporting requirements should be modeled after "Dash 5" reports produced in the U.S. given the significance of interlisted trading in Canada. This commenter stated that while the basic metrics proposed by the CSA are appropriate, they are insufficient since the structures of different marketplaces also need to be considered and the metrics provided in the Dash 5 type reports provide information that allows the end recipient to compare the costs and benefits of executing on various marketplaces.</p> <p>Some commenters did not believe that the information to be provided by the dealers would be useful to the public or for firms.</p> <p><i>Suggestions for Other Useful Information</i></p> <p>One commenter suggested that disclosure of routing and execution practices by marketplaces and dealers would provide valuable tools for monitoring and assessing best execution and help to improve the efficiency of capital markets. This commenter also stated that dealers should still provide the identity of market centres where they route a significant portion of their orders, disclosure of their relationship with such market centres or any conflict of interest that may exist.</p> <p>One commenter was of the view that ATSS should provide standardized and periodic data in order for market participants to be able to reasonably consider any dark pool options for best execution.</p>	<p><i>The CSA delayed the implementation of the reporting requirements to enable multiple marketplaces to begin operations and for marketplace participants to adjust to the changing market structure. We continue to think that this reporting is important.</i></p> <p><i>We have further streamlined the proposed reporting requirements to focus on areas that we think would provide useful information to assess quality of execution.</i></p>

Question 20: Should trades executed on a foreign market or over-the-counter (OTC) be included in the data reported by dealers?

Comments	CSA Responses
<p><i>Foreign Trades</i></p> <p>The majority of commenters who responded to this question do not believe there should be a requirement to report foreign trades in Canada. Two commenters elaborated that there is a great potential cost in providing this information with little tangible benefit.</p> <p>Three commenters favoured the disclosure of foreign trades. One of these commenters supported this type of disclosure when there is a relationship between the parties which dictates how orders are routed. Another commenter suggested that this information would provide additional data points for internal analysis.</p> <p><i>OTC Trades</i></p> <p>With respect to OTC trade information, one commenter noted that although a lack of transparency combined with limited comparative information can make it difficult to measure best execution on the OTC market, such information may be useful in certain cases such as government issues.</p>	<p><i>We are not proposing that trades executed on a foreign market or over-the-counter be included in the data. We are focussing on where securities are traded on multiple marketplaces in Canada.</i></p>

Question 21: Should dealers report information about orders that are routed due to trade-through obligations?

Comments	CSA Responses
<p>The majority of commenters responding to this question did not believe that dealers should report information about orders that are routed due to trade-through obligations. Reasons for this position included:</p> <ul style="list-style-type: none"> • Detailed information about routing of orders and decisions made in the trade process is more appropriately collected as part of the TREATS initiative; • This requirement would induce more delays and offloads undue operational and regulatory costs onto participants; and • Additional reporting requirements should be deferred until the market has been operating in the context of the proposed regulations for a reasonable amount of time and careful study reveals a compelling regulatory need for such a requirement. <p>Two commenters supported the reporting of information relating to orders routed for trade-through compliance purposes. One of these commenters however stated that it wants the CSA to be confident that the benefits of receiving such reports outweigh the costs associated with building a reporting structure before mandating this information.</p>	<p><i>We are not proposing at this time to include information about orders that are routed due to trade-through obligations. This may be re-assessed once the trade-through requirements have been in place for a period of time.</i></p>

Question 22: Should information reported by a marketplace include spread-based statistics?	
Comments	CSA Responses
<p>Six commenters did not support the requirement of marketplaces reporting spread-based statistics. Some reasons listed for this position include:</p> <ul style="list-style-type: none"> • There are difficulties in setting objective standards so that everyone reports in similar ways and the statistics could be manipulated by selectively including/omitting execution data; • Depending on the nature of the marketplace, it may be completely irrelevant information; and • Spread based statistics will not assist in determining speed of execution, certainty of execution and overall cost of the transaction. <p>Five commenters indicated that spread based statistics should be reported for the following reasons:</p> <ul style="list-style-type: none"> • Spread statistics are required when considering best execution for passive order flow; • This information is important for conducting transaction cost analysis in the form of implementation shortfall analysis; and • This information is the best metric for liquidity. 	<p><i>There were mixed views on whether to include spread-based statistics. As a result, we have proposed that marketplace reporting include spread-based statistics and have specifically requested comment on this point.</i></p>
Question 23: If securities are traded on only one marketplace, would the information included in the proposed reporting requirements be useful? Is it practical for the requirement to be triggered only once securities are also traded on other marketplaces? Would marketplaces always be in a position to know when this has occurred?	
Comments	CSA Responses
<p>Most commenters responding to this question did not believe the information included in the proposed reporting requirements would be useful if securities are traded on only one marketplace. Some commenters reasoned that the value of the information would not be justified by the cost of collection of the information.</p> <p>Three commenters did think that the information included in the proposed reporting requirements would be useful even if the securities were traded only on one marketplace. One commenter contended that this historical set of data can be used if or when the issuer graduates to a larger market where its securities will be listed on multiple marketplaces. Another commenter believes that transaction cost analysis can be conducted even if securities are traded on a single marketplace. As well, another commenter noted that the reporting requirements offer metrics to measure the expected execution quality of a marketplace and that since it is difficult to track interlisted securities on a real-time basis, this commenter is of the view that the best alternative is to standardize marketplace reporting requirements regardless of whether the securities traded are interlisted.</p>	<p><i>We have not limited the marketplace reporting requirements where securities are traded only on one marketplace. We think that the proposed reporting requirements contain useful information to assess execution quality.</i></p>

II. List of Respondents

1. Bloomberg Tradebook Canada Company
2. BMO Financial Group
3. Canadian Security Traders Association Inc.
4. CNQ
5. CPP Investment Board
6. egX Canada
7. Highstreet Asset Management Inc.
8. Investment Industry Association of Canada
9. ITG Investment Technology Group
10. Liquidnet Canada Inc.
11. Merrill Lynch Canada Inc.
12. Perimeter Markets Inc.
13. Raymond James Ltd.
14. RBC Asset Management Inc.
15. RBC Dominion Securities Inc.
16. Scotia Capital Inc.
17. TD Asset Management Inc.
18. TD Newcrest
19. TSX Group Inc.

APPENDIX B

COST-BENEFIT ANALYSIS

PROPOSED TRADE-THROUGH PROTECTION RULE

On April 20, 2007, the CSA and Market Regulation Services Inc. (now the Investment Industry Regulatory Organization of Canada or IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).¹ In the Joint Notice, we said that we would prepare a cost-benefit analysis for the proposal and we asked for comments on what factors we should consider. We also invited interested parties to let us know if they would like to participate further in our analysis process.

We thank everyone who submitted comments. This paper outlines the qualitative cost-benefit analysis we conducted to aid in the policy making process. The analysis incorporates the comments we received.

Our economic rationale for proposing a trade-through protection rule, where the obligation falls on marketplaces, reflects the following economic realities:

- marketplaces are well positioned to take advantage of economies of scale and can implement the necessary technical infrastructure at a lower cost than if all participants were required to do so
- the incremental compliance costs for dealers will be modest because there is already a trade-through rule (UMIR Best Price Rule, defined below), and
- marketplaces are already adding order routing capabilities that can be used to comply with the proposed rule, both as a service to their participants and in anticipation of CSA rulemaking

We welcome your feedback on this cost-benefit analysis and are interested in any empirical data you can provide in support of your comments. As part of the next phase, we will be contacting those who expressed interest in participating further in the analysis.

Overview

The CSA does not address trade-throughs² or a best-price obligation³ in any of its rules. These obligations are currently set out in UMIR Rule 5.2 *Best Price Obligations* (UMIR Best Price Rule). However, this rule only applies to investment dealers that are members of IIROC.

In the past, the UMIR Best Price Rule was sufficient to protect better-priced limit orders from being traded-through because only dealers had direct access to marketplaces. In addition, after the specialization of exchanges in 1999, individual securities were traded only on a single marketplace. The marketplace could then enforce price priority and avoid trade-throughs on an intra-market basis.

The introduction of multiple marketplaces trading the same security, including some marketplaces that allow direct access by non-dealers, has limited the effectiveness of the UMIR Best Price Rule. Multiple marketplaces increase the potential for trade-throughs because no one marketplace can enforce price priority on an inter-market basis.

In addition, the limited jurisdiction of UMIR means dealers and non-dealers that engage in similar trading activities⁴ are operating under different regulatory requirements. As a result, non-dealers can trade-through better-priced orders without breaching any regulations.

When participants that conduct the same activity are subject to different regulatory standards, regulatory asymmetry occurs. This is a concern to the CSA because it can:

- (a) impact competition
- (b) adversely affect the broader market and its participants, and
- (c) create "free-riders" in the market

¹ (2007) 30 OSCB (Supp-3).

² A trade-through occurs when better-priced limit order is bypassed in favour of an inferior-priced limit order.

³ A best-price obligation is an obligation to ensure that trades are not executed at inferior prices.

⁴ Although non-dealers are only able to participate on a principal basis

(a) Impact on competition

The asymmetry in the regulatory treatment of dealers and non-dealers can affect how marketplaces compete for large transactions.

Institutional investors often want to limit the risks and costs associated with trading a block of shares by minimizing the potential for information leakage to the wider market. Institutional traders will not post a limit order for the full size of an order because the market could move against the trader, affecting the price paid and therefore the total cost of the transaction.

Instead, institutional traders will break a large order into smaller orders or trade on a less transparent marketplace where the risk of information leakage is reduced. For example, they may execute the trade:

- through a dealer in the “upstairs” market
- using hidden orders within a transparent limit order book (e.g. an iceberg order), or
- on an ATS that does not have pre-trade transparency (i.e. a dark pool⁵)

If a dealer is trading via an exchange or an ATS, it is required to honour all better-priced limit orders. However, an institution can trade-through better-priced orders by trading directly on an ATS. This can give non-dealer participants a competitive advantage over dealers. It can also give ATSs with non-dealer access an advantage over other marketplaces.

(b) Impact on broader market

Trade-throughs can negatively affect other market participants. Limit order traders are impacted when a trade-through causes the delayed or missed execution of a limit order. This represents a cost to the trader that posted the limit order. Imposing a cost on others without compensation is a form of market failure and is of particular concern of regulators.

Repeated trade-throughs could also affect the market as a whole by decreasing the value of posting a limit order. As trade-throughs become more common, more participants may feel that they are not being compensated for exposing their limit orders and that the market is becoming less fair. Traders might then post fewer limit orders, which could negatively affect price discovery and market quality.

(c) Free-rider issues

Regulatory asymmetry creates free-riders that benefit from market integrity without necessarily paying for it. Dealers have the obligation to prevent trade-throughs and bear the costs of meeting that obligation. An example is the cost of monitoring multiple marketplaces on a real-time basis. The market benefits from the resulting market integrity and perception of fairness. This in turn, encourages traders to post limit orders and fosters an efficient price discovery process.

