

Table of Contents

ALTERNATIVE TRADING SYSTEM PROPOSAL

| | |
|------------------------------------------------------------------------------------------------------------------------------------|-----|
| Notice of Proposed National Instruments, Companion Policies and Ontario Securities Commission Rules under the Securities Act | 297 |
| Appendix A: List of Commenters and Summary of Comments and CSA Responses | 311 |
| National Instrument 21-101- Marketplace Operation | 343 |
| National Instrument 21-101 - Marketplace Operation Forms | 357 |
| Companion Policy 21-101CP - Marketplace Operation | 375 |
| National Instrument 23-101 - Trading Rules | 387 |
| Companion Policy 23-101CP - Trading Rules | 399 |
| Ontario Securities Commission Rule 23-501 - Designation as Market Participant | 407 |
| Ontario Securities Commission Rule 23-502 - The Reported Market | 411 |
| Companion Policy 23-502CP - The Reported Market | 415 |

**NOTICE OF PROPOSED
NATIONAL INSTRUMENTS, COMPANION POLICIES
AND ONTARIO SECURITIES COMMISSION RULES
UNDER THE SECURITIES ACT**

**NOTICE OF PROPOSED
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION,
COMPANION POLICY 21-101CP AND
FORMS 21-101F1, 21-101F2, 21-101F3, 21-101F4 AND 21-
101F5**

AND

**NOTICE OF PROPOSED
NATIONAL INSTRUMENT 23-101
TRADING RULES AND COMPANION POLICY 23-101CP**

AND

**NOTICE OF PROPOSED
ONTARIO SECURITIES COMMISSION RULE 23-501
DESIGNATION AS MARKET PARTICIPANT**

**AND NOTICE OF PROPOSED
ONTARIO SECURITIES COMMISSION RULE 23-502
THE REPORTED MARKET AND COMPANION POLICY 23-
502CP**

The Canadian Securities Administrators ("CSA") are republishing for comment two proposed national instruments and related documents. These regulatory instruments are part of a CSA initiative to create a framework that permits competitive operation of traditional exchanges and Alternative Trading Systems ("ATSs"), while ensuring that trading is fair and transparent. The proposed documents are:

- proposed National Instrument 21-101 *Marketplace Operation* (the "Proposed Instrument") and proposed Companion Policy 21-101CP (the "Proposed Policy"), Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4 and new Form 21-101F5, and
- proposed National Instrument 23-101 *Trading Rules* (the "Proposed Trading Rules") and proposed Companion Policy 23-101CP (the "Proposed Trading Rules Policy") (collectively referred to as the "ATS Proposal").

In addition to the above, the Commission is republishing Proposed Ontario Securities Commission Rule 23-501 Designation as Market Participant. The Commission is also publishing for the first time Proposed Ontario Securities Commission Rule 23-502 The Reported Market ("Proposed OSC Rule 23-502"). Rule 23-502 is being published for 90 days.

The CSA are also distributing to interested parties a request for proposal ("RFP") for the establishment of a data consolidator to receive and collect quotation and transaction information from each marketplace and to disseminate consolidated information to market data vendors, news services and other customers. The RFP can also be viewed

on the Commission's website (www.osc.gov.on.ca) or on the websites of other CSA jurisdictions.

The CSA has been discussing the issue of ATSs for many years. The discussions have focussed on the impact of ATSs on the markets (fragmentation) and how to regulate them. The ATS proposal sets out a scheme for regulating ATSs by giving them a choice of how they are to be regulated. An ATS can choose to be either an exchange, a member of an exchange or a dealer with additional requirements. The ATS proposal attempts to minimize fragmentation by setting out order and trade reporting requirements, information consolidation requirements and market integration requirements. In addition, the ATS proposal is designed not only to maintain market integrity but to improve it through the Proposed Trading Rule.

Thus, the regulatory objective of the ATS proposal are as follows: to provide investor choice, improved price discovery and less expensive execution costs.

A. July 2, 1999 Publication

On July 2, 1999, the Commission, together with most of the other members of the CSA, published for comment the following instruments: proposed National Instrument 21-101 Marketplace Operation ("Draft Instrument"), Companion Policy 21-101CP ("Draft Companion Policy"), Forms 21-101F1, 21-101F2, 21-101F3 and 21-101F4, proposed National Instrument 23-101 Trading Rules ("Draft Trading Rules"), Companion Policy 23-101CP ("Draft Trading Rule Policy") and a Discussion paper on a Plan for a Consolidated Canadian Market. Those versions of the documents are collectively referred to as the "1999 Proposal". In Quebec, the 1999 Proposal was published for comment on August 27, 1999.

During the comment period, which expired on October 1, 1999 in most jurisdictions (and in November 1999 in Quebec), submissions were received from eighteen commenters. The names of the commenters providing the submissions, a summary of their comments and the response of the CSA are contained in Appendix A to this Notice. The CSA thanks all commenters for providing their comments on the 1999 Proposal. The CSA have made some key changes to the 1999 Proposal in response to some of the comments.

Part B of this Notice provides a brief summary of the structure of the revised proposal.

Part C discusses the data consolidator and the process for establishing the data consolidator.

Part D discusses the issue of consolidation of the market regulation function.

Part E discusses the fixed income market and the new concept of an information processor to collect and disseminate information for the fixed income market.

Part F discusses jurisdiction.

Part G discusses the cross interference rule and the reasons for adopting display requirements.

Part H discusses the audit trail requirements

Part I discusses the proposal for dealing with reported market.

Part J discusses the implementation of the ATS proposal.

Part K discusses technical changes that have been made to the 1999 Proposal based on comments received.

B. Summary of Proposal

For additional background and a summary of the 1999 Proposal, please refer to the notice that accompanied the publication of the 1999 Proposal.

Summary and Purpose of Proposed Instrument, Proposed Policy and Proposed Forms

The Proposed Instrument is intended to provide an appropriate regulatory framework within which traditional markets, such as exchanges, and new markets, such as ATSS, can operate. The Proposed Policy sets out guidelines regarding the application of the Proposed Instrument.

The Proposed Instrument and Proposed Policy regulate all marketplaces operating within the jurisdictions of the CSA. Marketplaces include recognized exchanges, recognized quotation and trade reporting systems and ATSS¹. The Proposed Instrument and Proposed Policy provide guidelines for establishing which types of marketplaces must be recognized as exchanges and which types of marketplaces may be considered as ATSS². ATSS can choose to be recognized as an exchange, become a member of an exchange and be regulated in the same manner as any other exchange member, or become registered as a dealer which is a member of a recognized self-regulatory organization³.

The Proposed Instrument sets forth a number of requirements for exchanges and quotation and trade reporting systems, such as reporting and record keeping⁴. These requirements exist currently in some jurisdictions. The Proposed Instrument specifies several new requirements applicable to all marketplaces including information consolidation, market integration, access and systems capacity requirements that reflect the increased importance of technology for these markets⁵.

An ATS that is not a member of an exchange or has not chosen to be regulated as an exchange will be registered as a dealer and will be subject to the additional requirements set out in the Proposed Instrument⁶. These additional requirements include information consolidation, market integration, clearing and settlement, reporting and recordkeeping.

In response to comments, the CSA have separated the equity and fixed income markets for purposes of market consolidation and market regulation. These changes have been made to better reflect the historical differences between the fixed income market and the equity market. For the most part, equity and preferred securities have been listed and traded through central auction markets, while fixed income markets have been dealer markets. The changes affect which parties must provide order and trade information⁷, who will be the data consolidator for fixed income securities, and who will perform the market regulation function for fixed income securities. The changes to the instruments concerning the fixed income market are discussed in more detail in Part E.

The Proposed Forms are required to be filed by marketplaces before commencing to carry on business and must be filed by an ATS to report on certain activities and when ceasing to carry on business. In addition, a form must be filed by any person or company that would like to act as the information processor. When changes to the information contained on the forms occurs, the marketplaces or information processor must file amendments to the forms and exhibits to those forms.

Substance and Purpose of Proposed Trading Rules and Proposed Trading Rules Policy

members of a recognized exchange.

¹ Part 1 of the Proposed Instrument; Part 2 of Proposed Policy.

² Part 3 of Proposed Policy.

³ Section 2.1 of the Proposed Instrument provides that an ATS is excluded from the Proposed Instrument if it is a member of a recognized exchange; Section 6.1 of the Proposed Instrument establishes the regulatory model for ATSS that are not recognized as an exchange or a quotation and trade reporting system and are not

⁴ Part 5 of the Proposed Instrument is only applicable to recognized exchanges and recognized quotation and trade reporting systems.

⁵ Part 7 and Parts 9-12 of Proposed Instrument.

⁶ Part 6 and Parts 9-14 of Proposed Instrument.

⁷ Part 8 of Proposed Instrument; Section 6.3 of Proposed Trading Rules.

The Proposed Trading Rules and Proposed Trading Rules Policy set forth common trading rules which will apply to trading on all marketplaces⁸. The Proposed Trading Rules do not prohibit marketplaces from implementing additional rules.

Currently, each of the established recognized exchanges have implemented trading rules which are designed to establish fair and equitable trade practices and to prevent abusive and manipulative trade practices. If ATSS are to be allowed to operate independently of recognized marketplaces, they must also follow similar trade practices for their marketplace participants. In order to ensure that ATSS are not used to avoid rules regarding the integrity of the capital markets, it is necessary for the CSA to establish basic common trading rules that will apply across all marketplaces.

In addition, the CSA have added display requirements for dealers who act as market makers to provide quote and trade information⁹. Market makers are defined in the Proposed Trading Rules as "any dealer that holds itself out as being willing to buy and sell a security for its own account on a regular basis". This was done in part because of the deletion of the cross-interference rule and, in part, to improve transparency in securities that are substantially traded in dealer markets. These requirements are applicable to market participants for exchange-traded equity, preferred securities and options as well as market makers for non-exchange-traded equity and preferred securities and the fixed income market. These changes are based upon similar requirements in the United States set out in the Mandatory Quote Rule and the Order Handling Rules.

Changes to the instruments concerning the display requirements are discussed in more detail in Part G.

C. Data Consolidator

As described in the 1999 Proposal, the data consolidator will receive and collect quotation and transaction information from each marketplace. The data consolidator will also disseminate consolidated information to market data vendors, news services and other customers. There has been some debate regarding whether broker ID numbers should be collected and disseminated by the data consolidator. The CSA is considering excluding the collection

and dissemination of broker ID numbers by the data consolidator.

Question 1: Should broker ID numbers be collected and disseminated by the data consolidator? If yes, should the customer decide whether the broker ID is disseminated?

It was proposed in the 1999 Proposal that the data consolidator be operated by a third party facilitator chosen by the CSA from respondents to the RFP. The RFP will describe the functional and operational requirements for the data consolidator.

Some commenters expressed the view that the development and implementation of the data consolidator should be achieved through participation by industry-wide consultations rather than by the issuance of a RFP to a third party.

After considering the comments, the CSA are of the view that there is a clear need for a data consolidator in the new regime and there will be issues of consolidation and coordination if certain requirements are not specified in a RFP. The CSA are of the view that mandating certain requirements and retaining control of the process is necessary in order to ensure that the data consolidator is established quickly and efficiently.

At this time, the CSA are distributing copies of the RFP to interested parties. A copy of the RFP is located on the websites of the Alberta Securities Commission, British Columbia Securities Commission, Ontario Securities Commission and the Commission des valeurs mobilières du Québec.

D. Market Regulation

The CSA is proposing to deal with market regulation in both the equity market and the debt market. At this time, it is not intended that the equity market and the debt market will have the same market regulator.

⁸ The Proposed Trading Rules deal with the following items: Part 2 deals with Manipulation and Fraud; Part 3 deals with Short Selling; Part 4 deals with Front Running and Insider Trading; Part 5 deals with Best Execution; Part 6 deals with Display Requirements; Part 7 deals with Principal Trading.

⁹ Part 6 of Proposed Trading Rules; Part 7 of Proposed Trading Rules Policy.

Equity Market

In the 1999 Proposal, it was proposed that market regulation would be provided by an “approved agent”. The CSA indicated that all exchanges in Canada were “approved agents”.

The realignment and demutualization of the exchanges have raised a number of regulatory issues, including market regulation issues. A number of commenters raised concerns about conflicts of interest if an ATS is required to have its market regulation performed by an exchange with which it competes for order flow. This conflict could be avoided if an independent SRO were established to perform market regulation for ATSs. However, it is not clear that ATSs could, at least initially, support the cost of establishing and operating a separate market regulator.

Another possibility would be to consolidate in an independent SRO the responsibility for market regulation for all exchanges and ATSs. This has been opposed by exchanges on the grounds that they would lose control over a function that is important to their market integrity and competitive “brand name”.

A suggested compromise has been for the exchanges to move market regulation into separate divisions or subsidiaries that would be insulated from the parts of the exchange that compete with ATSs.

Question 2: Who should provide market regulation for ATSs? Please provide reasons for your answer.

The CSA is publishing the current proposal without taking a position on how market regulation should be organized for the equity market. Industry participants should consider and discuss possible solutions. The CSA is willing to participate in discussions but is looking to the industry to propose alternatives for market regulation in the equity market.

Debt Market

The CSA are considering who would be the appropriate entity to perform market regulation for the debt market. At present, the Investment Dealers Association of Canada (the “IDA”) is conducting market regulation of the debt market for IDA member firms. The CSA are considering whether it is appropriate for the IDA to assume the role of market regulator for the entire debt market.

Question 3: Is it appropriate for the IDA to assume the role of market regulator for all participants in the debt market?

E. Fixed Income Market- Reporting Requirements, Data Consolidation and Market Regulation

General

The CSA recognize that currently there are significant differences between domestic debt and equity markets. For example, while equity markets are typically markets where prices are determined through the interaction of purchases and sales by investors through an auction process, debt markets have historically been principal markets in which prices are determined by market makers through the interaction of buy and sell orders communicated by these dealers. Although there have been recent developments where electronic order matching has been used to trade bonds, the market maker model remains common today. As a result, the 1999 Proposal has been adapted to reflect the distinction between the fixed income market and the equity market.

The CSA believe that it is important to improve transparency of the domestic debt markets. In an effort to improve transparency, the 1999 Proposal has been adapted to require that inter-dealer bond brokers, marketplaces trading debt securities and market makers trading debt securities provide both pre-trade and post-trade information. In addition, the CSA are considering who will be the data consolidator for the fixed income market and who will perform the market regulation function.

Inter-dealer bond broker is defined as the organizations listed in Appendix A of the Proposed Instrument. These inter-dealer bond brokers are currently operating in Canada. Other inter-dealer bond brokers may apply to the CSA and request that they be added to the list in Appendix A.

Pre-Trade Transparency

For pre-trade transparency, the CSA propose that inter-dealer bond brokers be required to provide information for each debt security (corporate debt and government debt) traded by the inter-dealer bond broker as required by the information processor¹⁰. The CSA recognize that the number of issues will vary according to each inter-dealer bond broker. Marketplaces trading debt securities will be required to provide information for each debt security traded on the marketplace as required by the information processor¹¹. Information provided by inter-dealer bond brokers and marketplaces is expected to be provided in real time.

Marketmakers are required to provide the ask price, bid price and size of each market maker order as well as the ask price, bid price and size of each customer limit order that improves the ask or bid price of the market maker’s order¹².

¹⁰ Part 8 of Proposed Instrument.

¹¹ Part 8 of Proposed Instrument.

¹² Section 6.3 Proposed Trading Rules Policy

Initially, marketmaker pre-trade information will be expected to be provided on an end of day basis. It is expected that within one year, this information will be provided in real time.

Question 4: Should there be an exemption from the display requirement for debt securities based on the value of the order or some other criteria? If so what should the criteria be?

Question 5: Is the definition of market maker appropriate?

Question 6: Should requirements imposed on market makers to provide pre-trade information for the debt market be implemented on a gradual basis? What information should be provided? When should this information be provided initially? If information is provided on an end of day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 7: Should information only be required on a pre-trade basis for the most liquid debt securities or based on some other criteria? How should "most liquid" debt securities be defined? What information should be provided?

Post-Trade Transparency

For post-trade transparency, the CSA are proposing that inter-dealer bond brokers and marketplaces be required to provide details of all trades of debt securities¹³. This information is expected to be provided in real time. Market makers are also required to provide details of all trades of debt securities¹⁴. As above, the CSA are proposing that market maker post-trade information be implemented on a gradual basis. Initially, market maker post-trade information will be expected to be provided on an end of day basis. It is expected that within one year, this information will be provided in real time.

Question 8: Should requirements imposed on market makers to provide post-trade information for the debt market be implemented on a gradual basis? If so, when should this information be provided initially? If information is provided on an end of day basis, what

time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 9: Should information only be required on a post-trade basis for the most liquid debt securities? How would "most liquid" debt securities be defined?

The National Association for Securities Dealers ("NASD") in the United States has released a proposal to establish a corporate bond trade reporting and transaction disseminating facility called the Trade Reporting and Comparison Entry Service (TRACE). The proposed NASD rules require the dissemination of trade report information, including the actual quantity of the corporate bonds traded, except high yield and un-rated trades over \$1,000,000 par value which will be disseminated as "1MM+" and investment-grade transactions over a 5 million dollar par value will be disseminated as "5MM+". The CSA is considering whether to adopt this approach with respect to information provided to the information processor.

Question 10: Should the CSA follow a similar approach?

Data Consolidation

The CSA recognize that there could be two separate systems to collect and disseminate order and trade information for the equity market and the debt market. As set out above, the CSA will be issuing a RFP for the data consolidator to collect and disseminate order and trade information. At this time, it is expected that the data consolidator will collect and disseminate information for equity securities, preferred securities and options. The CSA have developed the concept of an "information processor" to collect and disseminate order and trade information for the government debt and corporate debt market. This concept was developed to reflect the fact that parties currently operating in a similar capacity could apply without the need for a request for proposal. At the current time, the only entity operating in a similar capacity is the CanPX transparency system ("CanPX"). Currently, CanPX links together feeds from participating inter-dealer bond brokers and sorts for the best bid-offer price and records transactions in real time. If CanPX is not the information processor, the data consolidator will collect and disseminate information for the debt market.

The CSA have established a number of requirements that are applicable to information processors¹⁵. First, a person or company that wants to perform the functions of the information processor must file Form 21-101F5. The CSA will review the form with a view to determining if it is contrary to

¹³ Part 8 of Proposed Instrument.

¹⁴ Section 6.3 of Proposed Trading Rules Policy.

¹⁵ Part 15 of Proposed Instrument; Part 18 of Proposed Policy; Form 21-101F5.

the public interest to have that person or company perform those functions. In addition, an information processor must:

- provide prompt, accurate, reliable and fair collection and distribution of information;
- not unreasonably prohibit or limit access to services offered by it; and
- keep certain books and records.

The purpose of requiring the filing of the form and establishing requirements that apply to information processors is to ensure the availability of prompt and accurate order and trade information, to guarantee fair access to the information and to assess the ongoing viability of the entity.

Question 11: Are there any other requirements that should apply to the information processor?

IDA Regulation 2100 prohibits the inter-dealer bond brokers from dealing with anyone other than IDA members and Canadian chartered banks. This prohibition prevents inter-dealer bond brokers from becoming ATSS. In light of the Proposed Instruments and developments in the markets, the CSA request comment on whether this prohibition is appropriate.

Question 12: Is Regulation 2100 of the IDA still appropriate?

F. Jurisdiction

In the notice accompanying the 1999 Proposal, comment was specifically requested on issues related to both domestic and foreign registration requirements for ATSS. With respect to domestic ATSS, CSA Staff set out their view that if an ATS was registered in one jurisdiction in Canada and only dealt with registered dealers in another jurisdiction in Canada, then it need only be subject to the regulatory requirements of the jurisdiction where its head office is located. After considering the comments received, the CSA have revised the proposal¹⁶. Every ATS carrying on business as an ATS in Canada must be registered in at least one local jurisdiction. An ATS is considered to be carrying on business in a local jurisdiction if it provides access to subscribers located in that jurisdiction. However, ATSS are exempt from the requirement to register if that ATS is already registered in a jurisdiction in Canada and provides access to only registered dealers located in the local jurisdiction.

¹⁶ Part 14 Proposed Instrument; Part 17 Proposed Policy.

With respect to foreign jurisdictions, CSA Staff requested comment on whether a similar approach to that set out above was appropriate for trading systems that are located and regulated outside of Canada. This would mean that if a foreign ATS dealt only with registered dealers in Canada, then it would only be subject to the regulatory requirements in the foreign jurisdiction where its head office is located. Many comments were received on this point and raised the issue of reciprocity. Commenters suggested that the approach set out above was inappropriate so long as Canadian ATSS do not enjoy similar treatment under foreign regimes.

After considering the comments received, the CSA are adding a provision in the revised proposal to clarify that foreign ATSS must register in at least one jurisdiction in Canada if the ATS is dealing with Canadian investors or dealers registered in Canada¹⁷. Once registered in one jurisdiction in Canada, the regime applicable to domestic ATSS would then apply.

G. Cross Interference Rule- Display Requirements

The 1999 Proposal contained a section dealing with offsetting orders (the "cross interference rule"). The cross interference rule provided that any existing bids or offers in any marketplace be satisfied when a cross occurs¹⁸. In other words, an order of a marketplace participant that is committed to the market (i.e., displayed by the data consolidator) would receive priority. The practice of crossing on the existing bid or offer without satisfying an order with previous standing was prohibited. The purpose of this rule was to encourage market participants to put orders into the book by rewarding those who do so by establishing "time" as the secondary priority rule. The rule applied to all transaction sizes.

Commenters indicated that the cross interference rule would drive the block market in interlisted securities to the United States. After considering the comments received, the CSA have decided to delete the cross interference rule and replace it with display requirements as described below.

The CSA have considered the Mandatory Quote Rule and the Order Handling Obligations in the United States. In general, the rules require market makers to display the price and full size of customer limit orders when these orders represent a buying or selling interest that is at a better price than a market maker's public quote.

¹⁷ Part 14 Proposed Instrument; Part 17 Proposed Policy.

¹⁸ It was explained that the CSA considered a cross to be an offsetting order to buy and sell a security entered by a marketplace participant as principal or agent.

