

1.1.2 OSC Staff Notice 21-705 – Process for Marketplace Filings and Proposed Rules of Exchanges

OSC STAFF NOTICE 21-705 PROCESS FOR MARKETPLACE FILINGS AND PROPOSED RULES OF EXCHANGES

Exchanges, quotation and trade reporting systems (QTRS) and alternative trading systems (ATS) have initial and ongoing reporting requirements that are set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101).¹ NI 21-101 also requires exchanges to file all rules, policies and other similar instruments (collectively, Rules), as well as amendments to these Rules.² Today, the Canadian Securities Administrators (CSA) published for comment a number of materials, including proposed amendments to NI 21-101 (Proposed Amendments). One of the objective of the Proposed Amendments is to update and streamline the regulatory and reporting requirements applicable to all marketplaces.³

In addition to the requirements in NI 21-101, recognized exchanges are subject to the terms and conditions of their recognition orders. These include requirements relating to the types of Rules that an exchange must have. The recognition orders also require recognized exchanges to comply with protocols that outline the process for filing, publication and Commission review and approval for new Rules and Rule amendments.

OSC staff's existing process for reviewing the initial filings for exchanges and ATSs and changes to certain of the operations of recognized exchanges and ATSs is described in OSC Staff Notice 21-703 *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems (Revised – Previously Published October 9, 2009)*.⁴ The staff notice also describes the information relating to the operations of ATSs that is made public and the publication process.

On December 9, 2010, a number of legislative amendments came into force in Ontario that would support the creation of a formal approval of both the initial Form 21-101F2 filed by an ATS and of changes in an ATS's operations as outlined in this form.⁵ As a result, OSC staff are currently developing protocols that will set out the process for filing, publication, review and approval of changes to all marketplaces' operations described in Form 21-101F1 or 21-101F2, as applicable. We are also reviewing the existing rule protocols applicable to exchanges to assess what, if any, changes are needed to increase consistency among the existing protocols and with the processes applicable to ATSs.

We plan to consult during the development process. We will also consider comments received in the public comment process for the Proposed Amendments⁶ in finalizing these protocols.

Questions may be referred to:

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¹ Sections 3.1, 4.1 and subsection 6.4(1) of NI 21-101 include the initial filing requirements for exchanges, QTRSs and ATSs, respectively. Sections 3.2, 4.2 and subsections 6.4(2), 6.4(3) and 6.4(4) include the ongoing filing requirements.

² See section 5.5 of NI 21-101.

³ As part of the Proposed Amendments, we propose to: shorten the prior notification period for fee changes; revise the filing requirements for changes that do not constitute significant changes; require that all marketplaces file quarterly reports of their trading activities; and give guidance on what is considered to be a significant change.

⁴ Available at <http://www.osc.gov.on.ca/en/28679.htm>

⁵ Specifically, new section 21.0.1 of the Act added regulatory powers relating to decision-making authority with respect to ATSs; definitions of "ATS" and "marketplace" were added to the Act; and a reference was added to paragraph 12(i) under subsection 143(1) of the Act to mirror the Commission's existing rulemaking activity in relation to exchanges.

⁶ The Proposed Amendments are published for a 90 day comment period that ends on June 16, 2011.