However, because non-dealer participants do not have this same obligation they can benefit from participating in a robust market without incurring the associated costs or taking into account other market participants. In essence, non-dealers are free-riders.

Scale and scope

Over the past few years, the number of marketplaces for trading equity securities in Canada has increased. Today, there are seven marketplaces that trade TSX-listed securities. Four of the current marketplaces use a continuous auction trading model, while the others use call auctions or negotiated trading.

Two of these marketplaces (Blockbook and Liquidnet) are ATSs which operate as dark pools and allow non-dealers to trade directly. While the ATS market in Canada is still developing, we expect that Canadian institutional investors will increase their use of these marketplaces over time. However, we do not anticipate that these marketplaces will completely replace dealer intermediated trading by institutional investors.

For some insight on the likely extent of dark pool trading we can look to the U.S. market. The U.S. has seen considerable growth in the number of dark pools and their use by institutional investors, but dark pool trading still accounts for less than 7% of total market volume.⁶

Trading on Blockbook and Liquidnet has resulted in a number of trade-throughs by non-dealers. While these trade-throughs do

⁵ A dark pool is a marketplace that allows buyers and sellers to anonymously match stock orders without pre-trade transparency.

⁶ Rosenblatt Securities, “Let there be light, Rosenblatt’s Monthly Dark Liquidity Tracker”, May 22, 2008.

not represent a significant proportion of total traded volume on Canadian markets, they have, to varying degrees, affected the traders whose posted limit orders were traded-through.

Objective and policy rationale

The CSA's objective is to promote competition, fairness, and price discovery in Canada's equity markets by updating market policy to reflect changes in market structure. This includes applying regulatory requirements consistently to participants engaging in similar activities.

Since IIROC has limited jurisdiction over non-dealer marketplace participants, it cannot enforce the UMIR Best Price Rule on these participants. Non-dealers have an economic incentive to trade-through better-priced orders if they can execute larger trades without the information leakage and costs associated with exposing their intent.

As a result, there is little incentive for non-dealers to voluntarily honour those better-price orders. We think that regulatory intervention is necessary to create a level playing field for market participants and to address the potential negative market impacts and free-rider issues associated with the current regime.

Policy alternatives

The status quo is not desirable because of the identified competitive issues and the potential negative effect on the market. We have considered the following three policy alternatives and evaluated each in terms of their anticipated impact on the market and its participants and the ability of each option to achieve our regulatory objective:

- (a) create a participant-level best-price obligation for non-dealers
- (b) remove the UMIR Best Price Rule, and
- (c) create a trade-through obligation that applies to marketplaces (the Proposed Trade-through Protection Rule or the proposed rule)

Costs and benefits

(a) Participant-level obligation

As noted above, dealers already have obligations under the UMIR Best Price Rule but non-dealers do not. One way to address the current regulatory asymmetry is to create a best price rule that applies to non-dealer participants as well as dealers. Requiring both dealers and non-dealers to take reasonable steps to prevent trade-throughs would address the competitive imbalance of the current environment. Non-dealers would no longer be able to free-ride on the activities of dealers.

This alternative would not impose any new requirements on dealers. Those that are complying with the existing UMIR Best Price Rule would not incur any additional compliance costs. However, non-dealers would have to implement policies and procedures to prevent trade-throughs. This would include building systems to monitor multiple marketplaces and route orders to the best available price. These costs could be significant.

To a large degree, these costs would be fixed costs and would not be proportional to the size of the firm. Large firms might be able to absorb these costs given their high volume of trading. However, smaller firms would face proportionally higher compliance costs because of the limited economies of scale.

The costs could discourage some non-dealers, especially smaller firms, from directly participating in the market. This could affect the ability of marketplaces whose niche is serving institutional investors to offer a competitive alternative to existing marketplaces. Fewer execution options for institutional investors could result, which is inconsistent with our objective of promoting competition.

(b) Remove the UMIR Best Price Rule

Removing the current UMIR Best Price Rule is, perhaps, the most controversial of the options. Some argue that a trade-through or best-price rule is not required.⁷ However, industry commenters to the April 2007 Joint Notice generally supported the need for trade-through protection in the Canadian market.

Removing the UMIR Best Price Rule would eliminate the regulatory asymmetry present in the current regime and addresses the

⁷ For an overview of academic research in this area see Comerton-Forde, Carole and Bruce Robert Arnold, 2005, Literature Review: Best Execution and Trade-Through, Market Regulation Services Inc.

free-rider concern. There would be no additional compliance costs for dealers or non-dealers.

However, limit order traders and the broader market are affected if traders are allowed to trade-through better-priced orders. Without a best price rule, traders could choose which orders to trade against, subject to their best execution obligations. They would not take into account the impact on better-priced orders. Trading-through a better-priced order could result in a delayed or missed execution for posted orders. A decrease in the likelihood of execution represents an increase in trading costs for limit order traders. A decrease in the value of exposing limit orders to the market could result in fewer limit orders being placed.

Having the UMIR Best Price Rule has meant that Canadian market participants are used to, and expect, a market with price priority. Removing that rule, and therefore price priority across marketplaces, could make Canada a less attractive market in which to post limit orders. Canadian marketplaces might find it harder to attract liquidity which could affect the efficiency of the Canadian market and its ability to compete. It is important to keep in mind that the SEC's Regulation NMS does create a marketplace level best-price obligation in the U.S. market.

Removing the UMIR Best Price Rule could also reduce competition in the Canadian market. Attracting liquidity and traders away from the established marketplaces can be a significant barrier to entry for new marketplaces. A best price obligation results in orders being directed to the marketplace with the best price.⁸ This lowers the barriers to entry for those new marketplaces that are able to offer competitive quotes. Without a best price obligation it could be more challenging for a new marketplace to compete.

Finally, to the best of our knowledge there has been no research on a market that has removed an entrenched best-price rule. As a result, there is little to indicate what the actual impact would be of removing the UMIR Best Price Rule.

(c) Create a marketplace level rule

These first two alternatives would address the regulatory asymmetry between dealers and non-dealers, however there could be significant negative impacts associated with each of them. Therefore, our analysis focuses on the Proposed Trade-through Protection Rule, which would apply to marketplaces rather than participants.

(i) Compliance costs for marketplaces

Imposing a trade-through rule at the marketplace level would result in costs for Canadian marketplaces trading equities. Marketplaces could have to:

- determine how to comply with the rule
- implement and maintain written policies and procedures to prevent trade-throughs
- train staff on the rule and their policies and procedures
- maintain and update the policies and procedures to ensure continued compliance with the rule
- acquire information and systems to monitor activity on all other protected marketplaces
- update trading systems to be able to process the Inter-market Sweep Order (ISO) marker and identify other permitted trade-throughs, and
- implement policies and procedures relating to the identification of system malfunctions and the required communication to other marketplaces, regulation service providers and marketplace participants

The following is a summary of the most significant costs for marketplaces under the proposed rule.

Policies and procedure to prevent trade-throughs

The Proposed Trade-through Protection Rule intentionally includes flexibility for marketplaces and does not prescribe any one way in which a marketplace can meet its regulatory obligations.

Marketplaces would need access to real-time consolidated bid and offer information to identify possible better-priced orders. They could develop this information themselves, as many with order routers have done, or they may be able to buy the information from an information vendor or service provider.

⁸ The current UMIR Best Price Rule contains a number of qualifications that are designed to restrict the benefits of the requirement to marketplaces that meet certain standards.

However, trade-throughs could be prevented by choosing to reject orders that would result in a trade-through of a better-priced protected order. This logic would have to be programmed into the marketplace's trading system.

Or, a marketplace could redirect incoming orders to the better available price(s) by establishing linkages with other marketplaces. This could be done using in-house smart order routing technology or a service provider.

We recognize that implementing a smart order router could be costly. However, most existing Canadian marketplaces have added or plan to add order routing capabilities⁹ through a smart order router or a third-party service provider. They are doing this as a value-added service and, possibly, in anticipation of the proposed rule creating a marketplace obligation. As a result, we anticipate that these marketplaces have already provided for these costs.

Compliance monitoring

Access to historical consolidated bid and offer information would be necessary to perform ongoing monitoring of a marketplace's policies and procedures. Marketplaces could compile this information from what is currently available or it may become available from a service provider. If marketplaces compile the information in-house and build their own historical database there would be associated, and possibly significant, costs.

We do not anticipate that access to consolidated bid and offer information would be a significant incremental cost for marketplaces with a smart order router as such data would be needed for more than compliance with the proposed rule.

The other component to monitoring compliance is information about the trading activity on each marketplace. Marketplaces may already be storing such information for business purposes and so we do not anticipate material incremental costs as a result of the proposed rule.

Updated systems, policies, and procedures

Marketplaces would need to update their trading systems to incorporate the proposed ISO marker. Incorporating the ISO marker should involve minimal incremental costs because it is expected to evolve from the current bypass marker

(ii) Compliance costs for dealers

We anticipate that there would be compliance cost savings for dealers if the trade-through obligation is moved to the marketplace level.

Marketplace monitoring

Under the current regime, dealers need to monitor other marketplaces so as to identify better-priced orders and route their orders as necessary.

Some dealers have implemented monitoring and routing systems to address a business need as well as meet regulatory requirements. Firms that have high trading volumes and want to take advantage of low latency trading would arguably invest in this technology whether or not there is a trade-through rule. Because these firms are able to exploit the available economies of scale, the cost per-client or per-trade is expected to be reasonable.

Dealers that operate on a smaller scale or who trade lower volumes are faced with significant costs in order to comply with the current dealer level obligation contained in the UMIR Best Price Rule. These firms cannot take advantage of economies of scale and would find it difficult to realize a return on the necessary investment in infrastructure. We anticipate that the proposed rule would reduce the burden on these firms because they would no longer be subject to market monitoring and access requirements.

Updated systems, policies, and procedures

Dealers would need to update their trading systems to incorporate the proposed ISO marker. These costs could be higher for dealers with proprietary software than for dealers that use third-party systems. System vendors would presumably make changes for the benefit of all their clients, which would reduce the cost per client.

Incorporating the ISO marker should involve minimal incremental costs because it is expected to evolve from the current bypass marker. However, dealers would also have to develop and implement policies and procedures to ensure that the ISO order marker is used appropriately. This would include training staff on using the marker.

⁹ Either through the use of a smart order router or via a third-party service provider.

The ISO marker would also allow firms to benefit from any market monitoring and order routing technology that they have already invested in. There could be some degree of latency associated with a marketplace checking an incoming order against the quoted prices on other marketplaces. The ISO marker would allow dealers to avoid that latency if it duplicates the checks they already perform.

Dealers would also have to develop policies and procedures on using the ISO marker when dealing with systems failures or malfunctions experienced by a marketplace. They would have to document and keep records of the steps taken and notify the marketplace with the apparent system malfunction and the regulation service provider.