After considering these requirements, the CSA are proposing display requirements that apply to marketplace participants trading exchange-traded securities (equity securities, preferred securities and options) and marketmakers trading non-exchange-traded securities (equity and preferred securities)¹⁹.

New provisions require marketplace participants to immediately provide to a marketplace in which it is a marketplace participant the ask price, bid price, and size of orders received from customers for exchange-traded securities. There is an exception provided for equity and preferred securities orders which have a value in excess of \$100,000 and options orders over 100 contracts. In exempting these orders, the CSA recognize that the handling of block size orders differs from other orders. For example, dealers often negotiate terms and conditions with respect to block size orders. One of the major objectives in proposing display requirements is to improve the handling and execution opportunities afforded to customers that lack the power to negotiate better terms. Because most investors that trade block size orders have such power, the CSA have chosen not to mandate the display of block size orders.

Question 13: Should there also be an exception based on number of shares traded (in addition to value of shares traded)? Are there any other exceptions to the display requirements that should be included?

Market makers for non-exchange-traded securities are also required to provide information to the data consolidator concerning the ask price, bid price and size of the market maker's orders and customer limit orders that would improve the ask or bid price of the market maker's orders, unless the order has been submitted to a marketplace²⁰. A customer limit order is defined as an order to buy or sell a security at a specified price that is not for the account of either a broker or a dealer.

The CSA are of the view that displaying customer limit orders that improve the bid or offer of the market maker's orders increases quote competition which, in turn, improves price discovery. As described above, there is an exception provided for orders for non-exchange-traded equity or preferred securities in excess of \$100,000 in recognition of the fact that block size orders differ from other orders.

Question 14: Should the requirement regarding customer limit orders apply to the fixed income market?

¹⁹ Part 6 of Proposed Trading Rules.

²⁰ Part 6 of Proposed Trading Rules.

Question 15: Should there be an exemption based on the value of the order or some other criteria for fixed income securities?

The CSA believe that adopting display requirements that apply to marketplace participants and market makers will promote transparency and enhance execution opportunities for customer orders and encourage liquidity. The CSA believe that the display requirements appropriately establish a presumption that orders should be displayed unless the orders are of block size.

H. Audit Trail Requirements

Part 11 of the Proposed Instrument imposes recordkeeping requirements onto marketplaces. These requirements require a marketplace to, among other things, keep records of certain information related to orders and trades. Marketplaces that are ATs must transmit this information to an approved agent.

Part 11 of the Proposed Instrument also requires that the marketplace or approved agent synchronize its clock used for recording the time and date of any event to the clock used by the data consolidator (for equity or preferred securities or options) or to the clock used by the information processor (for debt securities).

Part 11 of the Proposed Trading Rules sets record keeping requirements regarding orders and trades that are applicable to dealers. The CSA believe that it is particularly important to have such requirements for transactions that are not traded through a marketplace. The CSA believe that it is necessary to establish requirements to ensure that there are effective surveillance and examination capabilities. In this regard, the CSA have considered various NASD requirements including the NASD Order Audit Trail System (OATS). OATS imposes obligations on NASD member firms to record in electronic form and to report certain items of information with respect to orders they receive to effect transactions in equity and preferred securities traded in Nasdaq. NASD-R combines this information with transaction data currently reported by members through Nasdaq to construct an integrated audit trail of quotation, transaction and order data.

Question 16: Should special order audit trail requirements be adopted? Under what circumstances should the requirements be imposed? To whom should the requirements apply? What additional information should be collected?

Question 17: Should the audit trail requirements be established by the CSA or should the requirements be determined by the exchange, approved agent or the IDA?

Part 11 of the Proposed Trading Rules also requires clock synchronization. Dealers must synchronize their clocks to those of the marketplace where the order is executed, if the marketplace is an exchange, the approved agent of the ATS, if the order is executed on an ATS, or an approved agent, if the order is not executed through a marketplace.

I. The Reported Market

There have been requirements for reporting transactions in unlisted securities trading over-the-counter in Ontario since 1970. At that time, the Ontario Securities Commission recognized the IDA as the agency for receiving, assembling and publishing the over-the-counter trading data. The reporting of trades then moved to the Commission in the form of the Canadian Over-the-Counter Automated Trading System ("COATS") and finally to the Canadian Dealing Network ("CDN"), a subsidiary of the TSE. Although essentially a mechanism for fulfilling the reporting obligations under securities legislation, this operation is referred to as the reported 'market'.

Since 1970, the reporting requirement has been expanded. Originally, the Commission required transactions to be reported for designated unlisted industrial stocks traded over-the-counter. In 1971, the Commission added mining stocks and oil stocks to the reporting systems. Over time, the requirement has been expanded to require reporting of trades in all equity securities (except for those already reported through an exchange or quotation system). The requirement is set out in sections 128 and 154 of the regulations made under the *Securities Act* (Ontario) (the "Ontario Act"). Sections 128 and 154 require reporting by all dealers. This overlaps with the reporting requirements in the Proposed Trading Rules for market makers to display quote and trade information. This issue is also being discussed as part of the exchange restructuring regarding what should happen to the CDN reported market. Sections 128 and 152-157 should be repealed and replaced with a reporting requirement for all trades not otherwise reported under the Proposed Marketplace Rule or Trading Rules. No information will be displayed unless a market maker has been involved. The trades should be reviewed for purposes of compliance with the trading rules. These dealer reporting requirements are proposed in OSC Rule 23-502 The Reported Market.

Question 18: Should the display requirements for over-the-counter orders or trades be expanded from market makers to all dealers?

Question 19: Should the information be sent to the data consolidator or another party?

J. Implementation of the ATS Proposal

In order to facilitate implementation of the ATS proposal, the CSA may separate and implement parts of the ATS proposal that do not require material changes from those parts that need to be amended as a result of the comments received. For example, the CSA may consider splitting the ATS proposal into two separate proposals, one for the equity market (the "equity proposal") and one for the fixed income market (the "fixed income proposal"), and may implement the equity proposal before finalizing the fixed income proposal.

K. Technical Changes made to 1999 Proposal

This section of the Notice discusses various technical changes made to the 1999 Proposal.

The Concept of Marketplace

The definition of "marketplace" has been amended to include a "dealer" if that dealer brings together orders for "exchange-traded securities" and is not a marketplace participant²¹. This change reflects comments received that a dealer system that uses a modicum of discretion (for example, a trader reviewing incoming orders to determine which orders he or she wants to trade as principal against) would not be included in the definition of "marketplace". Without this change, it is possible that dealers who are not marketplace participants could internalize order flow and not provide their orders for purposes of transparency.

Definition of "ATS security"

The definition of "ATS security" has been deleted. This change has been made in response to comments that dealers today are not restricted from trading unlisted securities or from handling orders received for foreign securities. The definition would have placed a limitation on the business of an ATS that is currently available to dealers. As an alternative to the definition of "ATS security", the CSA are proposing that an ATS that is trading unlisted securities or foreign securities be required to provide risk disclosure to its subscribers²². The CSA will monitor the situation to determine whether this adequately addresses the issue of ATSS trading unlisted securities or foreign securities.

Volume Thresholds

The volume thresholds that could cause the members of the CSA to determine that a marketplace should be recognized as an exchange have been reduced from the 1999 Proposal. The first volume threshold in the 1999 Proposal has been

²¹ Part 1 of Proposed Instrument.

²² Section 6.8 of Proposed Instrument.

reduced from 40 percent to 20 percent²³. As a result, if, for three out of the preceding four calendar quarters, the average daily dollar value of the trading volume on the ATS for a calendar quarter in a 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 traded in Canada, then by virtue of the level of trading on the system, and the importance of ensuring that access is provided to all investors, the CSA will consider whether the system should be considered to be an exchange and therefore regulated as an exchange. The CSA have deleted the second volume threshold contemplated in the 1999 Proposal that would have applied if the volume of trading activity reached 50 percent of the average daily dollar value of the trading volume in any security and 5 percent of the average daily dollar value of the trading volume in any type of security traded in Canada. The CSA are of the view that, in considering whether a system should be regulated as an exchange, it is more appropriate to refer to the level of trading in a segment of the securities market than to refer to the level of trading in a particular security in combination with a lower level of trading in a segment of the securities market.

In addition, section 6.5 of the Proposed Instrument has been amended to provide that an ATS notify the appropriate member of the CSA when the volume thresholds are reached only in respect of securities traded in Canada. Commenters indicated that it might not be feasible for an ATS to calculate the threshold with respect to trading on marketplaces outside of Canada.

Prohibition Against Principal Trading

The section prohibiting principal trading by a person or company that operates an ATS has been deleted. This change reflects comments that the restriction would not be effective in achieving the stated objective. The CSA proposed this restriction to prevent dealers with large volumes of trading from withdrawing from exchanges and operating as ATSS. Commenters indicated that this restriction would not prevent a third party from offering dealers a system to internalize their order flow.

Disclosure of Transaction Fees

The section concerning transaction fees has been amended to provide that each marketplace is required to publicly post with the data consolidator a schedule of all trading fees that is applicable to *outside users* that are accessing an order displayed through the data consolidator²⁴. This change reflects comments that opposed the disclosure of transaction fees in orders displayed by the data consolidator. A section has been added to the companion policy to clarify

that it is not the intention of the CSA that a commission fee charged by a dealer be disclosed to the data consolidator²⁵. This change responds to comments seeking clarification if the provision concerning disclosure of transaction fees was intended to refer to commission fees, which are negotiated fees that may vary depending upon the client or in the circumstances.

Capacity, Integrity and Security of Marketplace Systems

In the 1999 Proposal, it had been proposed that all systems capacity, integrity and security requirements would apply to an ATS once trades on an ATS reached a 20% threshold but would not apply below the threshold. The CSA are of the view that certain basic systems capacity, integrity and security standards should apply to all ATSS as well as recognized exchanges and recognized quotation and trade reporting systems. Section 12.1 of the Proposed Instrument has been amended to require an ATS to meet certain systems capacity, integrity and security standards (set out in section 12.1(a) through (e) of the Proposed Instrument). Additional systems capacity, integrity and security standards (set out in section 12.2(f) and (g) of the Proposed Instrument) will apply to an ATS that has exceeded the 20 percent threshold set out in section 12.2 of the Proposed Instrument as well as all recognized exchanges and recognized quotation and trade reporting systems.

Capping and Pegging

The section in the 1999 Proposal concerning capping and pegging has been deleted. This change reflects comments received that the rule could severely hamper liquidity in the options market. Rather than adopt a separate “capping and pegging” prohibition, section 2.1(4) 9 of the Proposed Trading Rules Policy has been added to include any manipulative trading activity designed to increase the value of a derivative position.

Short Selling

The section on short selling has been amended. In the 1999 Proposal, the CSA proposed a zero-plus tick rule. As result of comments received, the CSA have amended the short sale rule to provide for a zero-tick rule, i.e., a short sale may be made at a price higher than the last sale price or at the same price as the last sale price regardless of whether the last sale price was a zero-plus tick or a zero-minus tick²⁶. The CSA consider that the framework rules provide certain minimum standards and that if an exchange considers it appropriate, it may implement a higher standard.

²³ Section 6.5 Proposed Instrument; Section 3.1 Proposed Policy.

²⁴ Part 10 Proposed Instrument.

²⁵ Part 13 Proposed Policy.

²⁶ Part 3 Proposed Trading Rules; Part 3 Proposed Trading Rules Policy.

Question 20: Should the short selling provision be limited to trades facilitated on a marketplace or should they apply to dealers trading outside of a marketplace?

Regulatory Halts

Section 8.1 of the Proposed Trading Rules is new and provides that if a securities regulatory authority, a recognized exchange or a recognized quotation and trade reporting system makes a decision to prohibit trading in a particular security, no marketplace shall permit trading in that security during the period the prohibition is in effect.

Trading After Hours

Subsection 9.1 of the Proposed Trading Rules is new and provides that each marketplace shall set requirements in respect of the hours of trading to be observed by the marketplace participants. The CSA agree with comments received that an ATS should be permitted to engage in after-hours trading outside of the closing bid-ask of the principal market.

L. SPECIFIC REQUESTS FOR COMMENT

In summary, the CSA requests comments on the following issues:

Question 1:

Should broker ID numbers be collected and disseminated by the data consolidator? If yes, should the customer decide whether the broker ID is disseminated?

Question 2:

Who should provide market regulation for ATSS? Please provide reasons for your answer.

Question 3:

Is it appropriate for the IDA to assume the role of market regulator for all participants in the debt market?

Question 4:

Should there be an exemption from the display requirement for debt securities based on the value of the order or some other criteria? If so what should the criteria be?

Question 5:

Is the definition of market maker appropriate?

Question 6:

Should requirements imposed on market makers to provide pre-trade information for the debt market be implemented on a gradual basis? What information should be provided? When should this information be provided initially? If information is provided on an end of day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 7:

Should information only be required on a pre-trade basis for the most liquid debt securities or based on some other criteria? How should "most liquid" debt securities be defined? What information should be provided?

Question 8:

Should requirements imposed on market makers to provide post-trade information for the debt market be implemented on a gradual basis? If so, when should this information be provided in initially? If information is provided on an end of day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 9:

Should information only be required on a post-trade basis for the most liquid debt securities? How would "most liquid" debt securities be defined?

- Question 10:
Should the CSA follow a similar approach?
- Question 11:
Are there any other requirements that should apply to the information processor?
- Question 12:
Is Regulation 2100 of the IDA still appropriate?
- Question 13:
Should there also be an exception based on number of shares traded (in addition to value of shares traded)? Are there any other exceptions to the display requirements that should be included?
- Question 14:
Should the requirement regarding customer limit orders apply to the fixed income market?
- Question 15:
Should there be an exemption based on the value of the order or some other criteria for fixed income securities?
- Question 16:
Should special order audit trail requirements be adopted? Under what circumstances should the requirements be imposed? To whom should the requirements apply? What additional information should be collected?
- Question 17:
Should the audit trail requirements be established by the CSA or should the requirements be determined by the exchange, approved agent or the IDA?
- Question 18:
Should the display requirements for over-the-counter orders or trades be expanded from market makers to all dealers?
- Question 19:
Should the information be sent to the data consolidator or another party?
- Question 20:
Should the short selling provision be limited to trades facilitated on a marketplace or should they apply to dealers trading outside of a marketplace?

The Proposed Instrument and Proposed Trading Rules are being proposed for implementation in Ontario as rules. In Ontario, the following provisions of the Ontario Act provide the Commission with authority to adopt the Proposed Instrument and the Proposed Forms as rules. Paragraph 143(1)1 authorizes the Commission to make rules prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of suspension, cancellation or reinstatement of registration. Paragraph 143(1)2 authorizes the Commission to make rules prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration or other requirements for registrants or any category or sub-category. Paragraph 143(1)7 authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants. Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Ontario Act to be kept by market participants (as defined in the Ontario 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 system 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 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 Ontario Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

In Ontario, the following provisions of the Ontario Act provide the Commission with authority to adopt the Proposed Trading Rules as a rule. Paragraph 143(1)2 authorizes the Commission to make rules prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration or other requirements for registrants or any category or sub-category. 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 and recognized quotation and trade reporting systems. Paragraph 143(1)13 authorizes the Commission to

Authority for the Proposed National Instruments and Proposed Forms

make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Related Instruments

The Proposed Instrument and Proposed Policy are related to each other as they deal with the same subject matter. In Ontario, the Proposed Policy is related to Part VII, Part VIII and Part XI of the Ontario Act and Part V of the Regulation to the Ontario Act.

The Proposed Trading Rules and Proposed Trading Rules Policy are related to each other as they deal with the same subject matter. In Ontario, the Proposed Trading Rules Policy is related to Part VIII of the Ontario Act.

Alternatives Considered

The Instrument provides an appropriate framework for the regulation of ATSS. Accordingly, no alternatives were considered to the adoption of the Instrument. Similarly, once ATSS begin operating in Canada, the Proposed Trading Rules are necessary as ATSS are not allowed to set requirements governing member conduct. Consequently, no alternatives were considered to the adoption of the Proposed Trading Rules.

Unpublished Materials

In proposing the Proposed Instrument, the Proposed Policy, the Proposed Trading Rules and Proposed Trading Rules Policy, the CSA have not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The Proposed Instrument allows ATSS to compete with traditional markets, such as exchanges. When an environment is established that allows for competition among markets, then investors will have choices. The CSA are of the view that allowing such competition will stimulate innovation and encourage markets to offer better features and services to their members and subscribers and at lower costs.

The Proposed Instrument also provides improved market transparency for all marketplaces as well as interlinkage of those marketplaces so that all buyers and sellers of a security have access to the best price for execution.

The requirements regarding systems capacity, integrity and security of systems provide several benefits to the marketplace and to investors. Marketplaces are increasingly reliant on technology and most of their functions are

becoming highly automated. The ability of marketplaces to provide more reliable and consistent service in the market benefits investors and the markets.

The Proposed Instrument imposes costs on ATSS, exchanges and quotation and trade reporting systems as a result of the requirements imposed by the proposed Instrument, including application procedures, access requirements, the requirement to adopt certain by-laws and rules, the requirements relating to pre-trade and post-trade transparency and market integration, and the requirements relating to capacity, integrity and security of systems. In particular, the notice, reporting and recordkeeping requirements will require marketplaces to file certain additional information. The requirements relating to capacity, integrity and security will also impose costs. However, smaller ATSS will not be subject to the requirements relating to capacity, integrity and security of systems.

In the view of the CSA, the benefits outweigh the costs.

The Proposed Trading Rules benefit purchasers and sellers of securities in that they are designed to prohibit certain practices and to require other practices, all of which are necessary for the operation of fair and efficient capital markets. The Proposed Trading Rules impose compliance costs on persons or companies subject to the Proposed Trading Rules in that it prohibits certain activities. It also imposes costs on marketplace participants in terms of the best execution rules and the rules restricting principal trading. It also requires marketplaces to monitor and enforce compliance with certain of the provisions of the Proposed Trading Rules. In the view of the CSA, the benefits of the Proposed Trading Rules outweigh the costs.

Regulations to be Amended

In Ontario, the Commission intends to amend s.128 and s. 154 of the Regulation to the Ontario Act to allow for the purchase or sale of a security through the facilities of an ATSS.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Instrument, Proposed Policy, Proposed Forms, Proposed Trading Rules, Proposed Trading Rules Policy, Proposed OSC Rule 23-501 and Proposed OSC Rule 23-502. Submissions for all instruments, except Proposed OSC Rule 23-502, received by September 30, 2000 will be considered. Submissions for Proposed OSC Rule 23-502 received by October 30, 2000 will be considered.

Submissions should be sent to all of the CSA listed below in care of the OSC, in duplicate, as indicated below:

British Columbia Securities Commission

Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
E-mail: claudio.stpierre@cvmq.com

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As securities legislation in certain provinces requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to any of:

Louyse Gauvin
Special Advisor to the Chair
British Columbia Securities Commission
(604) 899-6538 or (800) 373-6393 (in B.C.)

Ross McLennan
Director, Registration
British Columbia Securities Commission
(604) 899-6685 or (800) 373-6393 (in B.C.)

Eric Spink
Vice-Chair
Alberta Securities Commission
(780) 422-1503

Glenda Campbell
Vice-Chair
Alberta Securities Commission
(403) 297-4230

Barbara Shourounis
Director of the Securities Commission
Saskatchewan Securities Commission
(306) 787-5842

Doug Brown
Counsel
Manitoba Securities Commission
(204) 945-0605

Randee Pavalow
Manager, Market Regulation
Ontario Securities Commission
(416) 593-8257

Susan Greenglass
Legal Counsel, Market Regulation
Ontario Securities Commission

Tracey Stern
Legal Counsel, Market Regulation
Ontario Securities Commission
(416) 593-8167

Diane Joly
Director, Research and Market Development
Commission des valeurs mobilières du Québec
(514) 940-2199, ext. 4551

Proposed National Instruments, Companion Policies and Form

The text of proposed National Instrument 21-101, proposed Companion Policy 21-101CP, proposed Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4, 21-101F5 and proposed National Instrument 23-101 and proposed Companion Policy 23-101CP follow, together with footnotes that are not part of the proposed National Instruments, Companion Policies and Forms, as applicable, but have been included to provide background and explanation.

Appendix A
List of Commenters and
Summary of Comments and CSA Responses

APPENDIX A-

LIST OF COMMENTERS

1. The Toronto Stock Exchange
2. Canadian Depository for Securities
3. Vancouver Stock Exchange
4. Joint Exchange - ASE, ME, TSE, VSE
5. Bloomberg
6. Institutional Equity Traders Association
7. Goepel McDermid Securities
8. Instinet Canada Ltd.
9. Investment Dealers Association of Canada- Equity Trading Committee
10. Bank of Canada
11. Versus Technologies Inc.
12. CIBC World Markets
13. Nesbitt Burns
14. Bunting Warburg Dillion Read Inc.
15. TraderDirect
16. Investors Group
17. Investment Dealers Association of Canada- Capital Markets Committee
18. Ontario Teachers' Pension Plan Board

SUMMARY OF COMMENTS AND CSA RESPONSES

A. NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

1. Regulatory choice

TSE- It would be simpler and more effective to provide ATSS with two alternatives: join an exchange or register as an exchange. The fact that ATSS will not be required to join an SRO that performs market regulation means that, unlike the case in the US, ATSS will be subject *only* to the CSA's framework trading rules. Any concerns that the CSA may have about anti-competitive activities by the exchanges can be addressed through the Commissions' oversight powers. ATSS that do not want to be regulated by an entity that they view to be a competitor could become exchanges or establish their own market regulation SRO and have that recognized by the CSA.

Joint Exchanges- The tripartite regime whereby ATSS would not be required to join an SRO threatens current standards of market regulation. It is recommended that ATSS be required to join an exchange or register as an exchange.

Investors' Group- Given that regulation as an exchange may not be feasible for an ATSS in light of the significant costs involved and other considerations, membership in an exchange or the IDA may be the only viable alternative for many ATSS. This may raise concerns from a conflict of interest perspective. As a result, any regulatory system established for ATSS should address this by either: (1) ensuring that regulation as an exchange is a viable and economic option; (2) requiring that membership categories and rules established by exchanges or the IDA are reasonable and designed to foster competition and not act as a barrier to entry.

VSE- A tripartite regime will result in fragmentation of market regulation which will negatively affect the integrity of the Canadian market. It is recommended that, as in the US, ATSS should operate either as a member of an exchange or as an exchange. Existing commission oversight and the appeal process should deal with any real or perceived conflicts of interest that might arise. ATSS that do not consider this adequate protection would be able to register as an exchange.

Versus- The choice of regulatory alternatives is essential if ATSS are to be able to conduct business in Canada on a competitive basis. If ATSS were forced into exchange membership, the result would be that the Canadian marketplace would retain its status quo. The ATSS would be forced to seek permission from the exchange each time it sought to introduce a new competitive service.

Response: The choice of regulatory alternatives is necessary if ATSS are to conduct business in Canada on a competitive basis. There is concern that conflicts of interest might arise if ATSS were required to become members of exchanges.

2. Definition of "Marketplace" (National Instrument 21-101, Part 1)

TSE- One concern is with the wording of the definition to exclude dealers' internal systems to trade and manage order flow. The exception as drafted leaves open the possibility that a dealer system that uses a modicum of discretion would not be caught by the definition. This would allow dealers that are not exchange members to internalize order flow because they would not be matching these orders on a marketplace. This is of particular concern given that such a dealer would not be a "marketplace participant" and would therefore not be subject to the framework trading rules (other than the anti-manipulation rule).

Instinet- A broker that elects to trade as principal and commit capital to its trading activities

escapes regulation as an ATS and will never be regulated as an exchange no matter how large its volume is. Further, the boundary between an ATS and a “traditional dealer” is made to depend on the degree to which “non-discretionary methods” are employed for orders to

interact. Where a technologically advanced trading operation affords its users a variety of discretionary methods for trading, it does not seem appropriate to treat that entity as a marketplace.

TraderDirect- Would the following situations be considered marketplaces: (1) A system whereby multiple dealers are queried by a customer for a price, the dealers respond with quotes, and the customer then executes the trade with whichever dealer the customer chooses; and (2) A system whereby multiple dealers post executable prices to an auction screen, buy-side customers can execute against those prices for the volumes show, up to a maximum volume, buy-side customers cannot post prices and trades may be anonymous on the screen but there are credit checks built-in.

Bank of Canada- The definition of marketplace effectively excludes traditional dealer (to client) trading activity from the marketplace concept. However, interdealer bond brokers (IDBs) will, under this definition, be considered marketplaces. This implies that the IDB marketplace participants are the dealers since they are the only entities that have access to IDBs.

Response: Currently, the definition of “marketplace” contains a gap with respect to dealers. The intention is to have dealers trading exchange-traded securities participate for purposes of transparency and market integration. The definition of “marketplace” has been amended to ensure that dealers are not excluded. The result would be that a dealer would be considered to be a marketplace if that dealer was not a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS. With respect to the fixed income market, the CSA have excluded IDBs from the definition of marketplace. However, IDBs must provide information for purposes of transparency.

3. Recognized quotation and trade reporting system

TraderDirect- Will IDBs have to register as recognized quotation and trade reporting systems?

Response: This issue has been addressed in the response concerning the definition of a “marketplace”.

**4. Definition of “ATS”
(National Instrument
21-101, Part 1)**

TSE- The wording of the policy leaves open the possibility that ATSs could offer a market making function as it is limited to ATSs that offer “guaranteed minimum size” orders. The restriction appears to be based on the minimum guaranteed fill provided by market makers on the TSE and the ME pursuant to which small, tradeable client orders are guaranteed a complete fill at the bid and offer even if there is not sufficient size in the book to fill the order. A guaranteed fill is not an integral feature of a market making system. Rather than focus on guaranteed fills, the rule should focus on the essential role of a market maker, which is to guarantee a two-sided market for a security on a reasonably continuous basis.

Versus- Versus concurs with the provision requiring the ATS to be regulated as an exchange if it offers certain services that have been traditionally recognized as the service of an exchange (eg., listing). If these services are offered by the ATS, the ATS is an exchange and should be regulated as an exchange.

Response: The market making function in the definition of ATS will be amended to refer to the guarantee of a two-sided market for a security on a reasonably continuous basis.

5. Definition of “ATS security”

(National Instrument 21-101, Part 1)

Question 4: Should trading of securities be limited to securities that are listed on a recognized exchange?

TSE- Dealers today can trade foreign unlisted securities provided they comply with the trade reporting and quotation rules of CDN- so should ATSs.

VSE- ATSs should be restricted from trading unlisted securities, especially junior securities. Post restructuring, ATSs should have to comply with CDNX's reported market rules.

Goepel McDermid Securities- ATSs should be limited to reporting issuers whose securities are listed on a recognized exchange. The main reason being that we must maintain a high level of confidence in Canadian markets and to allow the trading of “non exchange listed” issues could potentially lead to abusive practices- a broker/dealer who is not an exchange member might seek to establish a CSA sanctioned ATS which could perhaps lend an air of legitimacy to this section of the Canadian capital marketplace.

Bloomberg- Currently, a Canadian investor can ask its broker to buy or sell securities that are trading in any foreign market. The definition of “ATS security” should not be limited to securities that are listed on a recognized exchange or circumscribed by reference to specific foreign markets.

TraderDirect- Does the definition mean that the ATS cannot bring together purchasers and sellers of other types of products (eg. foreign exchange products)? Can the ATS operate a parallel system that trades in other types of products? What is the definition of system? What would be the licensing scheme? Would an IDB have to have two licenses?

Investor's Group- Trading securities of reporting issuers on an ATS should not be limited to securities that are listed on a recognized exchange.

Instinet- Trading of securities of reporting issuers on an ATS should not be limited to securities that are listed on a recognized exchange. Limiting securities that can be traded on an ATS to exchange traded securities is too restrictive and imposes on ATSs an additional “stock exchange function”.

Versus- Versus does not concur that ATSs should be restricted in the securities that can be lawfully traded by them. Under its registration as a broker, Versus is not restricted from trading qualified OTC securities on behalf of its clients, or from handling orders received for foreign securities that fall outside the definition of “ATS security”. The introduction of this restriction would place a limitation on business currently within the scope of Versus, without apparent justification, placing it at a competitive disadvantage to other Canadian registered brokers and foreign ATS carrying on business in Canada.

Ontario Teachers' Pension Board- The definition of “ATS security” is broad enough.

Response: Currently, there is a gap in the definition of “ATS security” for systems trading products not identified (e.g., foreign debt). The definition of “ATS security” will be eliminated. The definition would have placed a limitation on the business of an ATS that is currently available to dealers. As an alternative to the definition of “ATS security”, an ATS that is trading unlisted securities or foreign securities will be required to provide risk disclosure to its subscribers which will advise that securities are not necessarily securities of reporting issuers in Canada and there is no guarantee of the quality or availability of information on the issuer or any other information.

6. Foreign Markets
(Appendix A to National Instrument 21-101)

Bloomberg- If the CSA feels that it must prescribe markets, Bloomberg would urge including, at a minimum, the markets located in the G7 nations.

Investor's Group- ATSs should not be restricted to trading in securities on the four foreign

Question 5: Which foreign markets should be included in the Appendix to the Instrument?

markets listed in Appendix A. All foreign markets should be included.

Instinet- Instinet believes that there should be no restrictions on the markets in which an ATS can trade securities,

Versus- No limitation should be placed on the securities that can be traded in the ATS subject to compliance with applicable securities laws in Canada.

Ontario Teachers' Pension Board- No limitation should be placed on the securities that can be traded in an ATS, subject to compliance with applicable securities laws in Canada.

Response: As the definition of "ATS security" will be eliminated, there will be no limitation on foreign markets. See response set out above for "ATS security" for discussion of risk disclosure required.

7. Volume thresholds (National Instrument 21-101, section 6.5)

TSE- Any threshold will necessarily be arbitrary, as it will be difficult, if not impossible to pre-determine when a trading system has achieved a critical mass making it a major player in a market. However, the thresholds are far too high. The proposal is not clear on how the thresholds will work, as they are tied to the ATS's share of trading in a type of security.

Question 1: Is 40 percent of the average daily dollar value of the trading volume in any type of security traded in Canada an appropriate threshold or should it be lower (for example, 10 percent or 20 percent)?

Joint Exchanges- The thresholds should not be set so high that an ATS, which does not have to belong to an SRO or is not required to have the same regulatory standards as an exchange, may have a greater market share than an exchange against which it competes.

VSE- Even 10% is too high. It is difficult to understand why an ATS with such volumes, which are higher than some Canadian exchanges, should not have to register and be regulated as an exchange. It may not be feasible to calculate the volume threshold when dealing with foreign markets.

Question 2: Should the CSA retain the second volume threshold set out in paragraph 6.5(1)(b) of the Instrument relating to 50 percent of the average daily dollar value of the trading volume in any security and 5 percent of the average daily dollar value of the trading volume in any type of security trading in Canada?

Investor's Group- The CSA should be keeping in touch with the exchanges and the IDA on an ongoing basis to determine whether the existing regulatory requirements a particular ATS is required to meet are adequate rather than imposing an obligation on the ATS to notify the CSA when certain thresholds are met. If these notification requirements are retained, any percentage chosen as the threshold for giving notice is necessarily arbitrary and certainly the levels should not be lower than those proposed.

Bloomberg- It may be more appropriate to focus on objective factors, such as determining whether a marketplace performs exchange-like functions (eg, having members, enforcing compliance with its own rules, regulating activities of members, etc.). If the volume-based method of making the ATS/exchange distinction is used, some additional detail will be required to explain the manner in which the calculations will be performed. For securities trading outside Canada, not confident that the information necessary to perform this calculation would be available.

Question 3: Is it feasible to require ATSS to calculate the volume threshold when dealing with foreign markets?

Instinet- The 40% threshold is an acceptable starting point. Such thresholds are always arbitrary and can have unanticipated consequences and, accordingly, should be subject to periodic review. A question that deserves additional thought is whether achieving the 40% trading volume in a single security is an adequate basis for reclassifying an ATS as an exchange. The 5% ceiling applicable to the second threshold seems too low and may prematurely and unfairly penalize electronic brokers that are successful. Even if it were feasible for ATSS to calculate the volume threshold when dealing with foreign markets, the effect of the rule is to penalize ATSS for their success in foreign markets by adding their share of trading in those markets to the local share which may be modest.

IDA Committee- In view of the fact that the Committee has concluded that market regulation

should be separated from the stock exchanges, the need for the 40% threshold is unnecessary. The Committee believes that the requirement for notification of trading volume changes would be beneficial. The difficulties in terms of accessing true volume statistics from foreign markets such as Nasdaq make the inclusion of foreign market data problematic.

Versus- Versus does not concur with the view that volumes traded within the ATS alone, at a certain level, may result in the characterization of the ATS being that of an exchange. ATS could be required to report their trading volumes to the CSA so that ATS trading volumes could be monitored against the comparative volume thresholds considered relevant by regulators. At the same time, registered dealers who are not regulated as ATSs should also be required to report volumes traded. Reports should be required to indicate volumes traded both within and outside Canada so regulators could have some basis for assessing the extent to which securities are traded by Canadian registrants on the alternative domestic and foreign marketplaces. It is also Versus' view that, as the threshold tests are drafted, it is not feasible to calculate the thresholds contemplated.

TraderDirect- The trading volume numbers for the debt securities from the Bank of Canada are not available until three months after the end of each calendar quarter. The trading volume thresholds are based on trading on "marketplaces" but does not include the trading

volume number for direct purchase and sale transactions (eg., direct trades between dealers). In the fixed income market, a significant proportion of the volume of trades is conducted through direct trades.

Bank of Canada- This type of percentage rule may translate into fixed income IDBs becoming exchanges, which in turn would require IDBs to provide a listing function for fixed income issuers such as the Government of Canada. Fixed income markets are presently decentralized (fully fragmented) and as such it is not clear how efforts to maintain a certain degree of centralization for equity markets can be equally applied to fixed income markets without affecting, perhaps negatively, the liquidity and efficiency of these markets.

Ontario Teachers' Pension Board- In order to determine if an ATS has become the dominant marketplace it would be necessary to add a time span in which the predominance of trades occurred in an ATS (perhaps over 6 months to 1 year).

Response: The first volume threshold will be reduced from 40% to 20%. The second volume threshold will be eliminated. It is proposed that ATSs report their trading volumes to the CSA. Due to the difficulty in calculating the volume thresholds for foreign markets, the calculation will only be applicable for securities traded in Canada. With respect to the fixed income market, appropriate volume thresholds are no longer an issue as IDBs will be excluded from the definition of marketplace provided that information is provided for purposes of transparency.

**8. Principal Trading
Restriction**

*(National Instrument
21-101, section 6.6)*

**Question 6: Should there
be a de minimis exemption**

TSE- The restriction may act as a disincentive to dealers seeking to establish their own ATS and act as a barrier to entry to some US ATSs that are owned by American dealers; it will not prevent a third party from offering dealers a system to internalize their order flow. The key is to ensure that the regime as a whole is not so unbalanced that it provides an incentive for dealers to withdraw from the public markets and establish their own ATSs.

Joint Exchanges- The proposed restriction would likely be ineffective because a third party could still offer dealers a system to internalize order flow.

for principal trading in order to encourage dealers to invest in ATSS?

CIBC World Markets- Since the Canadian market is dominated by a small number of investment dealers, most of whom are affiliates of banks, trust companies and other large financial market participants who trade for their own accounts, the prohibition would severely limit the ability of Canadian dealer-owned ATSS to achieve the kind of liquidity required to make them competitive. In addition, principal trading through a proprietary ATS has been key to the success of several ATSS in the US. If the principal trading prohibition were implemented, it would virtually guarantee that US ATSS would flourish at the expense of Canadian ATSS.

Investor's Group- Brokers who wish to participate should be allowed to do so as principal which will add to liquidity.

Instinet- It does not appear that such a broad prohibition would achieve the goals articulated in the release. Whether or not dealers elect to withdraw from exchanges, the proposal will allow them to set up non-member ATSS that compete directly with the exchanges thereby producing what the prohibition was designed to avoid.

IDA Committee- The Committee does not believe the restriction on principal trading is in the best interests of the Canadian market. If a dealer operating an ATS wants to deal as principal to enhance order flow and liquidity on that ATS, it is hard to fathom why this is detrimental to the overall equity markets- given the best execution, transparency and fair access provisions of the proposal.

Versus- Versus concurs with the proposal to limit the level of ownership of an ATS by an owner that engages in principal trading in the ATS. Versus is of the view that the limit need not be expressed in terms of an outright prohibition of ownership but should be capped at a level that would preclude effective control of the ATS (up to a maximum of 10%).

TraderDirect- The rationale for the prohibition against principal trading is relevant only for equity securities and should be limited to equity securities.

IDA Capital Markets Committee- The restriction is likely to have a damaging impact on the development of electronic trading platforms in debt markets since it is dealers who would wish to deal as principal via ATSS for client transactions.

VSE- The restriction on principal trading will not be effective since it would not prevent a third party from offering dealers a system to internalize order flow.

Goepel McDermid Securities- There should not be a *de minimis* exemption for principal trading in order to encourage dealers to invest in ATSS. A regime of ATSS is being created to provide benefits to investors and issuers, it is not being created to satisfy the parochial interests of a limited number of intermediaries; however, as the ATS regime evolves and all participants gain a high level of confidence with it, it would be appropriate to revisit this issue.

Ontario Teachers' Pension Board- There should be an exemption for principal trading- ownership in an ATS should be limited to 10%. Want Canadian dealers to be innovative and able to compete with international dealers. However, there is a risk that if a large dealer owned more than 50% of an ATS, they could re-direct orders away from the exchange and a fractured equity market would result.

Response: The principal trading restriction will be eliminated.

REGIME APPLICABLE TO EXCHANGES– PART 5, NATIONAL INSTRUMENT 21-101

9. General

TSE- Care must be taken to achieve a balance between ensuring effective oversight of public markets and not putting unnecessary hurdles in the path of those markets. In a competitive environment, the Commissions should focus on how the exchanges carry out their self-regulatory functions: are they comprehensive, properly administered and fairly applied? The Commissions should not focus on the business of the exchange, as that is subject to competition and the discipline of market forces.

Joint Exchanges- The CSA should not place new and we believe unnecessary administrative and regulatory burdens on exchanges in the competitive environment being created. The CSA should consider that ATs will be subject to minimal oversight, yet at the same time, the CSA is planning on involving itself in business areas of the exchanges. This will slow and hamper exchange responses to competitive pressures.

Response: Other than systems' capacity and integrity requirements, the requirements set out in the proposal are standards that the Canadian securities regulatory authorities have applied and are currently applying to recognized markets.

10. For-profit entity

TraderDirect- Can an exchange be a for-profit entity?

Response: Yes- an exchange can be a for-profit entity.

11. Access Requirements
(National Instrument
21-101, section 5.1)

TSE- The proposal does not state why the rule is necessary. Any applicant for exchange membership can ask the commission to review a decision to deny access or to impose conditions on access.

TraderDirect- Section 5.1(b) provides that a recognized exchange shall not unreasonably prohibit or limit access. IDA Regulation 2100 presently limits an IDB's customer base to customers approved by the IDA. There could be a conflict between open access under the proposal and the IDA Regulation.

Response: An exchange has self-regulatory responsibilities and must ensure that investors and market participants are treated fairly. In general, SRO requirements may be a cause for review.

12. Public Interest and
Discipline Rules
(National Instrument
21-101, section 5.3, 5.4)

TSE- Exchanges should have explicit self-regulatory responsibilities and should be required to enforce compliance with their rules. This may have limited impact if the exchanges' ability to regulate beyond the framework rules is restricted by their need to compete with ATs.

Response: An exchange will have the choice to determine what rules are necessary in addition to the framework rules.

13. By-Law Filing
(National Instrument
21-101, section 5.5)

TSE- The broad scope of the filing requirement leaves open the possibility that the day-to-day application of exchange rules may be subject to prior approval by the Commissions. Exchanges are frequently called upon to interpret their rules as they apply to specific trading situations and to allow one-off exemptions from those rules to permit certain trades.

Response: This was not intended to change the current practice. It should be noted, however, that the current practice could be modified by any subsequent agreements or protocols (such as the protocol between the TSE and OSC for Commission oversight of TSE rule proposals) or any protocol entered into between the securities regulatory authorities for oversight. The rule will be amended to refer to by-laws, rules, policies and other similar instruments. The proposal sets out a filing requirement.

14. Filing of Annual Financial Statements
(National Instrument
21-101, section 5.6)

TSE- Exchanges should be required to file annual financial statements with the commissions that have recognized it.

Response: The CSA have retained the requirement that exchanges file annual financial statements.

15. System Capacity Requirements
(National Instrument
21-101, Part 11)

TSE- Urge the CSA to lower the thresholds that would subject ATs to the system capacity rules.

Response: The rule will be revised to provide that all ATs will subject to section 11.1(a)-(e). Exchanges and larger ATs (those that meet the 20% threshold) will be subject to all requirements in section 11.1 (subsections (a)-(g)). The 20% threshold seems reasonable. The threshold will only be calculated with respect to trading volume on all marketplaces in Canada.

B. FORMS

1. FORM 21-101F1- APPLICATION FOR AND AMENDMENTS TO APPLICATION FOR RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

General

TSE- Form 21-101F1 is incredibly detailed. This raises two concerns. The first is that maintaining the accuracy of the information in the form will become a significant administrative burden for an exchange, particularly as any changes must be filed within 7 days of the change. The second is that it suggests that the commissions may consider all information in the form subject to their oversight. In particular, this raises the spectre that prior commission approval may have to be obtained for fee changes and for routine matters such as appointments to standing committees. The form should be limited to that which the commissions truly need in order to carry out their oversight responsibility. If the commissions believe that other information ought to be publicly available, it would be more effective to mandate that exchanges make the information available than to institute a

cumbersome filing and updating procedure.

Response: The information required would not limit Commission oversight. The CSA have reviewed the forms and are of the view that the following information should be provided in Form 21-101F1:

Exhibit A

Exhibit B- amended to refer to “rules, policies and other regulatory instruments”

Exhibit C

Exhibit D- eliminate #5 (procedures for ensuring compliance with system usage guidelines) and #7 (attach a copy of the users’ manual)

Exhibit E- only to be provided if not otherwise provided with Exhibit B

Exhibit F- only to be provided if not otherwise provided with Exhibit B

Exhibit G- only to be provided if not otherwise provided with Exhibit B

Exhibit H- if a new exchange, FOFI should be provided

Exhibit I

Exhibit J

Exhibit K

Exhibit L- only to be provided if not otherwise provided with Exhibit E

Exhibit M

Exhibit N- Amend to include a list of listed companies including those that are suspended from trading (the list of companies suspended from trading should be updated when a company is either reinstated or delisted)

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

General

Bloomberg- Would like confirmation that this form only requires reporting of trades in Canada. Anticipate providing a list of Canadian subscribers only. It is noted that question 3 is identical to the reporting requirements imposed by the SEC. In the US, Bloomberg is permitted to respond to this question by providing the SEC with a list of all securities that are eligible for trading rather than a list of the specific securities that were traded.

Response: Form 21-101F3 requires reporting of trades in Canada. An ATS would be required to provide a list of all subscribers to the Canadian ATS. Specific securities traded on the ATS (volumes traded) should be provided.

C. DATA CONSOLIDATION AND MARKET INTEGRATION

1. General

Institutional Equity Traders Association- Concerned with the level of detail with which the CSA proposes to achieve its proposed goals of market data consolidation and trade integration. The new regime for regulation of existing markets will clearly incur significant costs and create serious obstacles for present market participants.

VSE- VSE recommends that development and implementation of the Consolidation Plan be achieved through participation by industry-wide consultations rather than the issuance of an RFP to a third party.

Instinet- Instinet urges the Consolidation Plan be revisited: (1) The impact of the proposal on existing ATS operations has to be considered in the context of any technological

enhancements the proposal may require and the cost of those enhancements (2) Start up operations should not be exposed to excessive technological barriers to entry. (3) The existence of a technological means of achieving the consolidation plan is taken for granted yet the intended result may not be achievable. (4) The nature of the technology used by the data consolidator and market integrator has policy implications that are not considered in the proposal. (5) Until technological possibilities are known and the RFP process is complete, the contribution of data to a data consolidator should not be mandatory but should be treated as a proposed feature of the system. (6) The Consolidation Plan entails radical changes in the way that order flow is handled which have not received as much attention as other aspects in the proposal.