Dealers would have to be able to demonstrate compliance with the requirements relating to ISO markers and would have to access information about market conditions at the time an ISO order was routed.

Dealers may be able to access consolidated market data via a vendor¹⁰ or choose to construct that consolidation themselves. Firms would have to access historical consolidated market data to demonstrate compliance on a post-trade basis. The cost of data storage could be significant because the proposed rule applies on a depth-of-book basis.

A data consolidator or other data vendor may make consolidated historical information available at a reasonable cost. In the United States, service providers and exchanges sell access to these databases. For example, Nasdaq's Market Replay, which allows users to display market conditions at a point in time, is available for a relatively modest cost.

(iii) Compliance costs for non-dealer market participants

Updated systems, policies, and procedures

Costs related to implementing the ISO marker would only be incurred by non-dealers that want to use the marker. Firms that choose to use the ISO order marker might have to update their trading systems. We anticipate that this cost would be higher for firms using proprietary trading systems. They would also have to develop and implement policies and procedures to ensure that the ISO order marker is used appropriately. This would include training staff using the marker.

Firms would also have to store certain information about market conditions at the time an ISO order was routed. As noted above, the cost of storing data in-house could be significant. However, we anticipate that a data vendor will be able to take advantage of economies of scale and make a database available at a reasonable cost.

Impact on trading

Transaction costs for certain types of trades (i.e. block trades) might increase for non-dealers because they would no longer be able to trade-through better-priced orders.

(iv) Costs for other stakeholders

Market data vendors and other service providers would have to modify their systems to:

- process markers for ISOs, and
- identify marketplaces that are experiencing a system failure or malfunction

(v) Impact on competition

We expect the proposed rule to restore an appropriate competitive balance. Marketplaces would be required to have policies and procedures to prevent trade-throughs and, as a result, dealers and non-dealers would be subject to same trading constraints. These requirements would apply to all marketplaces. Those that permit non-dealer access would not have a regulation based advantage over other marketplaces in attracting order flow from institutional investors.

While there is some degree of flexibility in how marketplaces would meet their obligation to prevent trade-throughs, many would likely implement order routing capabilities. The costs associated with this could be a barrier to entry for new marketplaces. However, the actions of current marketplaces suggest that, regardless of the rules, order routing capabilities may be required to be competitive.

¹⁰ TSX, "TSX Datalinx to launch consolidated Canadian data feed including data from ATSS", press release, October 31, 2007

The proposed rule would require that prior to executing a trade, marketplaces check:

- displayed quotes on other marketplaces to ensure that there are no better-price orders, or
- ensure that the order is marked as an ISO

This step could increase the amount of time it takes to process a trade. However, since all marketplaces would have to conduct these checks, any increased latency should not affect how marketplaces compete with one another.

We do not anticipate that the proposed rule would have any other effects on competition. Marketplaces would still be able to compete in areas other than the quoted price while taking steps to prevent trade-throughs from occurring.

(vi) Impact on investors

The proposed rule would reduce the opportunity for trade-throughs to occur. This could promote the perception of fairness in the market and encourage market participation. It would also reduce the likelihood of investors being affected as a result of having an order traded-through.

Any increased transaction costs experienced by institutional investors will ultimately be passed on to the institutions' clients (e.g. pension plan members, mutual fund investors, etc.). On a per-client basis, the additional transactions costs are expected to be limited.

Conclusion

While all three policy options address the regulatory asymmetry, they also all have associated costs. In our opinion, the costs of creating a trade-through rule for non-dealers or of removing the UMIR Best Price Rule would not be proportionate to our objective. As a result, we think the Proposed Trade-through Protection Rule is the most balanced way to meet our objective.

Complying with the proposed rule would involve costs, particularly for marketplaces. We anticipate that current efforts to develop and implement smart order routers should limit the incremental cost of the rule. Most of the compliance costs would be fixed costs related to policies, procedures and systems. In our view, marketplaces are better positioned to take advantage of economies of scale in managing these costs than dealers and non-dealers.

Unofficial Consolidation – September 12, 2008

This document is an unofficial consolidation of all amendments to National Instrument 21-101 *Marketplace Operation*, its forms and its Companion Policy current to **September 12, 2008**. The black-lined portions indicate the proposed amendments to National Instrument 21-101 and its Companion Policy. This document is for reference purposes only and is not an official statement of the law.

APPENDIX C

**NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

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**NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Instrument

"alternative trading system" means a marketplace that

- (a) is not a recognized quotation and trade reporting system or a recognized exchange, and
- (b) does not
 - (i) require an issuer to enter into an agreement to have its securities traded on the marketplace,
 - (ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,
 - (iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and
 - (iv) discipline subscribers other than by exclusion from participation in the marketplace;

"ATS" means an alternative trading system;

"corporate debt security" means a debt security issued in Canada by a company or corporation that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101, and does not include a government debt security;

"effective spread" means,

- (a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt; or
- (b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt and the execution price.

"exchange-traded security" means 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 this Instrument and NI 23-101;

"foreign exchange-traded security" means a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada;

"government debt security" means

- (a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,
- (b) a debt security issued or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (c) a debt security of a crown corporation,
- (d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the Education Act (Ontario), or
- (e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l'île de Montréal

Request for Comments

that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

~~"IDA" means the Investment Dealers Association of Canada; "IIROC" means the Investment Industry Regulatory Organization of Canada;~~

"information processor" means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5;

~~"inter-dealer bond broker" means a person or company that is approved by the IDA/IIROC under IDA/IIROC By Law No. 36/Rule 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IDA/IIROC By law No. 36/Rule 36 and IDA/IIROC Regulation 2100/Rule 2100 Inter-Dealer Bond Brokerage Systems, as amended;~~

"market integrator" [repealed]

"marketplace" means

- (a) an exchange,
- (b) a quotation and trade reporting system,
- (c) a person or company not included in paragraph (a) or (b) that
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
 - (ii) brings together the orders for securities of multiple buyers and sellers, and
 - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
- (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

"marketplace participant" means a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS;

"member" means, for a recognized exchange, a person or company

- (a) holding at least one seat on the exchange, or
- (b) that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange,

and the person or company's representatives;

"NI 23-101" means National Instrument 23-101 Trading Rules;

"order" means a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security;

"realized spread" means,

- (a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution; or
- (b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution and the execution price; and

where, for orders that execute within the last five minutes of a marketplace's trading hours, the midpoint referred to in paragraphs (a) and (b) is the midpoint of the final best bid price and best ask price disseminated for the trading day.

"recognized exchange" means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange,
- (b) in Quebec, an exchange recognized by the securities regulatory authority as a self-regulatory organization or authorized by the securities regulatory authority, and
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

- (a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system, and
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

"regulation services provider" means a person or company that provides regulation services and is

- (a) a recognized exchange,
- (b) a recognized quotation and trade reporting system, or
- (c) a recognized self-regulatory entity;

"self-regulatory entity" means a self-regulatory body or self-regulatory organization that

- (a) is not an exchange, and
- (b) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority;

"subscriber" means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS, and the person or company's representatives;

"trading volume" means the number of securities traded;

"trading fee" means the fee that a marketplace charges for execution of a trade on that marketplace;

"unlisted debt security" means a government debt security or corporate debt security; and

"user" means, for a recognized quotation and trade reporting system, a person or company that quotes orders or reports trades on the recognized quotation and trade reporting system, and the person or company's representatives.

1.2 Interpretation – Marketplace – For the purpose of the definition of "marketplace" in section 1.1, a person or company is not considered to constitute, maintain or provide a market or facilities for bringing together buyers and sellers of securities, solely because the person or company routes orders to a marketplace or a dealer for execution.

1.3 Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

(1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if

- (a) in the case of a person or company,

- (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
 - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
 - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
 - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if
- (a) it is a controlled entity of,
 - (i) that other,
 - (ii) that other and one or more persons or companies each of which is a controlled entity of that other, or
 - (iii) two or more persons or companies, each of which is a controlled entity of that other; or
 - (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

1.4 Interpretation – Security

- (1) In Alberta and British Columbia, the term "security", when used in this Instrument, includes an option that is an exchange contract but does not include a futures contract.
- (2) In Ontario, the term "security", when used in this Instrument, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the *Commodity Futures Act* or the form of which is not accepted by the Director under the *Commodity Futures Act*.

PART 2 APPLICATION

2.1 Application – This Instrument does not apply to a marketplace that is a member of a recognized exchange or a member of an exchange that has been recognized for the purposes of this Instrument and NI 23-101.

PART 3 EXCHANGE – RECOGNITION

3.1 Application for Recognition

- (1) An applicant for recognition as an exchange shall file Form 21-101F1.
- (2) An applicant for recognition as an exchange shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F1, and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

3.2 Change in Information After Recognition

- (1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange shall file
- (a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or
 - (b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (2) If a recognized exchange implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized exchange shall, within 30 days after the end of the calendar quarter in which the change takes place, file

- (a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or
 - (b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (3) Subsection (2) does not apply to a change to a matter set out in Exhibits F and O of Form 21-101F1.

PART 4 QUOTATION AND TRADE REPORTING SYSTEM – RECOGNITION

4.1 Application for Recognition

- (1) An applicant for recognition as a quotation and trade reporting system shall file Form 21-101F1.
- (2) An applicant for recognition as a quotation and trade reporting system shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F1 and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

4.2 Change in Information After Recognition

- (1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized quotation and trade reporting system shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (2) If a recognized quotation and trade reporting system implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized quotation and trade reporting system shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

PART 5 REQUIREMENTS APPLICABLE ONLY TO RECOGNIZED EXCHANGES AND RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEMS

5.1 Access Requirements – A recognized exchange and a recognized quotation and trade reporting system shall

- (a) establish written standards for granting access to trading on it;
- (b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and
- (c) keep records of
 - (i) each grant of access including, for each member in the case of an exchange and for each user in the case of a quotation and trade reporting system, 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.

5.2 No Restrictions on Trading on Another Marketplace – A recognized exchange or recognized quotation and trade reporting system shall not prohibit, condition, or otherwise limit, directly or indirectly, a member or user from effecting a transaction on any marketplace.

5.3 Public Interest Rules

- (1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system
- (a) shall not be contrary to the public interest; and
 - (b) shall 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.

(2) A recognized exchange or a recognized quotation and trade reporting system shall not

- (a) permit unreasonable discrimination among clients, issuers and members or among clients, issuers and users; or
- (b) impose any burden on competition that is not reasonably necessary and appropriate.

5.4 Compliance Rules – A recognized exchange or a recognized quotation and trade reporting system shall have rules or other similar instruments that

- (a) require compliance with securities legislation; and
- (b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

5.5 Filing of Rules – A recognized exchange or a recognized quotation and trade reporting system shall file all rules, policies and other similar instruments, and all amendments thereto.