IDA Capital Markets Committee- The proposal for improving transparency and access to domestic markets could have a range of unexpected and damaging effects on the debt markets. Given that debt markets are essentially dealer-driven, requiring direct access to the markets may lower dealer willingness to take principal positions.

Response: The RFP will state the functional and operational requirements for the consolidator. Interested parties responding to the RFP will be asked to include information about the technology they will provide and the model they will use for cost recovery and revenue generation. With respect to the fixed income market, IDBs will be required to provide information for transparency purposes. IDBs, however, will not be subject to market integration due to the nature of the fixed income market.

DATA CONSOLIDATION

2. Consolidated Market Information *(National Instrument 21-101, Part 7)*

TSE- Rather than mandate the *means* by which the goal is to be achieved, the CSA should simply mandate that order and trade details must be available to all market participants. Exchanges and ATSS should be given the responsibility for ensuring that these goals are achieved, and the CSA would only need to regulate if the markets failed in doing this or unreasonably excluded certain marketplaces from the system.

Joint Exchanges- Do not agree that the CSA needs to be involved in determining the means by which data would be made available to market participants. A market-developed solution would be preferable.

Response: Relying on voluntary solutions has not always worked and has taken considerable more time. The rules provide a minimum framework for providing information to the data consolidator. This is necessary to ensure that the consolidator is established quickly and effectively.

3. Prescribed Information *(National Instrument 21-101, Part 7)*

TSE- Concerned about the suggestion that the prescribed information is the *only* information that a marketplace may provide the consolidator. The proposal should be amended to clarify that while the consolidator cannot compel a marketplace to provide data over and above that set out in NI 21-101, nothing precludes a marketplace from entering into a commercial arrangement with the consolidator to distribute additional data.

Institutional Equity Traders Association- The CSA should not be mandating prescribed information so as to prevent marketplaces from entering into arrangements with the data consolidator to distribute additional information.

Response: The members of the CSA have specified requirements that are necessary to provide to the data consolidator. There is a concern that if any additional information is permitted to be provided to the data consolidator, the data consolidator would be crowded with excess information that participants might not find useful. This would impact the effectiveness of the data consolidator. Of course, any additional information could be provided by a particular marketplace.

**4. Governing Committee
(Consolidation Plan)**

TSE- Concerned governing committee would set fees for market data and determine reimbursement to the various marketplaces. Changes in the market data industry require flexibility to make pricing and policy changes required by new end-user access technologies.

Versus- Versus concurs with the proposal that the data consolidator be subject to independent regulation by a Governing Committee. Because of the additional investment that will be required on the part of ATSS to integrate its systems with the data consolidator to facilitate public dissemination of consolidated data, it is important that there be a means for determining the appropriate reimbursement for the marketplaces, including ATSS, contributing to the system.

Response: The structure of how advice and recommendations will be made to the CSA will be clarified further in the RFP.

**5. Pre-trade information
transparency
(National Instrument
21-101, section 7.1)**

TraderDirect- Would CanPX be considered a data consolidator? Although the five best bid and ask price levels is relevant for equity securities, it is not relevant for fixed income securities. Depth is not currently shown in the fixed income market. If a marketplace displays an order to a person or company, it must be provided to the data consolidator. Should there be a market share threshold? What is meant by display an order to a person or company?

Response: For the fixed income market, the CSA will require that the best bid and ask be provided by each IDB to the information processor. This information will be consolidated on a non-attributed basis.

**6. ATS participation in data
consolidator**

TSE- American ATSS participate in the Consolidated Quotation System and the Intermarket Trading System through their SRO unless they register as an exchange. They do not share in the revenues from data sales but they also do not bear any of the infrastructure costs. If the CSA adopted the TSE's proposed model for regulation of ATSS in Canada, all the CSA would have to mandate is that the exchanges link to consolidate data.

CIBC World Markets- Support the revenue participation of ATSS in a consolidation function provided that participants also share in the responsibilities and costs of that function.

Response: ATSS will participate in the revenues from data sales provided that they also share in the costs of the system.

7. Feed Pricing

VSE- As the marketplaces provide the information to the data consolidator, the VSE believes that each marketplace should receive their feeds from the data consolidator without fees attached.

Response: This is an issue to be addressed through the issuance of an RFP.

8. Choice of Data Consolidator

TSE- Currently, Canadian market data is distributed on the High Speed Vendor Feed and the Consolidated Canadian Data Feed. Using existing feeds means that consolidated data could be made available almost immediately, no matter which entity is the consolidator.

VSE- The existing infrastructure is well positioned to fulfil the requirements for trade consolidation. If markets link through exchanges, the need for a centralized third party is eliminated.

IDA Committee- Stock exchanges through the Canadian Exchange Group (CEG) have played an effective and key role in consolidating trade information from all exchanges for display to domestic and foreign investors. The CEG group has the mandate to aggregate market information from the exchanges and distribute to vendors. While the consolidator should ultimately be determined through the RFP process, CEG would be a logical candidate to take on this role.

CIBC World Markets- CEG should be favoured as the "data consolidator". CEG plays this role currently and to select any other party would lead to a costly "reinvention of the wheel".

Institutional Equity Traders Association- The prescribed information would require vendors to develop a new data feed in addition to the one currently used.

Ontario Teachers' Pension Board- The primary criterion for the data consolidator must be technical expertise and the secondary requirement should be good communication. The third requirement should be independence from other participants that have an economic self-interest in promoting a particular market function such as an ATS. Would like to see the data consolidator operate on a cost-recovery plus basis- should be able to charge for additional information and services that exceed what has been proposed.

Response: Any interested party (including CEG) can respond to the RFP for the data consolidator and will be considered. As part of the RFP, the members of the CSA will develop criteria for the data consolidator including technical expertise. Another important requirement would be how the data consolidator proposes deal with any conflicts of interest.

9. Unavailability of Data Consolidator

VSE- In the event of unavailability of the data consolidator's systems, each marketplace should continue operation in a local trading only mode. Should the data consolidator experience multiple system failures, there should be an option to cancel the service agreement and re-bid to another provider.

Response: In the event of unavailability of the data consolidator, each marketplace would continue trading in "local mode". There should be a mechanism to revisit the selection of the data consolidator.

**10. Depth of market
(National Instrument
21-101, section 7.1)**

TSE- Market developments may require new displays. For example, if markets move to penny trading, an exchange or ATS may determine that it must display more than 5 price levels in order to show meaningful depth.

Question 19: Should the display of data include the volume at each price level for the best five prices on the bid and offer for each participant system?

Bloomberg- Support the display of data, including the volume at each price level for the best five prices on the bid and offer for each participant system.

Goepel McDermid Securities- The goal should be a display at the consolidator/ integrator level of the best five price levels on the bid and offer including both volume and number of orders at that particular price level. Each ATS must be free to display whatever level of information it deems appropriate to the needs of its own subscribers.

Investor's Group- The display of data should not include the volume at each price level for the best five prices on the bid and offer for each participant system. The display of pre-trade information is solely at the client's discretion. Clients own their own orders. Only once a trade happens does the information become public information posted on a consolidated tape.

VSE- It is not clear whether the data consolidator is to provide the complete depth of market for all locations for the top five prices. For example, there are five marketplaces with bids and asks at five different price levels. Each marketplace would send five bid and five ask messages with volumes aggregated. Does the data consolidator then disseminate fifty messages or ten (five bid and five ask?). The VSE supports the dissemination of all price information received by the data consolidator.

Instinet- A better approach would be to display the best bid and offer and aggregate quantity across all systems contributing data to the data consolidator. Customers should have the authority to regulate the degree to which their orders are made the subject of mandatory display obligations.

IDA Committee- The Committee supports this recommendation, However, the Committee would also propose that the consolidator be given sufficient flexibility to accommodate additional information as markets evolve.

Versus- This requirement should serve as the minimum requirement. Subject to this minimum standard, there should be no restriction or limitation on the level of additional information that a marketplace may choose to display.

Ontario Teachers' Pension Board- The minimum standard should be the information market participants have now. Subject to this minimum there should be no restriction or limitation on the level of additional information that a marketplace may choose to display.

Response: Each marketplace will be required to provide information to the data consolidator regarding the five best bid and ask levels for each security traded on the marketplace. Reserves are not required to be displayed. There is no restriction on the level of additional information a marketplace may choose to display. The data consolidator will collect all information and disseminate a consolidated market feed including the total volume bid/offered at each of the best five price levels of each security traded.

**11. Separate Canadian Dollar Page
(Consolidation Plan)**

TSE- The proposal does not give a reason why a market would be prohibited from converting prices in a US dollar book. The exchanges trade some securities in US dollars. The data consolidator should report orders and trades in the currency used by the principal market.

Response: Some securities listed in Canada trade in US dollars. These securities may

be displayed in US dollars by the data consolidator. The data collected and disseminated for securities which are listed in Canada and which trade in Canadian dollars will be shown in Canadian dollars by the data consolidator. The information provided to the data consolidator must reflect prices maintained in a Canadian dollar book and not converted from a US dollar book.

12. Broker Designations

Bunting Warburg Dillon Read Inc.- The proposed omission of broker designations on trades will lead to misinformation as brokers will routinely put up trades when they are clearly not theirs. With the use of broker numbers, customers can see who has transacted and engage in a conversation with the transacting broker and seek the true picture on the stock.

Institutional Equity Traders Association- The omission of this information will decrease information transparency and competition for all market participants. Broker numbers promote competition in the marketplace as institutional traders are able to seek out the most competitive offers for block trading. The display of broker numbers also plays an important marketing and business enhancing role for the Canadian brokerage community.

Response: Additional information (including broker designations) could be provided by a particular marketplace; however, any additional information should not be provided to the data consolidator.

13. Transaction Fees (National Instrument 21-101, Part 9)

TSE- While it is agreed that transaction fees may determine whether or not a particular market has a better price, the rule as drafted will be difficult to administer, particularly for a market such as the TSE which has an overall cap on transaction fees. Whether the fee must be displayed will depend on the size of a trade, not necessarily the size of an order. The proposal should be amended to provide that if a trading fee is greater than a certain percentage of the total value of a transaction it must be displayed in the price.

CIBC World Markets- Strongly oppose the proposal to require the disclosure of transaction fees in bids and asks displayed in the consolidated marketplace. Fee structures implemented by ATSS are likely to vary widely and may be staged according to the dollar value or number of securities being traded. An alternative approach would be to publicly post all trading fees through the data consolidator.

TraderDirect- The concept of a fee per security purchased or sold is appropriate for equity securities not for fixed income securities. The fee for debt securities is based on the dollar amount of the fixed income securities purchased or sold (eg., \$100 for each \$1,000,000). Commissions are reduced as trade volumes increase such that the commission is not determinable until the trade is over.

Versus- "Transaction fee" should be defined in a manner that excludes commission charged by the ATS. For the ATS/broker, commission is a privately negotiated fee that may vary from client to client or in the circumstances in which the client trades. Commissions may vary, for example, depending on volumes traded. In some circumstances, commission may be waived altogether in respect of a particular trade. In addition, commission charged by the ATS/broker is confidential, completely sensitive information. It should be left to the client to assess the best trading opportunity available to it, taking account of the publicly displayed order price of the security in the data consolidator and the additional transaction charges disclosed separately and privately to the client.

Ontario Teachers' Pension Board- If this is an ATS usage fee and a commission fee is on

top of the transaction fee, then we agree this “transaction fee” should be shown. The commission is a matter for determination between client and broker.

Response: The transaction fee is not intended to include the commission charged. The proposal will be amended to provide that each marketplace will be required to publicly post a schedule of trading fees for outside users to the data consolidator. Each system would be required to calculate the applicable fee.

MARKET INTEGRATION

14. Existing Infrastructures Joint Exchanges- The existing infrastructures are well positioned to meet the requirements for visibility and efficient order execution. Since all markets would be effectively linked through the exchanges, there would ultimately be no need for a third party, centralized integrator.

Response: There are several options regarding how market integration could be implemented. This will depend on the number of participants in the market and the amount of activity which is generated between markets.

15. Access

TSE- The CSA should mandate the goal (best execution with no trade-throughs) and leave it to the markets to determine how best to achieve that goal.

Joint Exchanges- The CSA should mandate the goal and leave it up to the markets to determine the most efficient and fairest way to achieve the goal.

TraderDirect- Does this provision mean that each IDB would have to provide its competitors with access to orders on such IDB’s marketplace?

Response: In Phase 1, the goal is mandated and the markets are left to determine how best to achieve this goal. Any changes for Phase 2 will depend on how well market integration functions in Phase 1.

16. Time for Markets to Respond to Orders

TSE- The proposal states that a market that routes an order to another market to fill a better-priced order will be able to treat that order as “dead” if it is not filled in three seconds. The CSA should not mandate a specific turnaround time unless the participants in the system are unable to agree on an acceptable speed for the system. Setting turnaround time limits will inevitably lead to disputes if the internal clocks of all marketplaces are not synchronized. Even if they are synchronized, any time limit should be limited to the time an order is within a particular market’s system. In other words, a market should have three seconds from the time it *receives* an order to *send* a “filled” or “cancelled” response.

Response: Any marketplace should expect to receive a response (fill, cancel) to an order in under 3 seconds. Three seconds is the outer limit and not an unreasonable period of time given today’s technology. The Proposed Instrument and Proposed Trading Rules address synchronization.

17. Fixed Income Markets

Bank of Canada- Given that most fixed income market makers subscribe to all existing fixed income IDB systems, this market consolidation provision would not, at this time, significantly increase the degree of market consolidation that currently exists in the interdealer sphere.

IDA Capital Markets Committee- The notion of consolidating the various markets may be antithetical to the notion of maintaining a dealer market.

Trader Direct- How would the concept of "principal market" apply in the fixed income market?

Response: Due to the structure of the fixed income market, the CSA have determined that the market integration provisions will not apply. The CSA are of the view that increased transparency will be beneficial to customers. Although customers would still have to contact dealers directly to make the trades they wanted, it is likely that information will increase their bargaining power and their interest in trading.

18. Trading During Halts

TSE- ATs should not be permitted to trade a security if the principal market has halted trading for a regulatory reason (they should be permitted to trade if the market is not open because of systems problems).

Question 22: Should any restrictions be placed upon an ATS when there is a regulatory halt imposed by the market where the security is listed or quoted? Should it matter if a halt is imposed by a recognized quotations and trade reporting system?

Joint Exchanges- ATs should not be permitted to trade if the principal market has halted the security for regulatory reasons.

Goepel McDermid Securities- The protocols covering trading halts should be: (i) All trading halted system wide if requested by a reporting issuer or another party having material information to disseminate; (ii) All trading halted if a regulatory halt is imposed by an established SRO according to a well defined set out criteria; (iii) Any halt that does not fall into one of the two above categories would only impact the particular ATS or ATs that chose to impose it.

Bloomberg- If there is a regulatory halt imposed by the market where the security is listed or quoted, an ATS should follow.

Investor's Group- If a trading halt is imposed by any market on which a security trades (eg., pending dissemination of information), trading on all other trading systems should be halted as well.

IDA Committee- An ATS should not be permitted to trade a security which is subject to a regulatory halt in the principal market.

Versus- If a trading halt has been imposed on a security by its primary market, ATS should not trade that security until the halt has been lifted.

Instinet- The regulator should have an electronic messaging capability capable of being engaged unilaterally by the regulator that will automatically communicate appropriate messages to ATS users. The extent of intervention should be halts for the dissemination of information.

Ontario Teachers' Pension Board- If the primary market has imposed a trading halt, ATSS should not trade the security until the halt has been lifted.

Response: ATSS should not be permitted to trade if the principal market has halted the security for regulatory reasons.

19. Phase One- Principal Market Integration

Versus- Versus is concerned that the exchange marketplaces could delay in implementing the technical work required for Phase 1 of the proposal. Versus suggests that no aspect of the proposal that contemplates integration in the operation of marketplaces should be enforced against an ATS until it can be equally enforced against the exchange marketplaces. If it appears that implementation of Phase 1 will be unreasonably delayed due to required technical, Versus suggests that Phase 1 be implemented in two stages. The first stage would involve marketplace integration with the data consolidator and the implementation of the proposed trading rules. The second stage would involve the integration of the ATS and exchange marketplaces.

Response: In Phase 1, systems that are technically able will not have to wait for those systems that do not have the necessary technology. An ATS will be able to proceed even if there are technical issues with other marketplaces.

20. Phase Two Market Integration

Versus- Versus believes that once Phase 1 has been implemented, a further opportunity should be extended to market participants to comment on the specific details that relate to Phase 2.

Response: It is intended that an advisory board will be established and there will be consulting before Phase 2. The final decision will be left to the members of the CSA.

21. Phased Implementation

CIBC World Markets- Support two-staged approach. With respect to Phase 2, the CSA should mandate the ends but not the means to achieving full order-routing integration. Since it is believed that market forces will result in the development and adoption of the most effective approach to integration, do not favour RFP process which would ultimately grant a monopoly on the provision of order-routing services in Canada.

VSE- The VSE supports the phased approach. If properly implemented, all marketplaces are inter-linked through the exchanges thus eliminating the requirements for a 3rd party. It would become the responsibility of the exchanges to ensure the intermarket links are operational and used in a manner that protects investors' interests.

IDA Committee- The Committee believes that the complex linkage of the proposed order-routing system is designed to promote a central limit order book. The more serious concern is that Phase 2 would have a detrimental impact on the competitiveness of the domestic market. Trying to incorporate price/time priority access different trading systems with different trading technologies is challenging and practically very difficult. Also concerned about the costs of the system which will be recouped through charges to access the trading systems. Mandatory Phase 2 integration may be largely unnecessary as it will happen naturally.

Versus- Versus is supportive of phasing-in implementation. Versus concurs that the initial

phase of the proposal should proceed rather than delay implementation until all technical aspects of market integration can be implemented.

Bank of Canada- Without an existing principal market for fixed income securities, it is not clear how this consolidation plan can be implemented.

IDA Committee- The Committee recommends that the CSA stipulate deadlines, as opposed to a convoy approach, where we wait until everyone is ready.

Ontario Teachers' Pension Board- The phased approach is the most practical method to start the process. The ideal starting date for implementation is as soon as possible. The CSA should have an oversight role in the implementation of the phasing in process. An advisory group will be required to drive the process, otherwise it could easily bog down in details.

Response: The Phased Approach outlined in the Consolidation Plan has been developed to allow marketplaces to proceed and not wait until each marketplace is ready. Phased implementation leaves open the possibility that it may not be necessary to proceed to Phase 2. With respect to the fixed income market, if there is no principal market, an exemption may be given.

22. Trading After Hours

Question 17: Should ATSS be allowed to trade outside the closing bid-ask of the principal market or should they be required to trade within the closing bid-ask on the principal market? Should this change if the exchanges extend trading to include evening hours?

Question 18: Should ATSS operate in the pre-opening period of the principal market or should there be a no-trade time period until the principal market has opened for trading?

TSE- ATSS should not be restricted in after-hours trading to the closing bid and ask in the major market. If ATSS trade during the pre-opening sessions, it will make the opening process more difficult as orders will be constantly changed to reflect trading in the ATSS. However, this is unavoidable. If ATSS garner significant order flow because they trade before or after the principal market is open, the principal market will have to seriously consider extending its own hours to match the ATSS.

Joint Exchanges- After hours trading may be acceptable if there is sufficient liquidity to ensure a fair market which is not always the case for the junior market.

Goepel McDermid Securities- An ATSS should be free to set whatever hours it wishes for its operations as should any exchange; furthermore to encourage ATSS to innovate, they should have as much operational flexibility as possible. The CSA should adopt a system wide policy of two no trade times (e.g., 5-6 pm and 8-9 am), thus allowing for predetermined periods when disclosure of material information can occur and also allowing for standard valuation reference points.

CIBC World Markets- In favour of permitting trades to be effected through ATSS outside the day's closing quote. After hours trading would require that both the data consolidation and market integration functions be operational even if the principal market book is not actively trading.

Bloomberg- Do not see any reason why ATSS should not be permitted to operate outside of exchanges hours. It is believed that trading should continue during the pre-opening period of the principal market and that information on the ATSS trading book should be integrated into this procedure.

Investor's Group- ATSS should be allowed to trade outside the closing bid-ask of the principal market to offer investors a greater choice.

Instinet- All brokers whether traditional or electronic brokers should be able to handle client trading outside the closing bid-ask as long as the information that is drawing the trades outside the closing is publicly available. Pre-open trading should not be restricted.

IDA Committee- The Committee recommends that ATSS should be permitted to engage in after-hours trading outside the closing bid-ask of the principal markets.

Versus- ATSS should be allowed to trade outside the closing bid-ask of the principal market. ATSS should be permitted to operate in the pre-opening period of the principal market.

Ontario Teachers' Pension Board- An ATS should be allowed to trade outside the closing bid-ask of the principal market. An ATS should be able to set whatever hours it wishes to operate as should the exchanges.

Response: ATSS should be allowed to trade outside the closing bid-ask of the principal market. ATSS should be permitted to operate in the pre-opening.

23. STAMP Protocol

VSE- The Plan refers to the STAMP transaction protocol in use in Canada and proposes that the governing committee determine the transaction protocol. The international FIX protocol should not be specifically excluded. There are FIX-to-STAMP protocol converters. The VSE recommends that an industry-wide committee rather than the data consolidator determine transaction protocols.

Response: The Consolidation Plan refers to the STAMP protocol as it is the current standard protocol used by the TSE, ME and CDNX. However, the FIX protocol is not specifically excluded.

24. Time Stamps

VSE- The Plan calls for time stamps to record seconds. As there may be many multiple trades in a second, there should be a further characteristic of "trade within a second" perhaps capable of accommodating up to 1,000 trades.

Response: It may be necessary for the time stamp to record smaller increments than seconds. This will be considered in the context of the RFP.

25. "Fair Access" Rules

Bloomberg- The proposal contemplates that best bids and offers of each ATS must be accessible to other market participants, regardless of whether they are participants of the ATS. Fair access rules should be structured to permit an ATS to limit access to market participants that meet certain credit requirements. Some comfort would be gained if the CSA adopts a requirement that all ATS providers implement and apply credit requirements that meet minimum standards.

Response: There is no need to limit access to market participants that meet certain credit requirements as the ATS (dealer) would be an IDA member subject to all credit

requirements.

26. Pre-trade Surveillance

VSE- ATs other than those that choose the exchange membership option are not specifically required to have a pre-trade facilitation process. Should the ATs outsource pre-trade facilitation to exchanges, there would be a requirement for each ATS to transmit complete order data to the exchange.

Response: There is no requirement for pre-trade surveillance. Surveillance and enforcement by an exchange can be performed in any manner; however, an exchange (“approved agent”) cannot impose requirements on markets it oversees. Surveillance and enforcement for other markets will be post-trade.

27. Market Integration Functions

VSE- Reference is made that the market integration functions may be performed by the data consolidator. Merging these two functions puts the Canadian capital market structure in undue risk. The goal of utilizing the existing infrastructure, which would result in distribution of workloads across multiple systems is more tolerant of system outages that could be disastrous in a centralized model.

Response: There are several options regarding how Phase 2 integration could be implemented. The proposal contemplates that one option is that a single integrator/consolidator could provide the interconnection between all marketplaces. The solution will depend on the number of participants in the consolidated market and the amount of activity which is generated between markets.

D. NATIONAL INSTRUMENT 23-101 TRADING RULES

1. General

TSE- The fact that ATs will not be required to join an SRO that performs market regulation means that ATs will be subject only to the CSA’s framework trading rules. Further, the proposal is silent to who will address the inevitable gaps that will appear; the CSA is the only body that will be able to take on this responsibility. It is suggested that the CSA empower the exchanges with the power to give interpretations and to grant exemptions as is the current practice. The exchanges would report to the Commissions periodically on interpretations given and exemptions given.

Nesbitt Burns- The trading rule proposals appeared to be outside of the context of the submission insofar as the focus was on the introduction of an ATS capability into the Canadian market. Concerned as to the intent of these proposed rule changes. If implemented, either in whole or in part, would serve to drive liquidity into foreign markets.

CIBC World Markets- The instruments are silent with respect to other trading rules that are currently promulgated and monitored by the exchanges. It is believed that the framework rules are too minimal in scope and that other existing rules should be applied to all marketplaces. Urge the CSA to address the full spectrum of existing trading rules and clarify which would apply across all marketplaces and how and by whom they would be monitored and enforced.

Institutional Equity Traders Association- The trading rules go too far. Little justification is provided for the rules, some of which would have a significant negative impact on the entire marketplace and pose a burden for participants.

VSE- If the same broader set of exchange trading rules is not applied to all markets where a security trades, there will be a race to the lowest common denominator. In general, the proposed rules, with the exception of the short selling rule, appear to have been developed for the senior market.

IDA Committee- Rules have been proposed to address problems that may not exist and there is a lack of hard evidence for some of the restrictions that the CSA wished to impose on ATSS. Concern was also raised that the trading rules and restrictions on ATSS would encourage market participants to direct order flow to the US markets, thereby damaging liquidity of the domestic marketplace.

Response: The framework rules provide basic common trading rules that the members of the CSA view to be necessary. The trading rules do not prohibit a marketplace from implementing additional rules that will apply to its own marketplace. It is expected that an exchange (or “approved agent”) will make initial decisions concerning the trading rules without obtaining approval from the CSA. With respect to granting exemptions, each exchange may continue to provide exemptions based on its own rules. Exemptions to provisions of the trading rules must be granted by the CSA.

**2. Anti-Manipulation Rule
(National Instrument
23-101, section 2.1)**

TSE- The TSE supports the rule. The companion policy should be revised to make it clear that placing of a buy and sell order can be manipulative even if no trade results. The last sentence of the paragraph 2.1(4)3 of the companion policy should also be amended. It refers to entry of bids and offers to “raise the price to attract other trades for the securities, thereby creating demand”. This activity is only manipulative if the purpose is to buy or sell the securities at an artificial price. It is perfectly legitimate for a buyer or seller to tighten a market in an attempt to attract counterparties who are unwilling to trade at the current bid or offer prices. The language in the section suggests that this may be manipulative.

Joint Exchanges- The exchanges support the rule.

Response: The CSA do not believe that it is necessary to make any change to the rule. Section 2.1 of National Instrument 23-101 provides that it is an offence to engage in, among other things, a transaction that results in an artificial price for a security. This would include manipulation by placing a buy and sell order even if no trade results. In addition, the CSA do not believe that the companion policy needs to be amended in the manner suggested as the rule provides that activity is only manipulative if a transaction results in an artificial price for a security.

**3. Capping and Pegging
Restrictions
(National Instrument
23-101, section 2.3)**

TSE- The proposed rule is too restrictive, cannot be surveilled adequately and is unnecessary given the general anti-manipulation rule. Its adoption will severely hamper liquidity in the options market. Rather than adopt a separate capping and pegging rule, s.2.1(4)3 of Companion Policy 23-101CP should be amended to include manipulative trading activity designed to increase the value of a derivative position.

Joint Exchanges- This rule is not necessary given the anti-manipulation rule. It is too restrictive and would be impractical to enforce. Liquidity in the options market would also be hampered.

CIBC World Markets- Strongly oppose the proposed provisions relating to capping and pegging because it is believed that the provisions run counter to the current, ordinary course hedging practices of writers of options. These rules, if adopted, would make it very difficult to hedge written options. The CSA’s objective under the proposals seems to be to prevent

writers of options from engaging in the manipulation of price of underlying securities for the purposes of putting the options “out of money”. That objective is adequately addressed in sections 2.1 and 2.2.

Institutional Equity Traders Association- Do not support the proposed capping and pegging rules as they are too restrictive. Manipulative trading activity, which is designed to ensure that an option expires out of the money, should not be allowed; however, such activity should be captured by the general price manipulation rule. A blanket restriction against capping and pegging would prevent a person or company that has sold both a put option and a call option in the same class of securities from hedging positions in this security. This would likely cause dealers in the institutional derivative market to withdraw from that market and effectively terminate the Canadian options market, thus driving liquidity to competing markets in the US.

IDA Committee- This rule is unworkable and would have a detrimental impact on the liquidity of markets. It is difficult to see how this rule would be monitored and enforced. The intent could be adequately captured by the manipulation rules.

Ontario Teachers' Pension Board- A rule that is directed towards manipulation will be difficult to police and may have a detrimental impact on the development of the Canadian derivative market. It needs to be more closely examined.

Response: This rule will be deleted as the restricted activity could be captured by the general anti-manipulation rule. The Companion Policy will be amended to include manipulative trading activity designed to increase the value of a derivative position as an example of manipulative trading (s.2.1(4)3).

4. Short Selling
(National Instrument
23-101, section 3.1)

TSE- The TSE urges the CSA to implement a “zero tick” rather than a “zero-plus tick” pricing rule. The TSE’s current rule is effective and no adverse impact on the market has occurred. If a particular exchange believes that a more stringent rule is necessary because of the nature of the securities it trades, it could adopt a more stringent rule. Further, several exemptions in the TSE short sale rule should be included. The transactions exempted are ones in which concerns about manipulating the price through short sales are minimal or non-existent or are ones that are necessary to allow market makers to carry out their responsibilities.

IDA Committee- The current TSE short sale rule is more flexible (there are several exemptions) and permits trades at the last sale, even if it is a downtick. The TSE has concluded that its rule has not been detrimental to the public, and it provides competitive advantage for Canadian equity markets, thereby contributing to liquidity. The Committee supports the TSE short sale rule.

Bank of Canada- A dealer in fixed income markets sells short a security it does not own by carrying out a parallel transaction in the repo market. When it comes time to deliver the security the dealer does not own, the dealer will enter into a repo transaction with another dealer or a customer. Short sellers in the fixed income market are almost exclusively dealers. Restricting the dealers’ ability to sell short may reduce market liquidity since market making activities are influenced by their ability to make markets, hedge undesired inventory or fund these positions.

Bunting Warburg Dillon Read Inc.- If the short sale rules were applied, the TSE would lose

an important creator of liquidity. The decision to go to a “zero plus tick” rule would disadvantage Canadian shortselling in favour of US distribution.

CIBC World Markets- Support the position set out by TSE and IDA Committee.

Institutional Equity Traders Association- The proposed short selling rule is too restrictive. The “zero-minus tick” rule maintains market stability, attracts business and creates liquidity. The less restrictive and more widely used “zero-minus tick” rule should be maintained in order to promote liquidity in the equity and derivative markets. The current TSE exemptions to the short selling rule should be recognized and included in the proposed rule.

VSE- Pleased the CSA is proposing the adoption of VSE rule which requires upticks on short sales in order to ensure that any short selling is done into a rising marketplace. This would be consistent with all marketplaces in the US. The small venture company is often supported and promoted by individuals connected to the company and to give the ability to short sell in anything but a rising market may place undue financial hardship on a promising enterprise.

IDA Capital Markets Committee- Short selling is more critical to the well functioning of the debt markets than it is to the equity markets.

Ontario Teachers' Pension Board- Currently in Canada a stock can be shorted at a price at least equal to the last sale of a board lot as displayed by the data consolidator. The application of the “up-tick” rule would significantly reduce arbitrage activity and the development of the futures and options market.

Response: The CSA propose to amend the short sale rule to implement a “zero tick” pricing rule. Any marketplace is permitted to implement a more stringent rule.

**5. Frontrunning
(National Instrument
23-101, section 4.1)**

TSE- The TSE agrees that market participants must be prohibited from taking advantage of information provided by a customer by trading with knowledge of an imminent material transaction in a security. However, the application of the rule in certain situations will become quite complex. It is suggested that the rule track the language of the TSE’s current rule. If the CSA’s analysis raises issues that it does not believe to be addressed by the rule, it is recommended the CSA refer those issues to the SROs and request a response.

Joint Exchanges- These issues are complex; it is recommended that the rules are not implemented. Should be referred to the SROs for a recommendation.

Bank of Canada- How do the frontrunning provisions influence fixed-income trading practices? Given that dealers have proprietary knowledge of their own order flow, dealers are in essence always frontrunning the other dealers as they rebalance their inventory using an IDB trade. However, dealers know this and trade with each other given this mutual awareness. It is not clear that the frontrunning must occur in a marketplace. In order to comply with the proposed rules, it is likely that dealers will be forced to reveal their proprietary order flow to IDB market participants if they chose to trade in an IDB. This would likely have a negative impact on the liquidity the dealers would offer to customers.

Response: This rule will be retained as proposed. The intention is to prohibit market participants from trading with imminent knowledge of a transaction.

6. Trading ahead of research reports
(National Instrument 23-101, section 4.1)

TSE- As with frontrunning, this issue is complex and fraught with grey areas given the close contact between the research department and the trading desks at many firms. The TSE and the other Canadian SROs have formed a committee on analyst standards that will examine, among other things, standards of supervision and compliance procedures for analysts. It is suggested that this committee be charged with making a recommendation on this issue.

CIBC World Markets- The issue of trading ahead of research reports is very complex and involves a discussion and analysis of the relationships and “Chinese Walls” that exist between trading floor and research staff. This issue should be addressed separately to ensure that input is received from all people affected by the rules.

Response: This rule will be deferred on the understanding that other committees are currently dealing with the issue (TSE Advisors Committee).

7. Insider Trading of Securities of Foreign Non-Reporting Issuers
(National Instrument 23-101, section 4.2)

TSE- Agrees with the proposed rule although note it will not affect the TSE market.

Response: This rule will be retained.

8. Best Execution
(National Instrument 23-101, section 5.1)

TSE- Although TSE agrees in principle that marketplace participants look at markets outside of Canada to determine whether a better price exists, adopting this as a requirements may put Canadian markets at a competitive disadvantage. The TSE urges the CSA to work with the SEC to develop a uniform best execution obligation for American and Canadian brokers. The TSE does not understand the statement in the companion policy that a marketplace participant should have an order management system that is capable of providing price improvement.

Joint Exchanges- The CSA should work with the SEC to develop a best execution obligation for American and Canadian brokers.

CIBC World Markets-Support the rules regarding best execution.

IDA Committee- The best execution rule would require market participants to make reasonable efforts to ensure that a customer receives the best price on a purchase or sale of securities. The Committee supports such an interpretation of the best execution rule and believes that this should be a key focus of market regulators. Foreign markets for interlisted Canadian securities should not be included in the best execution rule at this time because of the practical difficulties of complying with the rule.

Versus- Versus suggests that there should be a clear articulation of the manner in which these rules are to be complied with during Phase 1 when ATs are in the marketplace, integrated with primary exchange markets but not integrated with each one another. If the best priced order displayed through the data consolidator is in ATS2 at the time ATS1 is

ready to proceed with a match at a lesser price, is ATS 1 obliged to forego the match at the lesser price in light of trade through rules imposed on the market participant? The rules should apply equally to all marketplaces and the definition of market participant should be expanded to include all brokers, including those who are not members of an exchange.

Response: This rule will be retained. It should be emphasized that there is no requirement in the best execution rule to specifically consider foreign markets. In the companion policy (section 5.1(1)), the CSA noted that, in making reasonable efforts, a marketplace participant should consider whether it would be appropriate in the particular circumstances to look at markets outside of Canada.

**9. Cross Interference
(National Instrument
23-101, section 6.1(1))**

TSE- The cross interference rule is intended to reward market participants who display orders publicly. However, it likely will, at the very least, drive the block market in interlisted securities to the US. Although US exchanges in theory do not allow crosses, NYSE rules give priority to larger orders that completely fill a declared order. Even if block trades do not migrate to the US, the rule would be ineffective if trading increments dropped to a penny, as a trader executing a cross would simply improve the price by one cent to bypass the consolidated book. TSE recommends an order exposure rule similar to the TSE's or the SEC's. Market participants would be required to display orders.

Joint Exchanges- The proposed rule is too stringent, too costly to implement and may not be effective.

CIBC World Markets- Support positions set out by the TSE and IDA Committee.

Institutional Equity Traders Association- The offsetting orders rule is intended to reward participants who display their orders publicly. However, the proposed rules do not ensure the existence or establishment of a Central Limit Order Book. This is illustrated by the US experience where the cross interference rule at the NYSE has sent liquidity to regional exchanges which has resulted in market fragmentation. As well, the requirements that exchanges and ATSS ensure that orders in other markets are filled before crosses are executed in their own markets will impose significant transactions costs and burdens across the market. The costs associated with the offsetting orders rule would not be outweighed by any beneficial effect on the price discovery mechanism in the market.

IDA Committee- This rule attempts to establish "time" as a universal secondary priority rule and is much more restrictive than the US. NYSE rules allow larger orders to size out the market. In addition, crosses can be put through on regional exchanges with little difficulty. The imposition of this rule could negatively impact Canadian market liquidity, as it may encourage order flow to US exchanges. The rule might also be avoided by marking the order as an "all or none" trade. The Committee believes this rule will be costly to implement and in markets that are moving to decimal pricing, is of little significance to investors as long as the integrity of the best execution, transparency and fair access provisions are maintained.

Bunting Warburg Dillon Read Inc.- If implemented, this rule would disadvantage our own customers as we would have to fulfil the prevailing market prices shown. The new rules would force dealers to fulfil the market's intention and not wait for the ultimate buyer or seller to come to the crossing broker who is willing to assume risk for his customer. This rule will undermine the stated intention of bringing business back to Canada and will lose it to other exchanges.

Response: This rule will be deleted. As an alternative to the cross interference rule, an

order handling rule will be proposed.

10. Customer-Principal Trading
(National Instrument 23-101, section 6.1(2))

TSE- The TSE's experience indicates that a threshold of 5,000 shares is sufficient. Raising it to 10,000 shares will capture a lot of institutional orders, especially as there is no maximum value. As with the cross interference rule, extensive changes to the allocation algorithm would be required. As with the cross interference rule, the rule will not be effective in a penny trading environment as pro traders would simply better the price by one cent.

Joint Exchanges- The proposed rule is too stringent, too costly to implement and may not be effective.

CIBC World Markets- Support positions set out by the TSE and IDA Committee.

Institutional Equity Traders Association- The principal trading rules introduce a higher threshold than is currently in place at the TSE. No justification is put forward for this increase. It will result in more institutional orders being caught by the rule. The thresholds established by the TSE should remain in place.

VSE- For the junior market, where the average share price is currently less than \$1.00, the 10,000 share rule will capture a much larger number of orders than the rule intends. A dollar threshold should be considered to make the rule more applicable to the junior market.

IDA Committee- This rule would prohibit trades for orders of up to 10,000 shares and require market participants to allocate these orders to a central limit order book for execution. In markets that are moving to a decimal system, the advantage of the rule to the investor is minimal compared to the significant programming costs required to comply with the rule.

Versus- Versus concurs with the proposal as one that strengthens the public central auction market. Under current exchange rules, crosses effected by an ATS must be a minimum of 10,000 shares even if the ATS improves the price for the client. This share restriction has the effect of requiring the ATS to send all client orders less than 10,000 shares directly to the exchange book, even if the ATS could have matched its client order with another client and crossed it on the exchange. The restriction on order size in the ATS should apply only if the ATS is acting as principal and is not improving price over that offered in the public market.

Response: The threshold will be revised to \$100,000.

11. Time Priority

VSE- The Plan protects price/time priority within a marketplace, however, once an order is marketable, it is required to be routed to the marketplace with the best priced order. As there may be multiple marketplaces with best prices orders, the selection of which other marketplace to route will be at the discretion of the active order. Was this the intention? Another example is the sanctity of the order book to allow the best bid or offer to get the first shares traded at a particular price. If ATSs are allowed to trade the same securities, will they be subject to the same rules as the established marketplace?

Goepel McDermid Securities- Presume an effective consolidator/integrator mechanism and that order interaction takes place in a strict price and time priority environment- this appears to be implicit but should be clarified.

IDA Committee- The proposal appears to introduce a "time priority" standard. Price priority is usually the first rule of trading; secondary rules can include time, size, etc. Price priority is self policing; secondary rules are not. It is unclear to the Committee whether the benefits of requiring "time priority" outweigh the costs of universally enforcing it- especially when no requirement exists in the US. In addition, the requirement for "time priority" could have the detrimental effect of sending order flow away from trading systems that need order flow to build critical mass in the market.

Response: Order integration will take place in a price priority environment. An order is required to be routed to the best priced order. If there are multiple marketplaces with the same best priced order, a marketplace will be able to route at the discretion of the active order.

12. Market Regulation Function

(National Instrument 23-101, section 7.1)

Question 20: Should an ATS have to contract with the exchange on which a security is listed or should it still be able to choose the exchanges that will perform the market regulation function"? This question should be considered from both of the following perspectives: pre-exchange restructuring and post-exchange restructuring.

Question 21: If an ATS is going to trade all listed equities (senior and junior) should it be required to contract with both exchanges for oversight or with only one? This question should be considered from both of the following perspectives: pre-exchange restructuring and post-exchange restructuring?

TSE- Because an ATS will not be required to join an exchange and will not be permitted to perform market regulation, it is essential that it link to an exchange to ensure that effective market regulation is carried out. An ATS needs to link to as many exchanges as necessary to ensure proper surveillance of all securities that it trades. It would not be cost-effective for the TSE to build a new surveillance infrastructure to surveil trading in securities listed on the Vancouver and Alberta exchanges. The regime will be simpler for an ATS post-exchange restructuring as it will have to link with a maximum of two exchanges (assuming it does not trade derivatives).

Joint Exchanges- In order to ensure effective market surveillance and regulation, ATSs must be required to link to all exchanges whose listed securities they trade.

Nesbitt Burns- An attempt should be made to develop a consensual view in the area of market regulation. One option would be to establish an industry wide committee to discuss this issue and attempt to derive a unified view. Establishing a second market regulation function in Canada is not a desirable option. Industry negotiation is the first chose and, should that fail, the competitive market should derive the solution. ATS service providers should be required to provide market regulation in the same manner as the stock exchanges. Whether that service is contracted out or provided internally would be a matter to be resolved between the ATS and the CSA. Once the structure is established, the market forces would determine which entities are in fact providing a viable business.

IDA Committee- Stock exchanges may have a conflict of interest if they carry out market regulation of competing trading systems. The conflicts could be exhibited in various ways. Since the primary objective of privatized stock exchange owners is to maximize profit and shareholder value for the stock exchange owners, there is an incentive to cross-subsidize the regulation of their own market by allocating higher regulatory costs to competing ATSs. At the minimum, this creates a perception of bias which will frustrate the formation of ATSs. The Committee recommends that the regulation of market activity on all stock exchanges and competing trading systems be transferred to an independent national SRO. It is not enough to hive off the market regulation function from an exchange and place it under a nominal corporate umbrella. The Committee urges the exchanges and the securities industry jointly to rise to the challenge and begin immediately a process of designing a workable model that can be implemented quickly. Having reached this conclusion regarding market regulation, it would appear to be reasonable and suggest that market regulation and member regulation should be recombined. Stock exchanges would continue to provide a marketplace to trade securities, maintain a listing function and the regulation of the listing process, and provide a liquidity guarantee (specialist/RT role). The transfer of market regulation into an arm's length SRO would also enable the stock exchanges to focus on ensuring they retain their advantage as the foremost and principal marketplaces for Canadian equities and also on the listing function.

Versus- It is likely that each exchange will submit that it should assume surveillance responsibilities for those securities that are listed on its facility. Absent choice of exchange for this service, surveillance fees charged by the exchange could become an alternative means for an exchange to impede competition from the ATS. If ATSs are required to subscribe for surveillance services from an exchange, and the exchange has a monopoly over the provision of the service, to address conflicts of interest, an independent body should be vested with the authority to regulate the fees charged by the exchange. If surveillance of the ATS is to be performed by the exchange, it will be essential that the surveillance function be performed in a manner that is beyond the influence of, and is inaccessible to, the entity responsible for the for-profit business of the exchange. Versus is not persuaded that sufficient walls can be built around the surveillance division of the exchange to permit true independent review free of conflict of interest where confidentiality of proprietary information can be observed. The surveillance of the ATS should be performed by the SRO of which the ATS is a member. The IDA is positioned to serve as the primary SRO for ATSs that elect to be regulated pursuant to the ATS rules and the surveillance function should be vested in the IDA instead of the exchange.