5.6 Filing of Annual Audited Financial Statements – A recognized exchange or a recognized quotation and trade reporting system shall file annual audited financial statements within 90 days after the end of its latest financial year.

PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSS

6.1 Registration – An ATS shall not carry on business as an ATS unless

- (a) it is registered as a dealer;
- (b) it is a member of a self-regulatory entity; and
- (c) it complies with the provisions of this Instrument and NI 23-101.

6.2 Registration Exemption Not Available – Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.

6.3 Securities Permitted to be Traded on an ATS – An ATS shall not execute trades in securities other than

- (a) exchange-traded securities;
- (b) corporate debt securities;
- (c) government debt securities; or
- (d) foreign exchange-traded securities.

6.4 Reporting Requirements

(1) An ATS shall file an initial operation report on Form 21-101F2 at least 30 days before the ATS begins to carry on business as an ATS.

(2) At least 45 days before implementing a significant change to a matter set out in Form 21-101F2, an ATS shall file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.

(3) If an ATS implements a change involving a matter set out in Form 21-101F2, other than a change referred to in subsection (2), the ATS shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.

(4) An ATS shall file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the ATS has carried on business.

6.5 Ceasing to Carry on Business as an ATS

(1) An ATS that intends to cease carrying on business as an ATS shall 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 shall file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.

6.6 Notification of Intent to Carry on Exchange Activities – An ATS shall notify the securities regulatory authority in writing at least six months before it first

- (a) requires an issuer to enter into an agreement before the issuer's securities can trade on the ATS;
- (b) provides, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;
- (c) sets requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the ATS; or
- (d) establishes procedures for disciplining subscribers other than by exclusion from trading.

6.7 Notification of Threshold

(1) An ATS shall 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 for 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.

(2) An ATS shall provide the notice referred to in subsection (1) within 90 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 Confidential Treatment of Trading Information

(1) An ATS shall not release a subscriber's trading information to a person or company, other than the subscriber, unless

- (a) the subscriber 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) 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, including

- (a) limiting access to the trading information of subscribers to
 - (i) employees of the ATS, or
 - (ii) persons or companies retained by the ATS to operate the system or to be responsible for compliance by the ATS with Canadian securities legislation; and

(b) implementing standards controlling trading by employees of the ATS for their own accounts.

(3) An ATS shall not carry on business as an ATS unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

6.9 Name – An ATS shall not use in its name the word "exchange", the words "stock market", the word "bourse" or any derivations of those terms.

6.10 Risk Disclosure for Trades in Foreign Exchange-Traded Securities

(1) When opening an account for a subscriber, an ATS that is trading foreign exchange-traded securities shall provide that subscriber with disclosure in substantially the following words:

The securities traded by or through [the ATS] 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 ATS by a subscriber, the ATS shall obtain an acknowledgement from the subscriber that the subscriber has received the disclosure required in subsection (1).

6.11 Risk Disclosure to Non-Registered Subscribers

(1) When opening an account for a subscriber that is not registered as a dealer under securities legislation, an ATS shall provide that subscriber with disclosure in substantially the following words:

Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers.

(2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS shall obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

6.12 No Restrictions on Trading on Another Marketplace – An ATS shall not prohibit, condition, or otherwise limit, directly or indirectly, a subscriber from effecting a transaction on any marketplace.

6.13 Access Requirements – An ATS shall

- (a) establish written standards for granting access to trading on it;
- (b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and
- (c) keep records of
 - (i) each grant of access, including, for each subscriber, 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.

Part 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES

7.1 Pre-Trade Information Transparency – Exchange-Traded Securities

(1) A marketplace that displays orders of exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the exchange-traded securities displayed on the marketplace 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.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.2 Post-Trade Information Transparency – Exchange-Traded Securities – A marketplace shall provide accurate and timely information regarding trades for exchange-traded securities executed on the marketplace 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.

7.3 Pre-Trade Information Transparency – Foreign Exchange-Traded Securities

(1) A marketplace that displays orders of foreign exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed on the marketplace to an information vendor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.4 Post-Trade Information Transparency – Foreign Exchange-Traded Securities – A marketplace shall provide accurate and timely information regarding trades for foreign exchange-traded securities executed on the marketplace to an information vendor.

7.5 Consolidated Feed – Exchange-Traded Securities – An information processor shall produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 7.1 and 7.2.

7.6 Compliance with Requirements of an Information Processor – A marketplace shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

Part 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN UNLISTED DEBT SECURITIES, INTER-DEALER BOND BROKERS AND DEALERS

8.1 Pre-Trade and Post-Trade Information Transparency Requirements – Government Debt Securities

(1) A marketplace that displays orders of government debt securities to a person or company shall provide to an information processor accurate and timely information regarding orders for government debt securities displayed on the marketplace as required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.

(4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.

(5) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed through the interdealer bond broker as required by the information processor.

8.2 Pre-Trade and Post-Trade Information Transparency Requirements – Corporate Debt Securities

(1) A marketplace that displays orders of corporate debt securities to a person or company shall provide accurate and timely information regarding orders for designated corporate debt securities displayed on the marketplace 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, as required by the regulation services provider.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed on the marketplace 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, as required by the regulation services provider.

(4) An inter-dealer bond broker shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker 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, as required by the regulation services provider.

(5) A dealer executing trades of corporate debt securities outside of a marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer 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, as required by the regulation services provider.

8.3 Consolidated Feed – Unlisted Debt Securities – An information processor shall produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 8.1 and 8.2.

8.4 Compliance with Requirements of an Information Processor – A marketplace, interdealer bond broker or dealer that is subject to this Part shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

8.5 Filing Requirements for the Information Processor

(1) The information processor shall 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.

(2) The information processor shall 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 as required by the Instrument, including where the list of designated securities can be found.

8.6 Exemption for Government Debt Securities – Section 8.1 does not apply until January 1, 2012.

PART 9 [Repealed]

PART 10 DISCLOSURE OF TRADING FEES FOR MARKETPLACES

10.1 Disclosure of Trading Fees by Marketplaces – A marketplace shall make its schedule of trading fees publicly available.

10.2 Trading Fees for Trade-Through Purposes – With respect to trading fees charged for the execution of an order to comply with section 6.1 of NI 23-101, a marketplace shall not impose

- (a) a fee that is equal to or greater than the minimum price increment described in IIROC Universal Market Integrity Rule 6.1, as amended; and
- (b) terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace.

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.1 Business Records – A marketplace shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form.

11.2 Other Records

~~(1)~~—As part of the records required to be maintained under section 11.1, a marketplace shall include the following information in electronic form:

- (a) a record of all marketplace participants who have been granted access to trading in the marketplace;
- (b) daily trading summaries for the marketplace, including
 - (i) a list of securities traded,
 - (ii) transaction volumes
 - (A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities

traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and

(B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,

- (c) a record of each order which shall 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) the type, issuer, class, series and symbol of the security,
 - (v) the number of securities to which the order applies,
 - (vi) the strike date and strike price, if applicable,
 - (vii) whether the order is a buy or sell order,
 - (viii) whether the order is a short sale order, if applicable,
 - (ix) 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,
 - (x) the date and time the order is first originated or received by the marketplace,
 - (xi) whether the account is a retail, wholesale, employee, proprietary or any other type of account,
 - (xii) [repealed]
 - (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) [repealed]
 - (xvii) the currency of the order; and
 - (xviii) [repealed]
- (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including
- (i) the identifier assigned to the marketplace where the order was executed,
 - (ii) whether the order was fully or partially executed,
 - (iii) the number of securities bought or sold,
 - (iv) the date and time of the execution of the order,
 - (v) the price at which the order was executed,
 - (vi) the identifier assigned to the marketplace participant on each side of the trade,
 - (vii) whether the transaction was a cross,

- (viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,
- (ix) the marketplace transaction fee for each trade.

11.2.1 Transmission in Electronic Form – A marketplace shall transmit

- (a) to a regulation services provider, if it has entered into an agreement with a regulation services provider in accordance with NI 23-101, the information required by the regulation services provider, within ten business days, in electronic form; and
- (b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

11.3 Record Preservation Requirements

(1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep

- (a) all records required to be made under sections 11.1 and 11.2;
- (b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1 or 6.13;
- (c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;
- (d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;
- (e) the acknowledgement obtained under subsection 6.10(2) or 6.11(2);
- (f) a copy of any agreement referred to in section 8.4 of NI 23-101; and
- (g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3).

(2) During the period in which a marketplace is in existence, the marketplace shall keep

- (a) all organizational documents, minute books and stock certificate books;
- (b) in the case of a recognized exchange, copies of all forms filed under Part 3;
- (c) in the case of a recognized quotation and trade reporting system, copies of all forms filed under Part 4; and
- (d) in the case of an ATS, copies of all forms filed under sections 6.4 and 6.5 and notices given under sections 6.6 and 6.7.

11.4 Means of Record Preservation – A marketplace may keep all records, documents and forms referred to in this Part by means of mechanical, electronic or other devices, if

- (a) the method of recordkeeping is not prohibited under other applicable law;
- (b) the marketplace takes reasonable precautions, appropriate to the means used, to govern against the risk of falsification of the information recorded; and
- (c) the marketplace provides a means for making the information available in an accurate and intelligible form, capable of being printed, within a reasonable time to any person or company lawfully entitled to examine the records.

11.5 — Synchronization of Clocks

~~(1) A marketplace trading exchange-traded securities or foreign exchange traded securities, an information processor receiving information about those securities, a dealer trading those securities and a regulation services provider monitoring the activities of marketplaces trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.~~

~~(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, an inter-dealer bond broker trading those securities and a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.~~

11.5 Synchronization of Clocks – (1) A marketplace trading exchange-traded securities, an information processor receiving information about those securities and a dealer trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities and an inter-dealer bond broker trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

PART 11.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES

11.1.1 Reporting of Order Execution Information by Marketplaces – (1) A marketplace shall publish in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a monthly report containing the information set out below, but not including information relating to any non-standard order, calculated price order or closing price order:

Liquidity Measures:

- (a) for all orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace:
 - (i) the number of orders that the marketplace received;
 - (ii) the number of orders that were cancelled;
 - (iii) the number of orders that were executed on the marketplace;
 - (iv) if applicable, the number of orders routed to another marketplace for execution;
 - (v) the average volume of all orders executed on the marketplace;
 - (vi) the share-weighted average effective spread for order executions; and
 - (vii) the share-weighted average realized spread for order executions.

Trading Statistics:

- (b) the number of trades executed on the marketplace;
- (c) the volume of all trades executed on the marketplace;
- (d) the volume of all trades resulting from the execution of orders that are not displayed on the marketplace;
- (e) the volume of all trades resulting from the execution of orders that are partially displayed on the marketplace;
- (f) the value of all trades executed on the marketplace;

- (g) the arithmetic mean and median size of trades executed on the marketplace;
- (h) the number of trades that were executed on the marketplace with a volume of,
 - (i) for securities other than options,
 - (A) over 5,000 up to and including 10,000 units of securities, and
 - (B) over 10,000 units of securities, and
 - (ii) for options,
 - (A) over 100 up to and including 250 options contracts; and
 - (B) over 250 options contracts.