VSE- The VSE has developed an integrated approach to market regulation that has proven to be effective in regulating the junior market. At a minimum, ATSs should be required to link, for regulatory purposes, to the exchange where the securities they trade are listed. The needs of the retail venture market in Canada are different in some respects from those of the senior markets. Securities traded are often relatively illiquid and the listed companies themselves require a significant degree of oversight and regulation.

Bloomberg- Bloomberg supports a coordinated approach initiated by the CSA.

Investor's Group- ATSs should not be required to contract with an exchange in order to list a security- exchanges compete with ATSs.

Instinet- An ATS should not be compelled to contract for market regulation services from the principal market. It should have a choice.

TraderDirect- Since ATSs would be members of the IDA, would the OSC consider the IDA to be an approved agent@?

Bank of Canada- The problem with the proposal is that exchanges have only regulated trading in equity securities. Given that IDBs will be considered ATSs under the proposal, exchanges are likely to be ill suited to regulate trading in fixed income securities.

Ontario Teachers' Pension Board- It is expected that the TSE will propose they be the consolidator and regulator of ATSs. The TSE has resisted change and been steadfast in its opposition to ATSs and crossing networks. ATSs will require independent oversight from either the IDA or a new advisory group.

Response: There are issues of conflict of interest to consider if exchanges are performing market regulation on behalf of ATSs. There are also cost issues to consider if multiple market regulators are performing surveillance and enforcement rather than one market regulator. Further consideration of this issue is required.

E. MISCELLANEOUS

1. Pilot Trading Systems

TSE- The proposal should be amended to include an equivalent to the SEC's Form Pilot which allows exchanges to establish their own ATS-type trading systems without prior SEC approval. Full oversight does not begin until the pilot system meets certain volume thresholds or has been in operation for two years.

Response: All jurisdictions indicated that they would consider granting exemptions for appropriate systems developed by an exchange for an interim period. The way that the requirements work in each jurisdiction will be considered on a local basis.

2. Central Limit Order Book

Institutional Equity Traders Association- Believe a strong Central Limit Order Book must be established in order to prevent further market fragmentation in the Canadian market. This should be put in place before outside competition from ATSs is introduced.

Response: Some parties suggested the establishment of a central limit order book. The members of the CSA considered this issue and are of the view that, as a result of the exchange restructuring, it is best at this time not to introduce a central limit order book. In order to minimize fragmentation, the data consolidator and market integrator have been proposed.

**3. Jurisdiction
(Domestic)**

Question 7: What types of activities should lead the CSA to the conclusion that an ATS is carrying on business in a jurisdiction?

TSE- With respect to domestic ATSs, the TSE urges the CSA to wait until the regulatory regime for oversight of exchanges following their realignment along discrete business lines is finalized before establishing domestic registration requirements for ATSs. The model that the CSA adopts for exchanges should be the same one that it applies to ATSs. If it is not, the exchanges could be at a competitive disadvantage because they would have to deal with multiple commissions on issues that arise while an ATS would not.

Joint Exchanges- The CSA should wait until the current market restructuring is completed prior to establishing new registration requirements for ATSs.

Question 8: What limitations should be placed on the ATS' activities in a dealers' jurisdiction if the CSA adopts the Home Jurisdiction Approach?

VSE- The CSA should use the same oversight model for ATSs that it will use for the exchanges following realignment.

Investor's Group- The key factor in determining whether an ATS is carrying on business in a jurisdiction is dependent on the nature of contact with investors in that jurisdiction. The "home jurisdiction approach" makes sense but the scope should be broader. It should apply not only where the ATS deals only with dealers but with institutional investors as well.

Question 9: Are there any alternative approaches that should be considered by the CSA?

Instinet- A sensible approach for ATSs that are subject to substantial home jurisdiction would be to have a relatively light form of registration available with requirements similar to those in the "international dealer" category of registration in Ontario supplemented by ATS reporting requirements. This would enable regulators in each province to track the activities of different systems and registration requirements would not be excessively onerous. The test in the proposal for accepting home jurisdiction regulation is that the ATS's only contact be with dealers registered in the particular jurisdiction. The ATS will at the very least be indirectly marketed to investors by the dealers with which the ATS deals. Over time, the method of differentiating between home jurisdiction recognition ATSs and ATSs that need direct regulation will become difficult and unworkable.

Ontario Teachers' Pension Board- An ATS is carrying on business in a jurisdiction if it is providing a resident with access to its trading systems or services. Should be cautious on Home Jurisdiction since Home Jurisdiction may not only be another Canadian jurisdiction

but may also be a foreign jurisdiction. If care is not exercised, there may be a move to seek out the most beneficial Home Jurisdiction.

Response: The CSA are of the view that ATSS are different than exchanges. With respect to domestic jurisdiction, it is proposed that if an ATS (that is registered in one jurisdiction in Canada) is dealing with a dealer in another jurisdiction, there is no need to register in the other jurisdiction. However, if an ATS (that is registered in one jurisdiction in Canada) is dealing with an investor (either institutional or retail), the ATS should be required to register in that jurisdiction.

4. Jurisdiction- Foreign

Question 10: Should the foreign ATSS be required to be a regulated entity in its home jurisdiction? If so, must it be regulated under the securities laws of the home jurisdiction?

TSE- Unless there are reciprocal arrangements with the foreign jurisdiction, foreign ATSS should not be allowed to access Canadian markets. Allowing such access creates an unlevel playing field where US markets will have access to Canadian dealers when Canadian exchanges and ATSS do not have equivalent access to US dealers.

Joint Exchanges- Unless there are reciprocal arrangements with the foreign jurisdiction, foreign ATSS should not be allowed to access Canadian markets.

Question 11: Should access to the foreign ATS be through a Canadian dealer contacting a dealer that is regulated in the foreign jurisdiction (home jurisdiction of the foreign ATS)?

VSE- If the CSA permits foreign ATSS and markets to allow disintermediated access to their trading system to Canadian dealers, the exchanges will be at a great competitive disadvantage if they do not have equivalent access to the ATSS home jurisdiction.

Investor's Group- The "home jurisdiction approach" should not be limited to ATSS regulated elsewhere in Canada but to ATSS regulated in any foreign jurisdiction, at least those that have a credible regulatory system.

Question 12: Should this approach be limited to acceptable home jurisdictions, and if so what jurisdictions should be approved as acceptable?

Versus- Exempting foreign ATSS from Canadian regulation under the ATS proposal would undermine the primary objective of the proposal, which is to preserve a viable, liquid, efficient, and integrated capital market in Canada that can operate competitively within the global marketplace. Foreign ATSS carrying on business in Canada should be subject to the ATS proposal in the same manner and to the same extent as Canadian ATSS. The Home Jurisdiction Approach should not be adopted.

CIBC World Markets- The home jurisdiction approach is inappropriate so long as Canadian exchanges and ATSS do not enjoy reciprocity under the US regulatory regime. Even if the home jurisdiction approach is to be eventually adopted, we would caution the CSA that to do so too early would be extremely detrimental to the Canadian market because it would allow

large, well-established ATSS to solicit business in Canadian before Canadian ATSS can establish themselves.

IDA Committee- The Committee's general sense was that foreign ATSS providing investors and dealers with terminals to trade securities should be subject to some form of domestic regulation. The Committee concluded, to the extent possible, reciprocity should be the guiding principle to imposing regulation on foreign ATSS.

Instinet- Agree with an approach in which the home jurisdiction provides active regulation and thinks this is an acceptable basis for the local Canadian regulator to defer to a foreign regulator. If the approach is limited to acceptable home jurisdictions, two appropriate jurisdictions would be the US and the UK because they have sophisticated securities regulators, important capital markets and have devoted considerable thought to the appropriate regulation of trading systems.

Bloomberg- Bloomberg supports the home jurisdiction approach. In addition, if the ATS's only contact with Canadian entities occurs when the ATS deals with registered broker-dealers or banks that are trading for their proprietary accounts or customers' accounts and the ATS does not deal directly with Canadian customers, then the regulation of the broker dealer and banks should suffice.

Ontario Teachers' Pension Board- A foreign ATS handling Canadian stocks should not be exempt from Canadian regulation and the activity should be reported to the data consolidator. With respect to non-foreign Canadian stocks, access to the foreign ATS should be through a Canadian dealer contacting a dealer regulated in the foreign jurisdiction. Institutional investors will want the ability to trade non-Canadian stocks through foreign ATSS.

Response: The key issue to consider is reciprocity. With respect to foreign jurisdiction, it is proposed that a foreign ATS be required to register in one jurisdiction in Canada (then the position set out above applicable to domestic jurisdiction would apply).

5. Jurisdiction- Order routing and remote access

Question 13: Should the availability of the Home Jurisdiction Approach depend on the activities of the registered dealer in the jurisdiction where the investor is located?

Question 14: Should the answer to the above question depend upon whether the home jurisdiction is another Canadian jurisdiction or a foreign jurisdiction?

Question 15: Should the availability of the Home Jurisdiction Approach depend on whether the Canadian registered dealer is an affiliate of the ATS?

Question 16: Should remote access be limited to dealers which are members of a self-regulatory organization?

Instinet- If an order routing capability only is in question and the customers are relatively sophisticated, a limited licence such of that as an international dealer may well be appropriate. Ontario has a record of experience with the international dealer license and, in the absence of a finding that it has been inappropriate, there does not seem to be any need to revisit this matter.

Bloomberg- In the case of a remote access ATS, Canadian dealers and institutional users of the ATS will receive adequate regulatory protection if the home jurisdiction approach is adopted. If a foreign ATS is carrying on business within Canada, the ATS should become subject to Canadian regulation in the manner that is contemplated in Regulation ATS. The CSA should limit the home jurisdiction approach to jurisdictions with which the CSA is familiar and which have securities protections comparable to those in Canada.

Ontario Teachers' Pension Board- If an ATS is handling Canadian stocks the jurisdiction should be Canadian. If an ATS is handling foreign stocks, investors will need to be aware of the home jurisdiction for the settlement of disputes. Remote access should be limited to dealers that are members of an SRO.

Response: See response under foreign jurisdiction set out above.

6. Clearing and Settlement

CDS- While there is discussion of ATSS having access to CDS and CDCC, there is no explicit requirement that the trades from an ATS be routed to a recognized clearing agency for clearing and settlement. It is inferred that direct reporting of trades to the clearing agency may be done by the ATS itself or by the ATS using the services of a service bureau as an agent, however, further discussion would be beneficial. The discussion paper encourages marketplaces to work with CDS and service bureaus to facilitate improvements to the flow of trade information. CDS concurs that discussion and cooperation among industry participants is vital and would like to emphasize their interest in participating.

Response: A requirement will be added to provide that all trades from an ATS be reported, confirmed and settled through a clearing agency listed in Appendix B of the Proposed Instrument.

7. Regulation of technology vendor

Instinet- Where a vendor sells technology to an exchanges and the technology vendor enters into a joint venture, both entities should be treated as operators of the ATS. The technology vendor should not escape regulation as an ATS.

Response: All systems will be regulated directly or indirectly (if, for example, technology is licensed to exchanges).

8. Application to Fixed Income Markets

TraderDirect- The proposal would apply to IDBs. As the IDB market exists today, it does not fit within this concept since the IDBs presently operate independently of each other. The proposal should take into account the significant differences between the equity and fixed income markets. The SEC excluded the US government debt markets from the policy in relation to ATSS.

Bank of Canada- As opposed to most equity markets, fixed income markets in Canada are multiple dealer (or quote driven) markets. In this setup, dealers (market makers) intermediate all transactions. There exist two parallel and, in effect, separate markets: a public trading environment where customers trade exclusively (and bilaterally) with market makers (the customer or public sphere) and an interdealer trading environment, where dealers trade among themselves exclusively (the interdealer sphere). The interdealer sphere is segmented further into two: Dealers have the choice of either trading bilaterally with each other or trading indirectly and anonymously with each other via an interdealer broker. Given this structure, customers cannot transact with each other but instead must trade with a dealer of their choice and dealers have exclusive access to interdealer brokers. Because trading in fixed income securities takes place via multiple dealers and in two separate trading spheres, there does not exist a primary or central marketplace as is the case for most Canadian equity markets.

IDA Capital Markets Committee- There are significant structural differences between domestic debt and equity markets which mean that in many respects the current CSA proposal is unlikely to be applicable to debt markets. Debt markets have historically been principal markets in which prices are determined by market makers through the interaction of buy and sell orders posted by these dealers. The Committee would like clarification on the process for implementing rules for Canadian debt markets, and the relationship between the CSA, the Bank of Canada, the Department of Finance and the IDA in supervising and monitoring these markets.

Response: The CSA have reviewed the issue of applicability of the ATS proposal to fixed income markets. It is proposed that IDBs be exempted from the definition of “marketplace”. However, they must provide information to the information processor for purposes of transparency. Due to the structure of the fixed income market, IDBs will not be subject to the market integration provisions.

National Instrument 21-101 Marketplace Operation

**NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

TABLE OF CONTENTS

| PART | TYPE | |
|-------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| PART 1 | DEFINITIONS AND INTERPRETATION | 7.3 Post-trade Information Transparency - Equity Securities and Preferred Securities |
| | 1.1 Definitions | 7.4 Post-trade Information Transparency - Options |
| | 1.2 Interpretation - Marketplace | 7.5 Consolidated Feed - Equity Securities, Preferred Securities and Options |
| | 1.3 Interpretation - Affiliated Entity | 7.6 Compliance with Requirements of the Data Consolidator |
| | 1.4 Interpretation - Security | PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS |
| PART 2 | APPLICATION | 8.1 Pre-trade Information Transparency - Debt Securities |
| | 2.1 Application | 8.2 Post-trade Information Transparency - Debt Securities |
| PART 3 | EXCHANGE-RECOGNITION | 8.3 Consolidated Feed - Debt Securities |
| | 3.1 Application for Recognition | 8.4 Compliance with Requirements of the Information Processor |
| | 3.2 Change in Information | PART 9 MARKET INTEGRATION FUNCTION FOR MARKETPLACES |
| PART 4 | QUOTATION AND REPORTING SYSTEM - RECOGNITION | 9.1 Market Integration Function for Marketplaces |
| | 4.1 Application for Recognition | 9.2 Application |
| | 4.2 Change in Information After Recognition | PART 10 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES |
| PART 5 | REQUIREMENTS APPLICABLE ONLY TO RECOGNIZED EXCHANGES AND RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEMS | 10.1 Disclosure of Transaction Fees for Marketplaces |
| | 5.1 Access Requirements | PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES |
| | 5.2 Trading Off Exchange or Quotation and Trade Reporting System | 11.1 Business Records |
| | 5.3 Public Interest Rules | 11.2 Other Records |
| | 5.4 Discipline Rules | 11.3 Record Preservation Requirements |
| | 5.5 By-law Filing | 11.4 Means of Record Preservation |
| | 5.6 Filing of Annual Audited Financial Statements | 11.5 ATS Trade Report Transmittal |
| PART 6 | REQUIREMENTS APPLICABLE ONLY TO ATSS | 11.6 Synchronization of Clocks |
| | 6.1 Registration | PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS |
| | 6.2 Reporting Requirements | 12.1 System Requirements |
| | 6.3 Ceasing to Carry on Business as an ATS | 12.2 Application |
| | 6.4 Notification of Non-ATS Activities | PART 13 CLEARING AND SETTLEMENT |
| | 6.5 Notification of Threshold | 13.1 Clearing and Settlement |
| | 6.6 Confidential Treatment of Trading Information | PART 14 JURISDICTION |
| | 6.7 Name | 14.1 Jurisdiction |
| | 6.8 Risk Disclosure | PART 15 INFORMATION PROCESSOR |
| PART 7 | INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES OR OPTIONS | 15.1 Information Processor |
| | 7.1 Pre-trade Information Transparency - Equity Securities and Preferred Securities | 15.2 Change in Information |
| | 7.2 Pre-trade Information Transparency - Options | 15.3 Requirements Applicable to an Information Processor |
| | | PART 16 EXEMPTION |

16.1 Exemption

**NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions¹ - 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 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;

"approved agent" has the meaning ascribed to it in National Instrument 23-101 Trading Rules;

1 A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to one or more jurisdictions, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the National Instrument.

"ask price" means the price of an order to sell a particular security;

"ATS" means an alternative trading system;

"best bid" means the highest-priced order to buy a particular security;

"best offer" means the lowest-priced order to sell a particular security;

"bid price" means the price of an order to buy a particular security;

"corporate debt security" means a debt security issued by a company or corporation, but does not include a government debt security;

"data consolidator" means the person or company that has entered into an agreement with the securities regulatory authority to receive information from a marketplace in accordance with Part 7;

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

"exchange-traded security" means a security that is listed on an exchange that is recognized under securities legislation in any jurisdiction or is quoted on quotation and trade reporting system that is recognized under securities legislation in any jurisdiction;

"exercise price" means the price specified in an option contract at which the buyer of a call option can purchase the underlying interest during the life of the option, and the price specified in an option contract at which the buyer of a put option can sell the underlying interest during the life of the option;

"government debt security" means a debt security of or guaranteed by the government of Canada or a jurisdiction or any municipal corporation or a debt security of a public board or entity;

"information processor" means a person or company that collects, processes, distributes and publishes information about orders or executed trades;

"inter-dealer bond broker" means an organization listed in Appendix A;

"market integrator" means the person or company that has entered into an agreement with the securities regulatory authority to provide access to

orders in accordance with Part 9;

"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
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of exchange-traded securities,
 - (ii) brings together the orders for exchange-traded securities of multiple buyers and sellers,
 - (iii) uses discretionary methods or 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, and
 - (iv) is not a marketplace participant;

and 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) a person or company holding at least one seat on the exchange, or

- (b) a registrant that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange;²

"non-exchange-traded security" means a security that is not listed on an exchange that is recognized under securities legislation in any jurisdiction or is not quoted on a quotation and trade reporting system that is recognized under securities legislation in any jurisdiction;

"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;

"principal market" means

- (a) for types of exchange-traded securities, any recognized exchange or recognized quotation and trade reporting system on which that type of security is listed or quoted, and
- (b) for types of non-exchange-traded securities, the marketplace which has the highest trading volume for that type of security in Canada during the previous calendar year;

"recognized exchange" means

- (a) in Ontario, a recognized stock exchange,
- (b) in Alberta, a recognized exchange, and
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority under securities legislation to carry on business as an exchange;

"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

²

Paragraph (a) of the definition deals with the current structure of an exchange. Paragraph (b) contemplates the possible structure in certain jurisdictions after demutualization.

regulatory authority under securities legislation to carry on business as a quotation and trade reporting system or as an exchange;

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

- (a) is not an exchange,
- (b) carries out member regulation, and
- (c) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority under securities legislation;

"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;

"transaction fee" means the fee that a marketplace charges for execution of a trade; and

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

1.2 Interpretation - Marketplace - For the purposes 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

(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 a controlled entity of 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 - In Alberta and British Columbia, the term "security" includes an exchange contract but does not include a futures contract.

PART 2 APPLICATION

2.1 Application - This Instrument does not apply to a marketplace that is a member of a recognized exchange in any jurisdiction.

PART 3 EXCHANGE-RECOGNITION

3.1 Application for Recognition

- (1) An applicant for recognition as an exchange under securities legislation 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 described on Form 21-101F1 or on an amendment to Form 21-101F1, and the applicant shall file an amendment to Form 21-101F1 no later than seven days after a change in the information on that form or on an amendment to that form takes place.

3.2 Change in Information

- (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 was recognized after this Instrument came 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 was recognized after this Instrument came into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

PART 4 QUOTATION AND REPORTING SYSTEM - RECOGNITION

4.1 Application for Recognition

- (1) An applicant for recognition as a quotation and trade reporting system under securities

legislation 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 described on Form 21-101F1 or on an amendment to Form 21-101F1, and the applicant shall file an amendment to Form 21-101F1 no later than seven days after a change in the information on that form or on an amendment to that form 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 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 Trading Off Exchange or Quotation and Trade Reporting System - 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 an ATS.

5.3 Public Interest Rules

(1) By-laws, 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, with respect to members in the case of an exchange and users in the case of a quotation and trade reporting system, 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 cooperation and coordination 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 between customers, issuers and members in the case of an exchange, or between customers, issuers and users in the case of a quotation and trade reporting system; or
- (b) impose any burden on competition that is not reasonably necessary and appropriate.

5.4 Discipline Rules - A recognized exchange or a

recognized quotation and trade reporting system shall have by-laws, rules, policies or other similar instruments that provide that their respective members or users shall

- (a) comply with securities legislation; and
- (b) be appropriately disciplined for violations of the by-laws, rules, policies and other similar instruments of the exchange or quotation and trade reporting system.

5.5 By-law Filing - A recognized exchange or a recognized quotation and trade reporting system shall file with the securities regulatory authority all by-laws, rules, policies and other similar instruments, and all amendments thereto, when adopted by the exchange or quotation and trade reporting system.

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 with the securities regulatory authority 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; and
- (b) it is a member of a self-regulatory entity.

6.2 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) An ATS shall file an amendment to Form 21-101F2 at least 45 days before implementing a significant change to its operations.

(3) If a change in the information on Form 21-101F2 or an amendment to that form takes place, other than a change referred to in subsection (2), an ATS shall file an amendment to Form 21-101F2 no later than 30 days after the end of the calendar quarter in which the change takes place.

(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.

6.3 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.

6.4 Notification of Non-ATS Activities

- (1) 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 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.

6.5 Notification of Threshold

- (1) An ATS shall notify the securities regulatory authority in writing, if, 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.
- (2) An ATS shall provide the notice referred to in subsection (1) within ten days after the threshold in subsection (1) is met or exceeded.

6.6 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.
- (4) Nothing in this section shall prohibit an ATS from complying with National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer.³

6.7 Name - An ATS shall not use in its name the word "exchange", the words "stock market" or any

³ This subsection is necessary because an investment dealer that operates as an ATS may be an intermediary for the purposes of National Instrument 54-101 and required to disclose information under that Instrument.

derivations of those terms.