Speed and Certainty of Execution Measures:

- (i) the number of orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace and that are executed:
 - (i) within 1 second after the time of their receipt;
 - (ii) more than 1 second and up to and including 10 seconds after the time of their receipt;
 - (iii) more than 10 seconds and up to and including 60 seconds after the time of their receipt;
 - (iv) more than 1 minute and up to and including 5 minutes after the time of their receipt; and
 - (v) more than 5 minutes and up to and including 30 minutes after the time of their receipt.
- (2) The reporting required in paragraphs (1)(a) through (i) shall be categorized by security.
- (3) This section is effective on [insert date six months after Effective Date].

PART 12 — CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

12.1 — System Requirements — Subject to section 12.2, a marketplace shall, for each of its systems that support order entry, order routing, execution, trade reporting and trade comparison,

- (a) 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 of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,
 - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,
 - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and
 - (v) establish reasonable contingency and business continuity plans;
- (b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the securities regulatory authority of any material systems failures.

12.2 — Application — Paragraph 12.1(b) does not apply to an ATS unless, 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 for the calendar quarter in that type of security on all marketplaces in Canada.

12.3 — Availability of technology specifications and testing facilities

(1) — For at least two months immediately prior to operating, a marketplace shall make available to the public any technology requirements regarding interfacing with or access to the marketplace.

(2) — After the technology requirements set out in subsection (1) have been published, a marketplace shall make available to the public, for at least one month, testing facilities for interfacing with and access to the marketplace.

PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

12.1 System Requirements — For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall,

- (a) develop and maintain
 - (i) reasonable business continuity and disaster recovery plans;
 - (ii) an adequate system of internal control over those systems; and
 - (iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support and system software support;
- (b) consistent 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
 - (iii) test its business continuity and disaster recovery plans; and
- (c) promptly notify the regulator, or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider of any material systems failures.

12.2 Systems Reviews — (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report, in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

- (a) its board of directors, or audit committee, promptly upon the report's completion, and
- (b) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities — (1) A marketplace shall publish all technology requirements regarding interfacing with or ~~access to~~ accessing the marketplace in their final form,

- (a) if operations have not begun, for at least three months immediately before operations begin; and
- (b) once it has begun operations, for at least three months before implementing a material change to its technology requirements.

(2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

- (a) if operations have not begun, for at least two months immediately before operations begin; and

(b) once it has begun operations, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

PART 13 CLEARING AND SETTLEMENT

13.1 Clearing and Settlement

(1) All trades executed through an ATS shall be reported and settled through a clearing agency.

(2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by

- (a) the ATS;
- (b) the subscriber; or
- (c) an agent for the subscriber that is a clearing member of a clearing agency.

(3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by

- (a) the ATS; or
- (b) an agent for the subscriber that is a clearing member of a clearing agency.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR

14.1 Filing Requirements for an Information Processor

(1) A person or company that intends to carry on business as an information processor shall file Form 21-101 F5 at least 90 days before the information processor begins to carry on business as an information processor.

(2) During the 90 day period referred to in subsection (1), a person or company that files Form 21-101 F5 shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101 F5 and the person or company shall file an amendment to the information provided in Form 21-101 F5 in the manner set out in Form 21-101 F5 no later than seven days after a change takes place.

14.2 Change in Information

(1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor shall file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

(2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

(1) If an information processor intends to cease carrying on business as an information processor, the information processor shall file a report on Form 21-101F6 at least 30 days before ceasing to carry on that business.

(2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor shall file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

(1) An information processor shall enter into an agreement with each marketplace, interdealer bond broker and dealer that is required to provide information to the information processor that the marketplace, inter-dealer bond broker or dealer will

- (a) provide information to the information processor in accordance with Part 7 or 8, as applicable; and

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- (b) comply with any other reasonable requirements set by the information processor.
- (2) An information processor shall provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.
- (3) An information processor shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.
- (4) An information processor shall establish in a timely manner an electronic connection to a marketplace, inter-dealer bond broker or dealer that is required to provide information to the information processor .
- (5) An information processor shall provide prompt and accurate order and trade information and shall not unreasonably restrict fair access to such information.

~~14.5 System Requirements~~—An information processor shall

- ~~(a) on a reasonably frequent basis, and in any event, at least annually;~~
 - ~~(i) make reasonable current and future capacity estimates for each of its systems;~~
 - ~~(ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner;~~
 - ~~(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;~~
 - ~~(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and~~
 - ~~(v) establish reasonable contingency and business continuity plans;~~
- ~~(b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and~~
- ~~(c) promptly notify the securities regulatory authority of any material systems failures.~~

14.5 System Requirements – An information processor shall.

- (a) develop and maintain
 - (i) reasonable business continuity and disaster recovery plans;
 - (ii) an adequate system of internal controls over its critical systems; and
 - (iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;
- (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,
 - (i) make reasonable current and future capacity estimates for each of its systems;
 - (ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and
 - (iii) test its business continuity and disaster recovery plans;
- (c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);
- (d) provide the report resulting from the review conducted under paragraph (c) to

- (i) its board of directors or the audit committee promptly upon the report's completion, and
- (ii) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and
- (e) promptly notify the regulator, or, in Québec, the securities regulatory authority, and any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor of any material systems failures.

PART 15 EXEMPTION

15.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 16 EFFECTIVE DATE

- 16.1 Effective Date** – This Instrument comes into force on December 1, 2001.

11. Market Regulation is being conducted by:

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

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 subsection 3.1(2), section 3.2, subsection 4.1(2) or 4.2 of National Instrument 21-101, provide a description of the change and file a complete and updated Exhibit.

1. Corporate Governance

Exhibit A

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit 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:

1. Name and address of person or company.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Location and statute citation under which organized. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation or contractual or other agreement with exchange or quotation and trade reporting system.
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.
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.

Exhibit C

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:

1. Name.
2. Title.
3. Dates of commencement and expiry of present term of office or position and length of time position held.

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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.

Exhibit D

For each affiliated entity of the exchange or quotation and trade reporting system, provide the following information:

1. A copy of the constating documents, including corporate by-laws and other similar documents.
2. A copy of existing by-laws or corresponding rules or instruments.
3. The name and title of the present officers, governors, members of all standing committees or persons performing similar functions.
4. For the latest financial year of the affiliated entity, unconsolidated financial statements, which may be unaudited. Such financial statements shall consist, at a minimum, of a balance sheet and an income statement prepared in accordance with, or if the affiliated entity is organized under the laws of a foreign jurisdiction, reconciled with Canadian GAAP. If the affiliated entity is required by securities legislation to file annual financial statements, a statement to that effect with a reference to the relevant securities legislation may be provided instead of the financial statements required here.

Exhibit E

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:

1. Full legal name.
2. Title or status.
3. Date title or status was acquired.
4. Approximate ownership interest.
5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

2. Rules**Exhibit F**

A copy of all by-laws, rules, policies and other similar instruments of the exchange or quotation and trade reporting system that are not included in Exhibit A.

3. Systems and Operations**Exhibit G**

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.

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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 and settlement of transactions in connection with the System.
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.
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 will be implemented to ensure the safety of those funds or securities.
7. Description of training provided to users of the System and any materials provided to the users.
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.

Exhibit H

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 description of the security.

4. Access

Exhibit I¹

A complete set of all forms pertaining to:

1. Filing required for participation in the exchange or quotation and trade reporting system.
2. Any other similar materials.

Exhibit J²

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.

Exhibit K

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 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.

Exhibit L

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

1. Name.
2. Date of becoming a marketplace participant.

¹ Exhibit I is to be provided only if not otherwise provided with Exhibit F.

² Exhibit J is to be provided only if not otherwise provided with Exhibit F or Exhibit I.

3. Principal business address and telephone number.
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.).
5. 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.
6. The class of participation or other access.

5. Listing Criteria

Exhibit M³

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 contents listing the forms included in this Exhibit and a narrative description of the listing requirements.

6. Fees

Exhibit N

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.

7. Financial Viability

Exhibit O⁴

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.

8. Regulation

Exhibit P

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 in place to ensure confidentiality and policies and procedures relating to conducting an investigation.

Exhibit Q

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.

Exhibit R

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.

³ The forms described in Exhibit M are to be provided only if not otherwise provided with Exhibit F.

⁴ For a new exchange, future oriented financial information should be provided instead of the information specified in Exhibit O.

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)

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 6.4(2) or 6.4(3) of National Instrument 21-101, provide a description of the change and file a complete and updated Exhibit.

Exhibit A

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.

Exhibit 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.

Exhibit C

A detailed description of the market structure of the alternative trading system (*e.g.*, call market, auction market, dealer market).

Exhibit D

The name, address, telephone number, facsimile number and e-mail address of counsel for the alternative trading system.

Exhibit E

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit F

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.

Exhibit G

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 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.
6. Procedures for ensuring subscriber compliance with requirements of the alternative trading system.
7. A description of safeguards and procedures implemented by the alternative trading system to protect subscribers' trading information.
8. Description of the training to be provided to users of the System and a copy of any materials provided.

Exhibit H

A brief description of the alternative trading system's procedures for reviewing system capacity, security and contingency planning procedures.

Exhibit I

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 company and a brief description of the controls that will be implemented to ensure the safety of the funds and securities.

Exhibit J

A list of the full legal name of registered holders and beneficial owners of securities of the alternative trading system.

Exhibit K

A description of all material contracts executed by the alternative trading system.

Exhibit L

A copy of the contract executed between the ATS and the regulation services provider.

Exhibit M

The form of contract executed between the ATS and its subscribers.

Exhibit N

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

Exhibit O

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.

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)

[Amended March 1, 2007]

NATIONAL INSTRUMENT 21-101

FORM 21-101F3
 QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES

Alternative Trading System Name: _____

Period covered by this report: _____ to _____

1. Identification:
 - A. Full name of alternative trading system (if sole proprietor, last, first and middle name):
 - B. Name(s) under which business is conducted, if different from item 1A:
 - C. Alternative trading system's main street address:
2. Attach as Exhibit A, a list of all subscribers at any time during the period covered by this report.
3. Attach as Exhibit B, a list of all securities that were traded on the alternative trading system at any time during the period covered by this report.
4.
 - (a) Provide the details requested in the form set out in the chart below for each type of security traded on the alternative trading system for transactions during regular trading hours during the quarter. Enter "None", "N/A" or "0" where appropriate.
 - (b) Provide the details requested in the form set out in the chart below for each type of security traded on the alternative trading system for transactions during after hours trading sessions during the quarter. Enter "None", "N/A" or "0" where appropriate.

Category of Securities	Average Daily Dollar Value of Trading Volume	Total Trading Volume	Total Number of Trades
A. Exchange-traded securities Equity securities Preferred securities Debt securities Options			
B. Unlisted debt securities – Government debt securities Domestic Foreign			
C. Unlisted debt securities – Corporate debt securities Domestic			

Request for Comments

Category of Securities	Average Daily Dollar Value of Trading Volume	Total Trading Volume	Total Number of Trades
D. Foreign Exchange-Traded Securities Equity securities Preferred securities Debt securities Options			
E. Other Specify types of securities			

5. Provide the total trading volume for each security traded on the alternative trading system in the form set out in the chart below. Enter "None", "N/A" or "0" where appropriate.

Category of Securities	Total Trading Volume for Each Security
A. Exchange-traded securities Equity securities [name of securities] Preferred securities [name of securities] Debt securities [name of securities] Options [name of securities]	
B. Unlisted debt securities – Government debt securities Domestic [by issuer and maturity] Foreign [by issuer and maturity]	
C. Unlisted debt securities – Corporate debt securities Domestic [by issuer and maturity]	
D. Foreign Exchange-Traded Securities Equity securities [name of securities] Preferred securities [name of securities] Debt securities [name of securities] Options	

Request for Comments

Category of Securities	Total Trading Volume for Each Security
[name of securities]	
E. Other Specify securities	

6. Attach as Exhibit C, a list of all persons granted, denied, or limited access to the alternative trading system during the period covered by this report, designating for each person (a) whether they were granted, denied, or limited access; (b) the date the alternative trading system took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report relating to the alternative trading system 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)

NATIONAL INSTRUMENT 21-101
FORM 21-101F4
CESSATION OF OPERATIONS REPORT FOR
ALTERNATIVE TRADING SYSTEM

1. Identification:
 - A. Full name of alternative trading system (if sole proprietor, last, first and middle name):
 - B. Name(s) under which business is conducted, if different from item 1A:
2. Date alternative trading system proposes to cease carrying on business as an ATS:
3. If cessation of business was involuntary, date alternative trading system has ceased to carry on business as an ATS:
4. Please check the appropriate box:
 - the ATS intends to carry on business as an exchange and has filed Form 21-101F1.
 - the ATS intends to cease to carry on business.
 - the ATS intends to become a member of an exchange.

Exhibits

File all Exhibits with the Cessation of Operations 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.

Exhibit A

The reasons for the alternative trading system ceasing to carry on business as an ATS.

Exhibit B

A list of each of the securities the alternative trading system trades.

Exhibit C

The amount of funds and securities, if any, held for subscribers by the alternative trading system, or another person or company retained by the alternative trading system to hold funds and securities for subscribers and the procedures in place to transfer or to return all funds and securities to subscribers.

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)

BUSINESS ORGANIZATION

12. Legal status:

- Corporation Sole Proprietorship
- Partnership Other (specify):

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):

(a) Date (DD/MM/YYYY): _____ (b) Place of formation:

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 and file a complete and updated Exhibit.

1. Corporate Governance

Exhibit A

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments identifying the processes and procedures which promote independence from the marketplaces, inter-dealer bond brokers and dealers that provide data.

Exhibit B

List any person or company who owns 10 percent or more of the information processor's stock 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

A list of the partners, officers, directors, 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 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. 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.

Exhibit D

A narrative or graphic description of the organizational structure of the information processor.

Exhibit E

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 F

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, 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. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation or contractual or other agreement with the information processor.
5. Brief description of business or functions.
6. 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.

2. Systems and Operations

Exhibit G

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. The hours of operation of the System.
4. Description of the training provided to users of the System and any materials provided to the users.
5. 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.

Exhibit H

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 I

A list of all computer hardware utilized by the information processor to perform the services or functions listed in Item 10, indicating:

1. Manufacturer, and manufacturer's equipment and identification number.

Request for Comments

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.

Exhibit J

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. Include a general description of any physical and operational safeguards designed to prevent unauthorized access to the system. Describe 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.

Exhibit K

Where the functions of an information processor are performed by automated facilities or systems, attach a description of:

1. 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,
2. Business continuity and contingency plans for the ongoing operations of the facilities or systems in the event of a catastrophe,
3. 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, and
4. The total number of interruptions which have lasted two minutes or less.

Exhibit L

For each service or function listed in Item 10,

1. Quantify in appropriate units of measure the limits on the information processor's capacity to retrieve, collect, process, store or display the data elements included within each function.
2. Identify *the factors* (mechanical, electronic or other) *which account for* the *current* limitations reported in answer to 1. on the capacity to receive, collect, process, store or display the data elements included within each function.

3. Financial Viability**Exhibit M**

Audited financial statements for the latest financial year of the information processor and a report prepared by an independent auditor. Please discuss the financial viability of the information processor in the context of having sufficient financial resources to properly perform its functions.

Exhibit N

A business plan with pro forma financial statements and estimates of revenue.

4. Fees and Revenue Sharing**Exhibit O**

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, including the cost of establishing a connection that will provide information to the information processor. Where arrangements 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 are in place, a complete description of the arrangements and the basis for these arrangements.

5. Access

Exhibit P

Attach the following:

1. State the number of persons who presently subscribe or who have notified the information processor of their intention to subscribe to the services of the information processor.
2. 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 Q

The form of contract governing the terms by which persons may subscribe to the services of an information processor.

Exhibit R

A description of any specifications, qualifications or other 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, qualifications or other 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.

Exhibit S

Attach any specifications, qualifications or other criteria required of participants who supply securities information to the information processor for collection, processing for distribution or publication by the information processor.

6. Selection of Securities Reported to the Information Processor

Exhibit T

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 which securities should 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 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)

[Amended March 1, 2007]

NATIONAL INSTRUMENT 21-101
FORM 21-101F6
CESSATION OF OPERATIONS REPORT FOR
INFORMATION PROCESSOR

1. Identification:
 - A. Full name of information processor:

 - B. Name(s) under which business is conducted, if different from item 1A:

2. Date information processor proposes to cease carrying on business:

3. If cessation of business was involuntary, date information processor ceased to carry on business:

Exhibits

File all Exhibits with the Cessation of Operations Report. 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.

Exhibit A

The reasons for the information processor ceasing to carry on business.

Exhibit B

A list of each of the securities the information processor displays.

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)

**COMPANION POLICY 21-101CP
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.

1.2 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".

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

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

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 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. A system that merely routes orders for execution to a facility where the orders are executed.
3. 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 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 ~~DAIROC By-law No. 36~~ Rule 36 and ~~DAIROC Regulation 2100~~ 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 ~~By-law No. 36~~ Rule 36 or ~~DAIROC Regulation 2100~~ Rule 2100, but will be subject to all other DAIROC requirements applicable to a dealer.

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

3.1 Exchange

(1) Canadian 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 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 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) 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 ~~DAI~~IROC 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.

(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) of the Instrument require 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

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 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.

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".

(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.

(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, G, I, J, K, M, N, P and O 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 ~~any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers~~ 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 7 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS

7.1 Access Requirements – 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, however, restrict the authority of an exchange or quotation and trade reporting system to maintain reasonable standards for access. 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 member or user. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a member in the case of an exchange or a user in the case of a quotation and trade reporting system or anyone accessing orders directly or indirectly on the exchange or quotation and trade reporting system for purposes of the trade-through requirements set out in Part 6 of NI 23-101. A recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a member or user directly, or (b) a person or company that is indirectly accessing the recognized exchange or recognized quotation and trade reporting system through a member or user.

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 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.

8.2 Access Requirements – 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. 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. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a subscriber or anyone accessing orders directly or indirectly on the ATS for purposes of the trade-through requirements set out in Part 6 of NI 23-101. An ATS should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a subscriber directly, or (b) a person or company that is indirectly accessing the ATS through a subscriber.

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 information 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 the marketplace to provide 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. 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 the 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.

(2) ~~To comply with subsections 7.1 and 7.2 of the Instrument, 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. 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, 2012. 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

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

- (3) The requirements of the information processor for corporate debt securities are as follows:
- (a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than \$2 million, the trade details provided to the information processor are to be reported as "\$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than \$200,000, the trade details provided to the information processor are to be reported as "\$200,000+".
 - (b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.
 - (c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.
- (4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.
- (5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.
- (6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

Rating Organization	Long Term Debt	Short Term Debt
Fitch, Inc.	BBB	F3
Dominion Bond Rating Service Limited	BBB	R-2
Moody's Investors Service, Inc.	Baa	Prime-3
Standard & Poors Corporation	BBB	A-3

- (7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.
- (8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.
- (9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.

10.2 ~~Repealed~~ 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 Trading Fees for Trade-Through Purposes – Section 10.2 of the Instrument prohibits a marketplace from imposing fees for the purpose of complying with the trade-through requirements set out in Part 6 of NI 23-101 that (i) is equal to or greater than the minimum price increment that is described in IIROC Universal Market Integrity Rule 6.1, as amended, or (ii) has the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace. This prohibition would include any fees charged to access an order on a marketplace. Paragraph 10.2(b) of the Instrument is intended to ensure that a marketplace does not charge discriminatory fees to those routing orders to meet their trade-through obligations.

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** – Subsection 11.5(1) requires a marketplace trading exchange traded securities or foreign exchange traded securities, an information processor receiving information about those securities, a dealer trading those securities and a regulation services provider monitoring the activities of marketplaces trading those securities shall synchronize their clocks. Subsection 11.5(2) requires a marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, an inter-dealer bond broker trading those securities and a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities shall synchronize their clocks. The Canadian securities regulatory authorities are of the view that synchronization means that in most circumstances, the clocks will be within 2 seconds of each other. The clocks should be checked at least daily for synchronization and should be adjusted on a weekly basis. For exchange traded securities and foreign exchange traded securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks. For unlisted debt securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks.~~

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 activities of marketplaces, and, as appropriate, inter-dealer bond brokers or dealers trading the relevant securities. 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 should coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 13.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES

13.1.1 Reporting of Order Execution Information by Marketplaces – (1) Section 11.1.1 of the Instrument requires a marketplace to make available standardized, monthly reports of statistical information concerning the execution of orders. It is expected that this information would provide a starting point to promote visibility and best execution, in particular, relating to the factors of execution price and speed. It is also expected that this information would provide a tool for dealers and advisers to evaluate the quality of executions among marketplaces and aid in fulfilling their duty of best execution.

(2) Orders that are not immediately executable and orders that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery are not considered to be orders for the purposes of this Part. As well, order information regarding pre-arranged trades and intentional or internal crosses is not required. In addition, marketplaces reporting trade information should only count each share traded once.