6.8 Risk Disclosure

- (1) An ATS that is trading non-exchange-traded securities shall provide its subscribers with disclosure in substantially the following words:

The securities traded by or through [the ATS] may not be listed on an exchange in Canada or 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 any order for a non-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 in subsection (1).

PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES OR OPTIONS

7.1 Pre-trade Information Transparency - Equity Securities and Preferred Securities

- (1) A marketplace that displays orders of equity securities or preferred securities to a person or company shall provide to the data consolidator accurate and timely information for each equity security and preferred security traded on the marketplace in the format required by the data consolidator.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its own employees or persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.2 Pre-trade Information Transparency - Options

- (1) A marketplace that displays orders of put and call options to a person or company shall provide to the data consolidator accurate and timely information for every series of every put and call option at every available exercise price traded on the marketplace in the format required by the data consolidator.

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

7.3 Post-trade Information Transparency - Equity Securities and Preferred Securities - A

marketplace shall provide to the data consolidator, in the format required by the data consolidator, accurate and timely information regarding details of all trades of equity securities and preferred securities executed on the marketplace, including details as to the type, issuer, class and series of the security, the volume, the symbol, the price and the time of the trade.

7.4 Post-trade Information Transparency - Options - A

marketplace shall provide to the data consolidator, in the format required by the data consolidator, accurate and timely information regarding the details of all trades of put and call options executed on the marketplace, including details as to the underlying interest, the expiry month, the exercise price, the volume, the price and the time of the trade.

7.5 Consolidated Feed - Equity Securities, Preferred Securities and Options -

The data consolidator shall produce a consolidated feed showing the information provided to the data consolidator under sections 7.1, 7.2, 7.3 and 7.4 and the identity of the marketplace on which each trade took place, but shall not disclose information about the identity of the buyer and seller of the securities traded.

7.6 Compliance with Requirements of the Data Consolidator -

A marketplace that is subject to this Part shall comply with the requirements of the data consolidator.

PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS

8.1 Pre-trade Information Transparency - Debt Securities

- (1) An inter-dealer bond broker or a marketplace that displays orders of debt securities to a person or company shall provide to an information processor accurate and timely information for each debt security traded through the inter-dealer bond broker or on the marketplace in the format required by the information processor.

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

8.2 Post-trade Information Transparency - Debt Securities - An inter-dealer bond broker or a marketplace shall provide to an information processor accurate and timely information regarding details of all trades of debt securities executed through the inter-dealer bond broker or executed on the marketplace including details as to the type, issuer, class and series of the security, the volume, the price and the time of the trade.

8.3 Consolidated Feed - Debt Securities - An information processor shall produce a consolidated feed showing the information provided to the information processor under sections 8.1 and 8.2, but shall not disclose information about the identity of the inter-dealer bond broker, buyer or seller involved in a trade.

8.4 Compliance with Requirements of the Information Processor - A marketplace or inter-dealer bond broker that is subject to this Part shall comply with the reasonable requirements of the information processor.

PART 9 MARKET INTEGRATION FUNCTION FOR MARKETPLACES

9.1 Market Integration Function for Marketplaces

- (1) A marketplace that is subject to subsection 7.1(1), 7.2(1) or 8.1(1) shall comply with the requirements of the market integrator to provide for access to orders displayed through the data consolidator.
- (2) When receiving an order from another marketplace, the marketplace receiving the order shall apply its own rules to the execution of that order.
- (3) A marketplace shall provide to marketplace participants of any other marketplace access to the orders it displays to the data consolidator that is equivalent to the access that the marketplace provides to its own marketplace participants.

9.2 Application

(1) An ATS that is subject to subsection 7.1(1), 7.2(1) or 8.1(1) shall establish a connection to the principal market for securities traded on its

system and satisfy the best bid or best offer on any principal market before executing a trade on the ATS.

(2) Subsection (1) does not apply if the market integrator has established requirements to provide for access to orders displayed through the data consolidator.

PART 10 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES

10.1 Disclosure of Transaction Fees for Marketplaces -

If a marketplace charges a transaction fee to participants of another marketplace to execute a trade by accessing an order on that other marketplace that is displayed through the data consolidator, the marketplace shall disclose to the data consolidator a schedule of all transaction fees applicable.

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.1 Business Records - A marketplace shall keep such records as are necessary for the proper recording of its business.

11.2 Other Records - In addition to the records required to be maintained under section 11.1, a marketplace shall keep the following information

- (a) a record of all marketplace participants who have been granted access to trading in the marketplace; and
- (b) daily trading summaries for the marketplace, including
 - (i) securities traded,
 - (ii) transaction volumes
 - (A) for shares and derivatives of shares, expressed as 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 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 currency,

- (c) time-sequenced records of order information in the system, including
 - (i) the date and time, expressed in hours, minutes and seconds, that the order was received and entered,
 - (ii) details of the order, including the type, issuer, class and series of the security, whether the order is a buy or sell order, the quantity specified and all designated price parameters including market order and applicable price limits,
 - (iii) all other order modifiers, including time limit in force, short sale and special terms,
 - (iv) all instructions to modify or cancel the order,
 - (v) all execution report details, including the amount of the order executed, the price at which the order was executed, the currency, if not in Canadian dollars, the time of execution, whether the transaction was a cross and the identity of each counterparty, and
 - (vi) time-sequenced records of all messages sent to or received from the data consolidator, the market integrator and any other marketplace; and
 - (d) the transaction fees.
- (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;
 - (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) if the marketplace is an ATS and it is not required to comply with section 12.1, at least one copy of all records made or received by the marketplace in the course of carrying out any activities of a type described in paragraphs (a) to (g) of section 12.1, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results and other similar records related to those activities; and
 - (e) 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.
- (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 6.2 and 6.3 and notices given under sections 6.4 and 6.5.

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 ;

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) such 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 ATS Trade Report Transmittal - Each ATS shall transmit in electronic form within 90 seconds after execution the information set out in subsections 11.2(c) and (d) to the approved agent of the ATS in the format required by the approved agent.

11.6 Synchronization of Clocks

- (1) Each marketplace or approved agent for equity securities, preferred securities or options shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded pursuant to this Part to the clock used by the data consolidator and the marketplace shall maintain the synchronization of those clocks in conformity with procedures established by the data consolidator.
- (2) Each marketplace or approved agent for debt securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded pursuant to this Part to the clock used by the information processor and the marketplace shall maintain the synchronization of those clocks in conformity with procedures established by the information processor.

PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

12.1 System Requirements - Subject to section 12.2, an ATS, a recognized exchange and a recognized quotation and trade reporting system shall, for each of their systems that support order entry, order routing, execution, trade reporting and trade

comparison,

- (a) make reasonable current and future capacity estimates;
- (b) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
- (d) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (e) establish reasonable contingency and business continuity plans;
- (f) on an annual basis, perform an independent review, in accordance with established audit procedures and standards, of their controls for ensuring that each of them is in compliance with paragraphs (a) through (e), and conduct a review by senior management of a report containing the recommendations and conclusions of the independent review; and
- (g) promptly notify the securities regulatory authority of material systems failures.

12.2 Application - Paragraphs 12.1(f) and (g) do not apply to an ATS unless trades on the ATS in any type of security, during at least four of any six consecutive calendar months, are greater than 20 percent of the average daily dollar value of the trading volume in that type of security on all marketplaces in Canada.

PART 13 CLEARING AND SETTLEMENT

13.1 Clearing and Settlement - All trades made through or by an ATS shall be reported, confirmed and settled through a clearing agency listed in Appendix B.

PART 14 JURISDICTION

- 14.1 Jurisdiction** - Despite section 6.1, if an ATS is registered as a dealer in a jurisdiction in Canada and is providing access only to registered dealers in the local jurisdiction, then the ATS is exempt from the requirement to be recognized as an exchange or registered as a dealer in the local jurisdiction.

PART 15 INFORMATION PROCESSOR

15.1 Information Processor

- (1) A person or company shall not act as an information processor unless the person or company files Form 21-101F5 90 days prior to commencing operations as an information processor.
- (2) A person or company who has filed Form 21-101F5 may commence operations as an information processor unless the securities regulatory authority disapproves the commencement of operations within 90 days of the filing of Form 21-101F5.
- (3) During the 90 day period referred to in subsections (1) and (2), a person or company who files Form 21-101F5 shall inform in writing the securities regulatory authority immediately of any change to the information described on Form 21-101F5 or on an amendment to Form 21-101F5, and the person or company shall file an amendment to Form 21-101F5 no later than seven days after a change in the information on that form or on an amendment to that form takes place.

15.2 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 on Form 21-101F5 in the manner set out in Form 21-101F5
- (2) When there is a change to any information described on Form 21-101F5 or an amendment to that form, other than the information referred to in subsection (1), an information processor shall file an amendment to Form 21-101F5 not later than 30 days after the end of the calendar quarter in which the change takes place.

15.3 Requirements Applicable to an Information Processor

- (1) An information processor shall provide prompt, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and executed trades in, securities.
- (2) An information processor shall not

unreasonably prohibit or limit access by a person or company to services offered by it.

- (3) An information processor shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs.

PART 16 EXEMPTION

16.1 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.

**APPENDIX A
TO
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

INTER-DEALER BOND BROKERS

1. Cantor Fitzgerald Securities Canada Ltd.
2. Freedom International Brokerage Inc.
3. Prebon Yamane (Canada) Ltd.
4. Shorcan Brokers Ltd.
5. Tullett & Tokyo Securities Canada Ltd.

**APPENDIX B
TO
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

CLEARING AGENCIES

1. Canadian Depository for Securities Limited
2. Canadian Derivatives Clearing Corporation

National Instrument 21-101 - Marketplace Operation Forms

**NATIONAL INSTRUMENT 21-101
FORM 21-101F1
APPLICATION FOR AND AMENDMENTS TO APPLICATION FOR
RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM**

**G EXCHANGE
G APPLICATION**

**G QUOTATION AND TRADE REPORTING SYSTEM
G AMENDMENT**

1. Full name: _____

2. Main street address (Do not use a P.O. Box):

3. Mailing address (if different):

4. Address of head office (if different from address in item 2):

5. Business telephone and facsimile number:

(Telephone) (Facsimile)

6. Website address:

7. Contact employee:

(Name and Title) (Telephone Number) (Facsimile) (E-mail address)

8. Counsel:

(Firm Name) (Contact Name) (Telephone Number) (Facsimile) (E-mail address)

9. Date of financial year end: _____

10. Legal status: **G** Corporation **G** Sole Proprietorship
G Partnership **G** Other (Specify): _____

Except where the exchange or quotation and trade reporting system is a sole proprietorship, indicate the date and place where the exchange or quotation and trade reporting system obtained its legal status (e.g., place of incorporation, place

where partnership agreement was filed or where exchange or quotation and trade reporting system entity was formed):

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

(c) Statute under which exchange or quotation and trade reporting system was organized: _____

EXHIBITS

File all Exhibits with an application for registration. 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 applicant, recognized exchange or recognized quotation and trade reporting system files an amendment to this Form and the amendment relates to an Exhibit to this Form, the applicant, recognized exchange or recognized quotation and trade reporting system, as the case may be, must, in order to comply with section 3.2 or 4.2 of National Instrument 21-101, file the Exhibit to which the amendment relates showing the changes and provide an updated version of the Exhibit.

Exhibit A A copy of the constating documents with all subsequent amendments, and of existing by-laws or corresponding rules or instruments, whatever the name, of the exchange or quotation and trade reporting system.

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

Exhibit C 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 to be used to effect transactions on the exchange or quotation and trade reporting system (the "System"), 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 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 D Describe the manner of operation of the System. 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.
3. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System.
4. Proposed fees.
5. The hours of operation of the System, and the date on which 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,

describe the controls that will be implemented to ensure safety of those funds or securities.

Exhibit E¹ A complete set of all forms pertaining to:

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

Exhibit F² A complete set of all forms, reports or questionnaires required of marketplace participants relating to financial responsibility or minimum capital requirements for such marketplace participants. Provide a table of contents listing the forms included in this Exhibit.

Exhibit G³ A complete set of documents comprising the exchange's or quotation and trade reporting system's listing or quotation applications, 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.

Exhibit H 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.⁴

Exhibit I A list of the 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 termination of term of office or position.
4. Type of business in which each is primarily engaged (e.g., sales trading, market making, etc.).
5. For partners, directors, officers, governors or persons performing similar functions, the type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

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

1. A copy of the constating 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 K 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

¹ Exhibit E is to be provided only if it is not otherwise provided with Exhibit B.

² Exhibit F is to be provided only if it is not otherwise provided with Exhibit B.

³ Exhibit G is to be provided only if it is not otherwise provided with Exhibit B.

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

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).

Exhibit L⁵ 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 M Provide an alphabetical list of all marketplace participants, including the following information:

1. Name.
2. Date of becoming a marketplace participant.
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 trading, principal trading, 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 trader, registered trader and market maker) and state the number of marketplace participants in each.
6. The class of participation or other access.

Exhibit N 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.
2. Other securities traded on the marketplace, including, for each, the name of the issuer and a description of the security.

**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)

⁵ Exhibit L is to be provided only if it is not otherwise provided with Exhibit E.

(Signature of director, officer or partner)

(Official capacity- please type or print)

**NATIONAL INSTRUMENT 21-101
FORM 21-101F2
INITIAL OPERATION REPORT AND AMENDMENT TO INITIAL OPERATION REPORT
FOR ALTERNATIVE TRADING SYSTEM**

9 Initial Report

9 Amendment to Initial Operation Report

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. If this filing makes a name change on behalf of the alternative trading system in respect of the name set out in Item 1A or Item 1B, enter the previous name and the new name.

Previous name: _____

New name: _____

D. Alternative trading system's main street address:

E. Mailing address (if different):

F. Address of head office (if different from address in item D):

G. Business telephone and facsimile number:

(Telephone)

(Facsimile)

H. Website address:

I. Contact Employee:

| (Name and Title) | (Telephone Number) | (Facsimile) | (E-mail address) |
|------------------|--------------------|-------------|------------------|
|------------------|--------------------|-------------|------------------|

2. The ATS is
 - 9 a member of _____
name of the recognized self-regulatory entity
 - 9 a registered dealer
3. If this is an initial operation report, the date the alternative trading system expects to commence operation:

4. Attach as 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.
5. Attach as Exhibit B:
 - (a) A list of the types of securities the alternative trading system trades (e.g., debt, shares) or if this is an initial operation report, the types of securities it expects to trade.
 - (b) 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.
6. Attach as Exhibit C, the name, address, telephone number, facsimile number and e-mail address of counsel for the alternative trading system.
7. Attach as Exhibit D, a copy of the constating documents with all amendments, and of existing by-laws or corresponding rules or instruments, whatever the name, of the alternative trading system.
8. Attach as Exhibit E, 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.
9. Attach as Exhibit F, the following information:
 - (a) The manner of operation of the alternative trading system.
 - (b) Procedures governing entry of orders into the alternative trading system.
 - (c) The means of access to the alternative trading system.
 - (d) Fees charged by the alternative trading system.
 - (e) The procedures governing execution, reporting, clearance and settlement of transactions effected through the alternative trading system.
 - (f) Procedures for ensuring subscriber compliance with requirements of the alternative trading system.
 - (g) A description of safeguards and procedures implemented by the alternative trading system to protect subscriber's trading information.
10. Attach as Exhibit G, a brief description of the alternative trading system's procedures for reviewing system capacity, security and contingency planning procedures.
11. 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 as Exhibit H 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.

12. Attach as Exhibit I, a list of the full legal name of registered holders and beneficial owners of securities of the alternative trading system.
13. If an ATS files an amendment to this Form and the amendment relates to an Exhibit to this Form, the ATS must, in order to comply with subsection 6.2(2) or 6.2(3) of National Instrument 21-101, file the Exhibit to which the amendment relates showing the changes and provide an updated version of the Exhibit.

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)

**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. Provide the total unit and dollar value of transactions in the following securities during regular trading hours. Enter "None", "N/A" or "0" where appropriate.

| Category of Securities | Total Unit Volume of Transactions | Total Dollar Volume of Transactions (Cdn\$) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------|
| A. Listed shares | | |
| Domestic | | |
| Foreign | | |
| B. Listed debt securities (non-government) | | |
| Domestic | | |
| Foreign | | |
| C. Unlisted shares | | |
| Domestic | | |
| Foreign | | |
| D. Unlisted debt securities (non-government) | | |
| Domestic | | |
| Foreign | | |

| Category of Securities | Total Unit Volume of Transactions | Total Dollar Volume of Transactions (Cdn\$) |
|-------------------------------|-----------------------------------|---------------------------------------------|
| E. Government debt securities | | |
| Domestic | | |
| Foreign | | |
| F. Listed Options | | |
| Domestic | | |
| Foreign | | |
| G. Unlisted options | | |
| Domestic | | |
| Foreign | | |
| H. Other | | |
| Specify types of securities | | |

5. Provide the total unit and dollar value of transactions in the following securities for after-hours trading. Enter "None", "N/A" or "0" where appropriate.

| Category of Securities | Total Unit Volume of Transactions | Total Dollar Volume of Transactions (Cdn\$) |
|----------------------------------------------|-----------------------------------|---------------------------------------------|
| A. Listed shares | | |
| Domestic | | |
| Foreign | | |
| B. Listed debt securities (non-government) | | |
| Domestic | | |
| Foreign | | |
| C. Unlisted shares | | |
| Domestic | | |
| Foreign | | |
| D. Unlisted debt securities (non-government) | | |
| Domestic | | |
| Foreign | | |
| E. Government debt securities | | |
| Domestic | | |
| Foreign | | |
| F. Listed options | | |
| Domestic | | |
| Foreign | | |
| G. Unlisted options | | |
| Domestic | | |
| Foreign | | |
| H. Other | | |
| Specify types of 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: _____

3. If cessation of business was involuntary, date alternative trading system has ceased to carry on business: _____

4. Attach as Exhibit A the reasons for the alternative trading system ceasing to carry on business.

5. Attach as Exhibit B a list of each of the securities the alternative trading system trades.

6. Attach as 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 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)

**NATIONAL INSTRUMENT 21-101
FORM 21-101F5
INITIAL FORM AND AMENDMENTS TO FORM FOR
INFORMATION PROCESSOR**

G INITIAL FORM

G AMENDMENT

GENERAL INFORMATION

1. Full name: _____
2. Main street address (Do not use a P.O. Box):

3. Mailing address (if different):

4. Address of head office (if different from address in item 2):

5. Business telephone and facsimile number:

(Telephone) (Facsimile)
6. Website address:

7. Contact employee:

(Name and Title) (Telephone Number) (Facsimile) (E-mail address)
8. Counsel:
] _____
(Firm Name) (Contact Name) (Telephone Number) (Facsimile) (E-mail address)
9. Date of financial year end: _____
10. List of all marketplaces, dealers or other parties for which the applicant is acting or for which it proposes to act as an information processor. For each marketplace, dealers or other party, provide a description of the function(s) which the applicant performs or proposes to perform. For each such marketplace, dealer or other party, provide a list of all securities for which information with respect to quotations for, or transactions in, is or is proposed to be collected, processed, distributed or published.

BUSINESS ORGANIZATION

11. 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 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 filer or information processor files an amendment to this Form and the amendment relates to an Exhibit to this Form, the filer must, in order to comply with section 15.3 of National Instrument 21-101, file the Exhibit to which the amendment relates showing the changes and provide an updated version of the Exhibit.

BUSINESS ORGANIZATION

Exhibit A List any person or company who owns 10 percent or more of the filer'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 filer. 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 B A list of the present officers, directors, governors or persons performing functions similar to any of the foregoing, of the information processor indicating for each:

- a. Name
- b. Title
- c. Dates of commencement and termination of present term of office or position
- d. Length of time each present officer, director or governor has held the same office or position
- e. Brief account of the business experience of each officer and director over the last 5 years

Exhibit C A narrative or graphic description of the organizational structure of the filer.

Exhibit D A list of all affiliates of the information processor and the general nature of the affiliation.

Exhibit E A copy of the constating documents with all subsequent amendments and of any existing by-laws, rules or instruments.

FINANCIAL INFORMATION

Exhibit F Audited financial statements for the latest financial year of the filer and a report prepared by an independent auditor.

Exhibit G A complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the filer for its information services.

OPERATIONAL CAPABILITY

Exhibit H A description in narrative form of each service or function listed in item 10 and performed by the information processor. Include a description of all procedures utilized for the collection, processing, distribution and publication of information with respect to quotations for, and transactions in, securities.

Exhibit I A list of all computer hardware utilized by the filer to perform the services or functions listed in item 10, indicating:

- a. Manufacturer, and manufacturer's equipment and identification number
- b. Whether purchased or leased (if leased, duration of lease and any provisions for purchase or renewal)
- c. Where such equipment (exclusive of terminals and other access devices) is physically located

Exhibit J A description of the personnel qualifications for each category of professional, non-professional and supervisory employees employed by the information processor.

Exhibit K A description of the measures or procedures implemented by the filer 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 accuracy of information received or disseminated by the system.

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

- a. 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,
- b. business and contingency plans for the ongoing operations of the facilities or systems in the event of a catastrophe,
- c. 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
- d. the total number of interruptions which have lasted two minutes or less.

Exhibit M For each service or function listed in item 10,

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

ACCESS TO SERVICES

Exhibit N Attach the following:

- a. State the number of persons who presently subscribe or who have notified the filer of their intention to subscribe to the services of the information processor.
- b. 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 filer, indicate the name of each such person and the reason for the prohibition or limitation.

Exhibit O Copies of all contracts governing the terms by which persons may subscribe to the services of an information

processor.

Exhibit P 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.