PART 14 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

14.1 Capacity, Integrity and Security of Marketplace Systems

(1) Subsection (a) of section 12.1 of the Instrument requires a marketplace to meet certain systems, capacity, integrity and security standards. Subsections (b) and (c) of section 12.1 of the Instrument require a recognized exchange, a recognized quotation and trade reporting system and an ATS that exceeds the threshold in section 12.2 of the Instrument to meet certain additional systems, capacity, integrity and security standards.

(2) The activities in subsection (a) of section 12.1 of the Instrument must be carried out at least once a year. The Canadian securities regulatory authorities would expect these activities to be carried out even more frequently if there is a change to the marketplace that is material either in terms of structure or volume of trading that necessitates that these functions be carried out more frequently in order to ensure that the marketplace can appropriately service its marketplace participants.

(3) The independent review contemplated by subsection (b) of section 12.1 of the Instrument should be performed by competent, independent audit personnel following established audit procedures and standards.

(4) An ATS becomes subject to subsections (b) and (c) of section 12.1 of the Instrument after it first satisfies the trading volume test in section 12.2 of the Instrument. It remains subject to subsections (b) and (c) of section 12.1 even if, thereafter, it no longer satisfies the trading volume test, unless it is successful in obtaining relief under section 15.1 of the Instrument.

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). 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.

14.2 Availability of Technology Specifications and Testing Facilities (1) Subsection 12.3(1) of the Instrument requires marketplaces to publish their technology requirements regarding interfacing with or accessing the marketplace in their final form for at least three months. If there are material changes to these requirements after they are published and before operations begin, the revised requirements should be published for a new three month period prior to operations. The subsection also

requires that an operating marketplace publish its technology specifications 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 published. Should the marketplace publish its specifications 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 available for at least two months before implementing the material systems change.

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 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) The purpose of an information processor is to ensure the availability of prompt and accurate order and trade information and to guarantee fair access to the information.~~

(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

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

16.2 Selection of an Information Processor

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

- (a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;
- (b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms ~~which are not unreasonably discriminatory~~;
- (c) personnel qualifications;
- (d) whether the information processor has sufficient financial resources for the proper performance of its functions;

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- (e) the existence of another entity performing the proposed function for the same type of security;
- (f) the systems report referred to in subsection 14.5(b) 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.

16.4 System Requirements – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.

Unofficial Consolidation – September 12, 2008

This document is an unofficial consolidation of all amendments to National Instrument 23-101 *Trading Rules*, and its Companion Policy current to **September 12, 2008**. The black-lined portions indicate the proposed amendments to National Instrument 23-101 and its Companion Policy. This document is for reference purposes only and is not an official statement of the law.

**NATIONAL INSTRUMENT 23-101
TRADING RULES**

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NATIONAL INSTRUMENT 23-101
TRADING RULES

PART 1 DEFINITION AND INTERPRETATION

1.1 Definition – In this Instrument

"NI 21-101" means National Instrument 21-101 Marketplace Operation;

"automated functionality" means the ability to:

- (a) permit an incoming order that has been entered on the marketplace electronically to be marked as fill-or-kill;
- (b) immediately and automatically execute an order marked as fill-or-kill against the displayed volume;
- (c) immediately and automatically cancel any unexecuted portion of an order marked as fill-or-kill without routing the order elsewhere;
- (d) immediately and automatically transmit a response to the sender of an order marked as fill-or-kill indicating the action taken with respect to the order; and
- (e) immediately and automatically display information that updates the displayed order to reflect any change to its material terms;

"best execution" means the most advantageous execution terms reasonably available under the circumstances;

"calculated price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace if the price of that security

- (a) is not known at the time of order entry; and
- (b) is to be calculated based on, but will not necessarily be equal to, the price of that security at the time of execution;

"closing price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is

- (a) entered on a marketplace on a trading day; and
- (b) subject to the conditions that
 - (i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price;

"inter-market sweep order" means a limit order for the purchase or sale of an exchange-traded security, other than a derivative,

- (a) entered on or routed to a marketplace to be executed against a protected order; and
- (b) identified as an inter-market sweep order; and

at the same time that it is entered or routed, one or more additional limit orders are routed, as necessary, to a marketplace to execute against the displayed volume of any other protected order on that marketplace with a better price to the protected order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace that is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than a derivative,

- (a) that is displayed by a marketplace that has automated functionality; and

- (b) about which information is provided pursuant to Part 7 of NI 21-101 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;

“protected offer” means an offer for an exchange-traded security, other than a derivative,

- (a) that is displayed by a marketplace that has automated functionality; and

- (b) about which information is provided pursuant to Part 7 of NI 21-101 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;

“protected order” means a protected bid or protected offer; and

“trade-through” means the execution of a trade at a price that is,

- (a) in the case of a purchase, higher than any protected offer, or

- (b) the case of a sale, lower than any protected bid.

1.2 Interpretation – NI 21-101 – Terms defined or interpreted in NI 21-101 and used in this Instrument have the respective meanings ascribed to them in NI 21-101.

PART 2 APPLICATION OF THIS INSTRUMENT

2.1 Application of this Instrument – A person or company is exempt from subsection 3.1(1) and Parts 4 and 5 if the person or company complies with similar requirements established by

- (a) a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) directly;
- (b) a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) directly; or
- (c) a regulation services provider.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) A person or company shall not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in or acquisition of a security or any act, practice or course of conduct, if the person or company knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative of that security; or
- (b) perpetrates a fraud on any person or company.

(2) In Alberta, British Columbia, Ontario, Quebec and Saskatchewan, instead of subsection (1), the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply.

PART 4 BEST EXECUTION

4.1 Application of this Part – This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

4.2 Best Execution – A dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client.

4.3 Order and Trade Information – To satisfy the requirements in section 4.2, a dealer or adviser shall make reasonable efforts to use facilities providing information regarding orders and trades.

4.4 Reporting of Order Routing by Dealer – (1) A dealer shall publish, in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a quarterly report on its routing of orders when acting as agent during that quarter and shall include the following information if securities are traded on more than one marketplace:

- (a) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace
 - (i) at the direction or instruction of the client, and
 - (ii) otherwise determined by the dealer; and
- (b) a discussion of any material aspects of a dealer's relationship with a marketplace including a description of any arrangements.

(2) A dealer shall, within 15 days of receiving a request from a client, disclose to the client the identity of any marketplace where the client's orders were routed for execution in the six months before the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the executions, if any, that resulted from such orders.

(3) This section is effective on [insert date six months after Effective Date].

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – If a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 21-101 makes a decision to prohibit trading in a particular security for a regulatory purpose, no person or company shall execute a trade for the purchase or sale of that security during the period in which the prohibition is in place.

PART 6 TRADING HOURS

~~6.1 Trading Hours~~ – ~~Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.~~

PART 6 TRADE-THROUGH PROTECTION

6.1 Trade-through Protection – (1) A marketplace shall establish, maintain and enforce written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs on that marketplace other than the trade-throughs listed in section 6.2; and
- (b) to ensure that the marketplace, when executing a transaction that constitutes a trade-through listed in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required by subsection (1) and shall take prompt action to remedy any deficiencies in such policies and procedures.

(3) At least 45 days before implementation, a marketplace shall provide to the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any material amendments to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

- (a) the transaction that constituted the trade-through was executed when there were reasonable grounds to believe that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment;
- (b) the transaction that constituted the trade-through was the execution of an order identified as an inter-market sweep order;

- (c) the transaction that constituted the trade-through was executed by a marketplace that simultaneously routed an inter-market sweep order to execute against the total displayed volume of any protected order that was traded through;
- (d) the marketplace displaying the protected order that was traded through had displayed, immediately before the execution of the transaction that constituted the trade-through, a protected order with a price that was equal or inferior to the price of the trade-through transaction;
- (e) the transaction that constituted the trade-through was the result of the execution of
 - (i) a non-standard order;
 - (ii) a calculated price order; or
 - (iii) a closing price order; and
- (f) the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer.

6.3 Inter-market Sweep Order Requirements – A marketplace or marketplace participant responsible for the routing of an inter-market sweep order must take all reasonable steps to ensure that the order is an inter-market sweep order.

6.4 Systems or Equipment Failure, Malfunction or Material Delay – (1) A marketplace shall immediately notify all regulation services providers, its marketplace participants and other marketplaces if there is a failure, malfunction or material delay of its systems or equipment.

(2) When executing a transaction that falls within paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

- (a) the marketplace that it has reasonable grounds to believe it is experiencing a failure, malfunction or material delay of its systems or equipment;
- (b) all regulation services providers; and
- (c) its marketplace participants.

(3) When a marketplace participant has reasonable grounds to believe that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify

- (a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment;
and
- (b) all regulation services providers.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally lock or cross a particular marketplace or the market as a whole by

- (a) entering on a marketplace a bid at a price that is the same as or higher than the best protected offer; or
- (b) entering on a marketplace an offer at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – Each marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall route 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.

PART 7 MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM

7.1 Requirements for a Recognized Exchange

- (1) A recognized exchange shall set requirements governing the conduct of its members, including requirements that the members will conduct trading activities in compliance with this Instrument.
- (2) A recognized exchange shall monitor the conduct of its members and enforce the requirements set under subsection (1), either
 - (a) directly, or
 - (b) indirectly through a regulation services provider.

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

- (a) that the regulation services provider will monitor the conduct of the members of a recognized exchange;
- (b) that the regulation services provider will enforce the requirements set under subsection 7.1(1);
- (c) ~~that the recognized exchange will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and~~ that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange; and
- (d) that the recognized exchange will comply with all orders or directions made by the regulation services provider.

7.3 Requirements for a Recognized Quotation and Trade Reporting System

- (1) A recognized quotation and trade reporting system shall set requirements governing the conduct of its users, including requirements that the users will conduct trading activities in compliance with this Instrument.
- (2) A recognized quotation and trade reporting system shall monitor the conduct of its users and enforce the requirements set under subsection (1) either
 - (a) directly; or
 - (b) indirectly through a regulation services provider.

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

- (a) that the regulation services provider will monitor the conduct of the users of a recognized quotation and trade reporting system;
- (b) that the regulation services provider will enforce the requirements set under subsection 7.3(1);
- (c) ~~that the recognized quotation and trade reporting system will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and~~ that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized quotation and trade reporting system; and
- (d) that the recognized quotation and trade reporting system will comply with all orders or directions made by the regulation services provider.

7.5 Co-ordination of Monitoring and Enforcement – A regulation services provider, recognized exchange, or recognized quotation and trade reporting system shall enter into a written agreement with all other regulation services providers, recognized exchanges, and recognized quotation and trade reporting systems to coordinate monitoring and enforcement of the requirements set ~~under this Part~~ under Parts 7 and 8.

PART 8 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS

8.1 Pre-condition to Trading on an ATS – An ATS shall not execute a subscriber's order to buy or sell securities unless the ATS has executed and is subject to the written agreements required by sections 8.3 and 8.4.

8.2 Requirements Set by a Regulation Services Provider for an ATS

(1) A regulation services provider shall set requirements governing an ATS and its subscribers, including requirements that the ATS and its subscribers will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an ATS and its subscribers and shall enforce the requirements set under subsection (1).

8.3 Agreement between an ATS and a Regulation Services Provider – An ATS and a regulation services provider shall enter into a written agreement that provides

- (a) that the ATS will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the regulation services provider will monitor the conduct of the ATS and its subscribers;
- (c) that the regulation services provider will enforce the requirements set under subsection 8.2(1);
- (d) ~~that the ATS will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of ATSs and marketplace participants; and~~
- (e) that the ATS will comply with all orders or directions made by the regulation services provider.

8.4 Agreement between an ATS and its Subscriber – An ATS and its subscriber shall enter into a written agreement that provides

- (a) that the subscriber will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);
- (b) that the subscriber acknowledges that the regulation services provider will monitor the conduct of the subscriber and enforce the requirements set under subsection 8.2(1);
- (c) that the subscriber will comply with all orders or directions made by the regulation services provider in its capacity as a regulation services provider, including orders excluding the subscriber from trading on any marketplace.

8.5 [Repealed]

PART 9 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTERDEALER BOND BROKER

9.1 Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker

(1) A regulation services provider shall set requirements governing an inter-dealer bond broker, including requirements that the inter-dealer bond broker will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an inter-dealer bond broker and shall enforce the requirements set under subsection (1).

9.2 Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider – An inter-dealer bond broker and a regulation services provider shall enter into a written agreement that provides

- (a) that the inter-dealer bond broker will conduct its trading activities in compliance with the requirements set under subsection 9.1(1);
- (b) that the regulation services provider will monitor the conduct of the inter-dealer bond broker;
- (c) that the regulation services provider will enforce the requirements set under subsection 9.1(1); and
- (d) that the inter-dealer bond broker will comply with all orders or directions made by the regulation services provider.

9.3 Exemption for an Inter-Dealer Bond Broker

(1) Sections 9.1 and 9.2 do not apply to an inter-dealer bond broker, if the inter-dealer bond broker complies with the requirements of ~~IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets~~ IROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended.

(2) [Repealed]

PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE

10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace

(1) A regulation services provider shall set requirements governing a dealer executing trades of unlisted debt securities outside of a marketplace, including requirements that the dealer will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace and shall enforce the requirements set under subsection (1).

10.2 Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider – A dealer executing trades of unlisted debt securities outside of a marketplace shall enter into an agreement with a regulation services provider that provides

- (a) that the dealer will conduct its trading activities in compliance with the requirements set under subsection 10.1(1);
- (b) that the regulation services provider will monitor the conduct of the dealer;
- (c) that the regulation services provider will enforce the requirements set under subsection 10.1(1); and
- (d) that the dealer will comply with all orders or directions made by the regulation services provider.

10.3 [Repealed]

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Application of this Part

(1) This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

(2) A dealer or inter-dealer bond broker is exempt from this Part if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.

11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers

(1) **Recording Requirements for Receipt or Origination of an Order** – Immediately following the receipt or origination of an order for equity, fixed income and other securities identified by a regulation services provider, a dealer and inter-dealer bond broker shall record specific information relating to that order including,

- (a) the order identifier;

- (b) the dealer or inter-dealer bond broker identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order, if applicable;
- (e) the number of securities to which the order applies;
- (f) the strike date and strike price, if applicable;
- (g) whether the order is a buy or sell order;
- (h) whether the order is a short sale order, if applicable;
- (i) 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;
- (j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;
- (k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;
- (l) the client account number or client identifier;
- (m) the date and time that the order expires;
- (n) whether the order is an intentional cross;
- (o) whether the order is a jitney and if so, the underlying broker identifier;
- (p) any client instructions or consents respecting the handling or trading of the order, if applicable;
- (q) the currency of the order;
- (r) an insider marker; and
- (s) any other markers required by a regulation services provider.

(2) **Recording Requirements for Transmission of an Order** – Immediately following the transmission of an order for securities to a dealer, inter-dealer bond broker or a marketplace, a dealer or inter-dealer bond broker transmitting the order shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the dealer or inter-dealer bond broker identifier assigned to the dealer or inter-dealer bond broker transmitting the order and the identifier assigned to the dealer, inter-dealer bond broker or marketplace to which the order is transmitted; and
- (b) the date and time the order is transmitted.

(3) **Recording Requirements for Variation, Correction or Cancellation of an Order** – Immediately following the variation, correction or cancellation of an order for securities, a dealer or inter-dealer bond broker shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

- (a) the date and time the variation, correction or cancellation was originated or received;
- (b) whether the order was varied, corrected or cancelled on the instructions of the client, the dealer or the inter-dealer bond broker;
- (c) in the case of variation or correction, any of the information required by subsection (1) which has been changed; and
- (d) the date and time the variation, correction or cancellation of the order is entered.

(4) **Recording Requirements for Execution of an Order** – Immediately following the execution of an order for securities, the dealer or inter-dealer bond broker shall add to the record maintained in accordance with this section specific information relating to that order including,

- (a) the identifier of the marketplace where the order was executed or the identifier of the dealer or inter-dealer bond broker executing the order if the order was not executed on a marketplace;
- (b) the date and time of the execution of the order;
- (c) whether the order was fully or partially executed;
- (d) the number of securities bought or sold;
- (e) whether the transaction was a cross;
- (f) whether the dealer has executed the order as principal;
- (g) the commission charged and all other transaction fees; and
- (h) the price at which the order was executed, including mark-up or mark-down.

~~(5)~~ **[Repealed]**

~~(6)~~ **[Repealed]**

~~(7.5)~~ **Record Preservation Requirements** – A dealer and an inter-dealer bond broker shall keep all records for a period of not less than seven years from the creation of the record referred to in this section, and for the first two years in a readily accessible location.

~~(6)~~ **[Repealed]**

11.3 Transmission in Electronic Form – A dealer and inter-dealer bond broker shall transmit

- (a) to a regulation services provider the information required by the regulation services provider, within ten business days, in electronic form; and
- (b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

PART 12 EXEMPTION

12.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 13 EFFECTIVE DATE

13.1 Effective Date – This Instrument comes into force on December 1, 2001.

**COMPANION POLICY 23-101 CP
TO NATIONAL INSTRUMENT 23-101
TRADING RULES**

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**COMPANION POLICY 23-101CP
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.

PART 2 APPLICATION OF THE INSTRUMENT APPLICATION AND DEFINITIONS

2.1 Application of the Instrument and Definitions – 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, Quebec and Saskatchewan and the relevant provisions of securities legislation apply.

2.2 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 fill-or-kill orders.

2.3 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 based on, but not necessarily equal to, the price of an exchange-traded security at the time of execution. 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.

2.4 Definition of Inter-Market Sweep Order – An inter-market sweep order must be marked to inform the receiving marketplace that it can be immediately executed without reference to better-priced orders displayed by other marketplaces. It may be marked “ISO” by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one inter-market sweep order in order to execute against the best protected bid or best protected offer and any inferior-priced orders. In addition, marketplace participants may send a single inter-market sweep order to execute against the best protected bid or best protected offer.

2.5 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.

2.6 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 a derivative, that is displayed on a marketplace with 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 trade-through 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 trade-through obligation applies.

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* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Quebec 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 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.

4.2 Reporting Requirements Applicable to Dealers – Section 4.4 of the Instrument requires disclosure of the order routing practices of dealers that route orders for clients. As dealers owe a duty of best execution to their clients, dealers should review their order routing practices periodically to assure they are meeting this responsibility. It is expected that the information required by section 4.4 of the Instrument will bring transparency to this process and provide clients with the opportunity to monitor a dealer’s order routing activity. On request by a client, a dealer is required to disclose where an individual client’s orders were routed.

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, 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 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 system or exchange or quotation and trade reporting system recognized for the purposes of the Instrument and NI 21-101.

PART 6 — TRADING HOURS

6.1 — Trading Hours

~~(1) Section 6.1 of the Instrument provides that each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. A marketplace may have after hours trading at any prices.~~

~~(2) An ATS can trade after hours at prices outside of the closing bid price and ask price of a security set by the marketplace where that security is listed or quoted.~~

PART 6 — TRADE-THROUGH PROTECTION

6.1 Trade-through Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and enforce 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 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.

(3) In certain circumstances a marketplace participant should create policies and procedures and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an inter-market sweep order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively. If a marketplace participant regularly uses inter-market sweep orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

(4) 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.

(5) Trade-through protection applies whenever two or more marketplaces with displayed 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 List of Trade-throughs – Section 6.2 of the Instrument sets forth a list of "permitted" trade-throughs that are primarily designed to achieve workable trade-through protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraph 6.2(a) of the Instrument would apply where there are reasonable grounds to believe that a marketplace is experiencing a failure or malfunction of its systems or equipment as well as any material delay (systems issues). If a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) The marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants and regulation services providers when the failure,

malfunction or delay 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 that has reasonable grounds to believe that the marketplace is having systems issues may nevertheless rely on paragraph 6.2(a). 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 belief. 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).

- (b) Paragraph 6.2(b) of the Instrument contemplates that a marketplace would immediately execute any order identified as an inter-market sweep order. A marketplace that receives an inter-market sweep order would not need to delay its execution to ensure the execution of better-priced orders at other marketplaces. A marketplace participant may send an inter-market sweep order to a marketplace for execution.
- (c) Paragraph 6.2(d) of the Instrument allows for a transaction if the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. This inclusion of "flickering orders" in paragraph 6.2(d) provides some relief due to rapidly moving markets.
- (d) The basis for the inclusion of calculated price orders, non-standard orders and closing price orders in paragraph 6.2(e) 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) Paragraph 6.2(f) of the Instrument includes 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 trade-through protection only applying to displayed orders or parts of orders, hidden or reserve orders will remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of this paragraph would be a violation of section 6.5 of the Instrument.

6.3 Locked and Crossed Markets – Section 6.5 of the Instrument provides that a marketplace participant cannot intentionally lock or cross a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order to lock or cross a marketplace or the market as a whole (for example, to take advantage of rebates offered by a particular marketplace instead of executing against already existing orders). It is not intended to prohibit the use of marketable limit orders. Paragraph 6.2(f) allows for the resolution of crossed markets that occur unintentionally.

6.4 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from routing 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 trade-through 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 ~~IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets~~ 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 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 co-ordinate the enforcement of the requirements set under Parts 7 and 8. This coordination may include having regulation services providers monitor trading on all 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 the terms of its own rules or policies and procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, and audit trail requirements. If a recognized exchange or recognized quotation and trade reporting system has retained a regulation services provider, the agreement to coordinate required in section 7.5 of the Instrument should be reflected in the agreement referred to in section 7.2 or section 7.4 respectively. 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.

(2) Currently, only IIROC is the regulation services provider for both exchange-traded 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).