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

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
Marketplace Operation**

**COMPANION POLICY 21-101CP
TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

for Marketplaces Dealing in Equity Securities, Preferred Securities and Options

TABLE OF CONTENTS

| <u>PART</u> | <u>TITLE</u> |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PART 1 | INTRODUCTION 1.1 Introduction |
| PART 2 | MARKETPLACE 2.1 Marketplace |
| PART 3 | CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSS 3.1 Exchange 3.2 Quotation and Trade Reporting System 3.3 ATS |
| PART 4 | DATA CONSOLIDATOR AND MARKET INTEGRATOR 4.1 Data Consolidator and Market Integrator |
| PART 5 | RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM 5.1 Recognition as an Exchange or Quotation and Trade Reporting System |
| PART 6 | ORDERS 6.1 Ask and Bid Prices 6.2 Order |
| PART 7 | FORMS FILED BY MARKETPLACES 7.1 Forms Filed by Marketplaces |
| PART 8 | CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS 8.1 Access Requirements 8.2 Discipline Rules 8.3 By-law Review |
| PART 9 | CONFIDENTIAL TREATMENT OF TRADING INFORMATION BY ATSS 9.1 Confidential Treatment of Trading Information by ATSS |
| PART 10 | INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES AND OPTIONS 10.1 Information Transparency Requirements |

- PART 11 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS
 - 11.1 Information Transparency Requirements for Marketplaces Dealing in Debt Securities and Inter-Dealer Bond Brokers

- PART 12 MARKET INTEGRATION FUNCTION FOR MARKETPLACES
 - 12.1 Execution of Orders
 - 12.2 Equivalent Access
 - 12.3 Phased Implementation

- PART 13 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES
 - 13.1 Disclosure of Transaction Fees for Marketplaces

- PART 14 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES
 - 14.1 Recordkeeping Requirements for Marketplaces

- PART 15 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS
 - 15.1 Capacity, Integrity and Security of Marketplace Systems

- PART 16 CLEARING AND SETTLEMENT
 - 16.1 Clearing and Settlement

- PART 17 JURISDICTION
 - 17.1 Domestic Jurisdiction
 - 17.2 Foreign Jurisdiction

- PART 18 INFORMATION PROCESSOR
 - 18.1 Purpose of the Information Processor
 - 18.2 Change to Information
 - 18.3 Selection of the Information Processor

**COMPANION POLICY 21-101CP
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 ("ATS"). 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.

PART 2 MARKETPLACE

2.1 Marketplace

- (1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades.
- (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, non-discretionary 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 merely provides information to marketplace participants about other marketplace participants' trading interests, without facilities for execution.

In the first two cases, the criteria of multiple buyers and sellers would not be met. In addition, 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 under securities legislation.
- (7) The Canadian securities regulatory authorities are of the view that a dealer that does not provide direct or indirect access to a marketplace for exchange-traded securities should be considered to be a marketplace. In respect of the definition of "marketplace" in the Instrument, a dealer that is not a marketplace participant that uses internal systems to trade and manage orders for exchange-traded securities, either by using discretionary methods or by using established non-discretionary methods, would be considered to be a marketplace.
- (8) The Canadian securities regulatory authorities have excluded inter-dealer bond brokers from the definition of marketplace. Inter-dealer bond brokers are expected to comply with Part 8 of the Instrument dealing with information transparency requirements.

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

3.1 Exchange

- (1) Canadian securities legislation prohibits a person or company from carrying on business as an exchange unless recognized by the securities regulatory authority. Canadian securities legislation of most jurisdictions does not define the term "exchange".
- (2) The Canadian securities regulatory authorities generally consider a marketplace 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 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 reasonably continuous basis. This type of liquidity guarantee has historically been carried out on exchanges through traders, acting as principals such as registered traders, specialists or market makers;
 - (c) sets requirements governing the conduct of marketplace participants, in addition to conduct in respect of the trading by those marketplace participants 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 actions.
- (3) In respect of paragraph (c) of subsection (2), the Canadian securities regulatory authorities would consider a marketplace to be setting requirements governing the conduct of marketplace participants if it imposes, as a condition of participation in the marketplace, any requirements for which the marketplace has to examine marketplace participants for compliance. This includes anti-manipulation requirements or requirements related to surveillance and enforcement. In addition, if a marketplace imposes as a condition of participation, directly or indirectly, restrictions on a marketplace participant's activities outside of the marketplace, the Canadian securities regulatory authorities are of the view that the marketplace sets requirements governing the conduct of marketplace participants. This limitation would not preclude a marketplace from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

Paragraph (c) of subsection (2) provides an exclusion for conduct in respect of trading by marketplace participants on the system. This is a reference to a marketplace having in place trading algorithms that provide that a trade takes place if certain events occur. This

exclusion is necessary as those algorithms could otherwise be considered to be conduct in respect of the trading by the marketplace participants on the system.

- (4) The criteria in subsection (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.
- (5) Subsection 6.5(1) of the Instrument requires an ATS to notify the securities regulatory authority if the average daily dollar value of the trading volume on the ATS for any three of the ATS's previous four calendar quarters meet or exceed a certain volume threshold.
- (6) Upon being informed of the volume threshold referred to in subsection (5) being 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 the volume threshold may be indicative of an ATS having market dominance over a type of security, such that it would be more appropriate that that marketplace 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.
- (7) The volume thresholds referred to in subsection 6.5(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 shares, debt securities or options.

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 would not normally be considered to be a quotation and trade reporting system.

- (2) A person or company cannot carry on business as a quotation and trade reporting system in those jurisdictions unless it is recognized appropriately in the local jurisdiction, or it is an ATS that is in compliance with the Instrument.

3.3 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 market makers,
 - (c) setting rules governing the conduct of subscribers, 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.

- (2) 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) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of an exchange. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.
- (4) If the ATS is a member of an exchange, the by-laws, rules, policies and other similar instruments of the exchange apply to the ATS.

- (5) Under subsection (a) of section 6.1 of the Instrument, an ATS that is not a member of a recognized exchange must register as a dealer if it wishes to carry on business. The requirements imposed by the Instrument are in addition to any requirements applicable to dealers registered under Canadian securities legislation.

- (6) Subsection (b) of section 6.1 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 Investment Dealers Association of Canada is the only entity that would come within the definition.

- (7) Section 6.8 of the Instrument requires that an ATS that is trading non-exchange-traded securities provide its subscribers with disclosure as set out in that section and must obtain an acknowledgement from each subscriber that the subscriber has received the disclosure before any order for a non-exchange-traded security is entered onto the ATS by that subscriber. 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. The acknowledgement must be specific to the information required to be disclosed under section 6.8 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 DATA CONSOLIDATOR AND MARKET INTEGRATOR

a particular security. The term "order" is discussed in section 6.2.

4.1 Data Consolidator and Market Integrator - Each of the data consolidator and market integrator under the Instrument will have entered into an agreement with one or more of the Canadian securities regulatory authorities to perform the functions set out in Parts 7 and 9 of the Instrument, respectively.

PART 5 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

5.1 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 has sufficient financial resources for the proper performance of its functions; and
 - (d) whether the by-laws, 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 6 ORDERS

6.1 Ask and Bid Prices - The terms "ask price" and "bid price" are defined in section 1.1 of the Instrument as the price of an order to sell or to buy

6.2 Order

- (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 agreement of the person or company entering the indication. 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. The Canadian securities regulatory authorities do not consider special terms orders such as all or none, minimum fill or cash or delay delivery to be firm indications.
- (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.

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 open for public inspection unless the person or company filing the form applies to the securities regulatory authority to keep the form confidential and the securities regulatory authority agrees to do so. In determining whether to keep a form confidential, the securities regulatory authority will look at the type of information on the form and determine whether the desirability of avoiding disclosure outweighs the desirability of public disclosure.
- (3) Under section 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change involving a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to Form 21-101F1, 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, C, D, E, G and J 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 Form 21-101F1 should number each amendment consecutively.
- (5) Securities legislation in a number of jurisdictions requires 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. The Canadian securities regulatory authorities consider a voluntary surrender to be a change to information described on Form 21-101F1 that is significant requiring the filing of an amendment to Form 21-101F1.
- (6) Under subsection 6.2(2) of the Instrument, an ATS is required to file an amendment to Form 21-101F2 at least 45 days before implementing a significant change to its operations. The Canadian securities regulatory authorities consider that a significant change to the operations of an ATS includes any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers.

PART 7 FORMS FILED BY MARKETPLACES

7.1 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

- (7) Subsection 6.2(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).

PART 8 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS

- 8.1 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.
- 8.2 Discipline Rules** - Section 5.4 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to have appropriate disciplinary procedures to deal with violations of by-laws, 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.
- 8.3 By-law Review** - Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file with the securities regulatory authority all by-laws, rules, policies and other similar instruments and amendments when adopted by the exchange and quotation and trade reporting system. The securities regulatory authority will determine which of these instruments to review. Initially, all by-laws, rules, policies and other similar instruments should be filed before implementation. By agreement, this may be varied by a securities regulatory authority.

PART 9 CONFIDENTIAL TREATMENT OF TRADING INFORMATION BY ATSS

- 9.1 Confidential Treatment of Trading Information by ATSS**
- (1) Subsection 6.6(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) Subsection 6.6(4) of the Instrument provides that nothing in that section shall prohibit an ATS from complying with National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer. This subsection is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Instrument 54-101 and required to disclose information under that Instrument.

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES AND OPTIONS

10.1 Information Transparency Requirements for Marketplaces Dealing in Equity Securities, Preferred Securities and Options

- (1) Subsections 7.1(1) and 7.2(1) of the Instrument require a marketplace that displays orders of equity or preferred securities or orders of put and call options to any person or company to provide to the data consolidator information as required by the data consolidator. Initially, the data consolidator will receive information regarding the total disclosed volume at each of the five best bid price and ask price levels for each equity or preferred security traded on the marketplace. In addition, the data consolidator will receive information regarding the total disclosed volume at each of the best bid and ask price levels for every series of option traded on the marketplace. The term "total disclosed volume" refers to the amount of the orders that is displayed in the marketplace. Volumes that are not disclosed or that are "reserve" or

hidden volumes are not required to be displayed. The data consolidator may determine that additional or different information should be received and displayed.

- (2) The Canadian securities regulatory authorities expect that information required to be provided to the data consolidator under the Instrument will be provided in real time or as close to real time as possible.
- (3) Section 7.5 of the Instrument requires the data consolidator to produce a consolidated feed showing the information provided to the data consolidator. For pre-trade information, the data consolidator will initially disseminate the total volume bid or offered at each of the best five price levels for each security.

PART 11 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS

11.1 Information Transparency Requirements for Marketplaces Dealing in Debt Securities and Inter-Dealer Bond Brokers

- (1) Subsection 8.1(1) of the Instrument requires inter-dealer bond brokers or marketplaces that display orders of debt securities to provide to an information processor information as required by the information processor. Initially, the information processor will require the inter-dealer bond broker or marketplace to provide the total disclosed volume at the best bid and best offer for each debt security traded by that inter-dealer bond broker or marketplace. The Canadian securities regulatory authorities recognize that the number of issues for which information will be made available will vary according to each inter-dealer bond broker or marketplace. The term "total disclosed volume" refers to the amount of the orders that is displayed in the marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not required to be displayed. The information processor may determine that additional or different information should be received and displayed.
- (2) The Canadian securities regulatory authorities expect that information required to be provided to an information processor under Part 8 of the Instrument will be provided in real time or as close to real time as possible.

(3) Section 8.3 of the Instrument requires the information processor to produce a consolidated feed showing the information provided to the information processor. For pre-trade information for the government debt market and the corporate debt market, it is expected that initially, the information processor will disseminate the total volume bid or offered at each of the best five price levels for each security. The Canadian securities regulatory authorities note that, in cases where this level of information is not available, the information processor will disseminate less than five levels of pre-trade information.

PART 12 MARKET INTEGRATION FUNCTION FOR MARKETPLACES

12.1 Execution of Orders - Subsection 9.1(2) of the Instrument requires a marketplace, when receiving an order from another marketplace, to apply its own rules to the execution of that order. This requires a marketplace that displays orders through the data consolidator to provide access to its passive booked orders. When an active order is routed to the system in which the passive order is booked, then execution will be completed according to the rules of the system in which the passive order is booked. A passive order is an order that has been placed in the order book because it was not executable at time of entry and is now waiting to be executed. An active order is an order that comes into the market seeking a counterparty that is either a market order or an executable limit order (a buy order with a limit at or above present ask price or a sell order with a limit at or below the present bid price).

12.2 Equivalent Access

- (1) The Canadian securities regulatory authorities believe that a marketplace participant should be able to execute against another marketplace orders that are provided to the data consolidator to the same extent as if that order had been reflected in the marketplace in which the marketplace participant is a member, a user or a subscriber. Accordingly, subsection 9.1(3) of the Instrument requires a marketplace to be able to receive from or send orders to other marketplaces to which it is linked.
- (2) Examples of where the Canadian securities regulatory authorities would consider a

marketplace not to be in compliance with subsection 9.1(3) of the Instrument include

- (a) the marketplace responding to orders entered by a person or company that is not a marketplace participant in that marketplace more slowly than it responds to orders by a marketplace participant in that marketplace;
 - (b) the marketplace using different technology to execute orders entered by a person or company that is not a marketplace participant in that marketplace, if that technology would not provide an equivalent service to orders entered by a marketplace participant in that marketplace; or
 - (c) the marketplace charging fees that have the effect of creating barriers to access for a person or company that is not a marketplace participant in that marketplace.
- (3) The Canadian securities regulatory authorities will not consider a marketplace to be in breach of subsection 9.1(3) of the Instrument merely because it has a different fee structure for persons or companies that are not marketplace participants in the marketplace. Instead the Canadian securities regulatory authorities will look at whether the different fee structure can be justified or whether it has only been implemented in order to create a barrier to access for those persons or companies.

12.3 Phased Implementation

- (1) As market integration is a complex task and raises some significant technology challenges, the Canadian securities regulatory authorities believe that a phased approach to market integration is preferable. Accordingly, section 9.2 provides requirements for the first phase of market integration ("Phase 1 Integration") that will be in place until any requirements are established by the market integrator ("Phase 2 Integration").
- (2) Phase 1 Integration will require any ATS who wishes to operate in Canada to establish a connection to the principal market for the securities being traded on its system. ATSS will be permitted to begin operations when they have established this connection to the

principal market. The Canadian securities regulatory authorities consider that, for exchange-traded securities, the principal market will be any of the exchanges on which the security is listed. If a security is listed on more than one exchange in Canada, the principal market will be the exchange that has the largest trading volume for that security in Canada. For non-exchange-traded securities, the principal market will be considered to be the market which has the largest trading volume for that security in Canada. In Phase 1 Integration, each ATS must satisfy any better priced bids or offers on the principal market before execution of a match in its system. In addition, the principal market will also be required to satisfy a better priced bid or offer on any ATS. The Canadian securities regulatory authorities note that, during Phase 1 Integration, integration will only be required between ATSs and the principal markets; ATSs will not be required to satisfy better bids and offers on other ATSs.

- (3) Section 9.2 of the Instrument requires that an ATS establish a connection to the principal market for securities traded on its system. The data consolidator will determine within 10 days of the end of the calendar year which market is the principal market for equity securities, preferred securities and options. The information processor will determine within 10 days of the end of the calendar year which market is the principal market for government debt and corporate debt securities. The ATS then has thirty days from the date the determination is made to establish a connection to the appropriate principal market, as determined by the data consolidator or information processor.
- (4) Phase 2 Integration will establish more complete market integration and order routing between all marketplaces in order to ensure that there will be price protection for all orders between all competing marketplaces. Each marketplace will have the responsibility to monitor the orders in all other marketplaces and will send their orders to other systems by way of a direct connection or through a market integrator. Each system will maintain control over its own orders and will have responsibility for managing order execution.

PART 13 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES

- 13.1 Disclosure of Transaction Fees for Marketplaces**
- Section 10.1 of the Instrument requires that each marketplace disclose the schedule of transaction fees to the data consolidator. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed to the data consolidator. Each marketplace is required to publicly post with the data consolidator a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through the data consolidator.

PART 14 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

- 14.1 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.

PART 15 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

- 15.1 Capacity, Integrity and Security of Marketplace Systems**
 - (1) Subsections (a) to (e) of section 12.1 of the Instrument require an ATS, a recognized exchange and a recognized quotation and trade reporting system to meet certain systems, capacity, integrity and security standards. Subsections (f) and (g) of section 12.1 of the Instrument require an ATS that exceeds the threshold in section 12.2 of the Instrument, a recognized exchange and a recognized quotation and trade reporting system to meet certain additional systems, capacity, integrity and security standards.
 - (2) The activities in subsections (a) to (e) 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 (f) 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 (f) and (g) of section 12.1 of the Instrument after it first satisfies the volume test in section 12.2 of the Instrument. It remains subject to subsections (f) and (g) of section 12.1 even if, thereafter, it no longer satisfies the volume test, unless it is successful in obtaining relief under section 16.1 of the Instrument.

PART 16 CLEARING AND SETTLEMENT

16.1 Clearing and Settlement

- (1) Section 13.1 of the Instrument requires that all trades made through or by an ATS be reported, confirmed and settled through a clearing agency listed in Appendix B. At this time, the Canadian Depository for Securities and the Canadian Derivatives Clearing Corporation are the only entities under the Instrument that are specified for this purpose. If a marketplace wished to perform its own clearing and settlement, it would have to apply to the Canadian securities regulatory authorities for recognition to perform these functions or for an exemption from the requirements of the Instrument.
- (2) The Canadian securities regulatory authorities are of the view that direct reporting of executed trades to a clearing agency may be done either by an ATS or by a subscriber where the subscriber has a settlement account with a clearing agency.

PART 17 JURISDICTION

- 17.1 Domestic Jurisdiction** - An ATS would be carrying on business in a local jurisdiction if it provides access to subscribers located in that jurisdiction. Section 14.1 of the Instrument provides an

exemption from registration as a dealer in the local jurisdiction to those ATSS that are already registered in a jurisdiction in Canada and provide access to only registered dealers located in the local jurisdiction.

- 17.2 Foreign Jurisdiction** - A foreign ATS is required to register in one jurisdiction in Canada whether it is dealing with investors or registered dealers in Canada. Once registered in a Canadian jurisdiction, section 14.1 of the Instrument would apply.

PART 18 INFORMATION PROCESSOR

18.1 Purpose of the Information Processor

- (1) The Instrument uses the term “ information processor ” to refer to a person or company that collects and disseminates order and trade information. This term does not include the data consolidator.
- (2) The Canadian securities regulatory authorities believe that it is critical 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).
- (3) 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.

- 18.2 Change to Information** - Under subsection 15.2(1) of the Instrument, an information processor is required to file an amendment to 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, E, G, H, O, P, Q and Item 10 of Form 21-101F5.

18.3 Selection of the 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; and
 - (d) whether the information processor has sufficient financial resources for the proper performance of its functions.
- (2) At the current time, it is expected that, for purposes of data consolidation, there will only be one consolidator of information for each type of security. For equity securities and options, it is contemplated that the data consolidator selected by the Canadian securities regulatory authorities will collect and disseminate order and trade information. It is contemplated that there will be an information processor to collect and disseminate order and trade information for the debt market. At the current time, it appears that the only potential information processor for the debt market is the CanPX Transparency System ("CanPX"). If no information processor files Form 21-101F5, it is contemplated that the data consolidator would collect and disseminate information for the debt market.

National Instrument 23-101 Trading Rules

**NATIONAL INSTRUMENT 23-101
TRADING RULES**

TABLE OF CONTENTS

| | | | |
|-------------|-----------------------------------------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------------------|
| | | 10.2 | Monitoring and Enforcement by an Approved Agent for ATs and Trades Not Executed on a Marketplace |
| | | 10.3 | Coordination of Monitoring and Enforcement |
| PART | TITLE | PART 11 | AUDIT TRAIL REQUIREMENTS |
| PART 1 | DEFINITIONS AND INTERPRETATIONS | 11.1 | Application of this Part |
| | 1.1 Definitions | 11.2 | Audit Trail Requirements for Orders Regarding Equity Securities, Preferred Securities and Options |
| | 1.2 Interpretation - NI 21-101 | 11.3 | Audit Trail Requirements for Orders Regarding Debt Securities |
| | 1.3 Interpretation | 11.4 | Synchronization of Clocks |
| PART 2 | MANIPULATION AND FRAUD | PART 12 | EXEMPTION |
| | 2.1 Price Manipulation, Deceptive Trading and Fraud | 12.1 | Exemption |
| | 2.2 Attempted Manipulation | | |
| PART 3 | SHORT SELLING | | |
| | 3.1 Short Selling | | |
| PART 4 | FRONT RUNNING AND INSIDER TRADING | | |
| | 4.1 Front Running | | |
| | 4.2 Insider Trading of Securities of Foreign Non-Reporting Issuer | | |
| | 4.3 Defences | | |
| PART 5 | BEST EXECUTION | | |
| | 5.1 Best Execution | | |
| PART 6 | DISPLAY REQUIREMENTS FOR MARKETPLACE PARTICIPANTS AND MARKET MAKERS | | |
| | 6.1 Marketplace Participants - Pre-Trade Transparency | | |
| | 6.2 Market Maker Display Requirements for Non-Exchange-Traded Securities - Equity Securities and Preferred Securities | | |
| | 6.3 Market Maker Display Requirements for Non-Exchange-Traded Securities - Debt Securities | | |
| PART 7 | PRINCIPAL TRADING | | |
| | 7.1 Principal Trading | | |
| PART 8 | REGULATORY HALTS | | |
| | 8.1 Regulatory Halts | | |
| PART 9 | TRADING HOURS | | |
| | 9.1 Trading Hours | | |
| PART 10 | MONITORING AND ENFORCEMENT | | |
| | 10.1 Monitoring and Enforcement by a Recognized Exchange or Recognized Quotation and Trade Reporting System | | |

**NATIONAL INSTRUMENT 23-101
TRADING RULES**

PART 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions¹ - In this Instrument

"approved agent" means a person or company

(a) that is recognized by the securities regulatory authority to,

(i) in the case of a recognized exchange or recognized quotation and trade reporting system, perform the functions referred to in section 10.1, or

(ii) in the case of a marketplace or a dealer executing trades that are not executed on a marketplace, perform the functions referred to in section 10.2; and

(b) that has entered into an agreement referred to in section 10.3;

"consolidated market display" means the consolidated feed produced by the data consolidator pursuant to section 7.5 of NI 21-101;

"customer limit order" means an order to buy or sell a security at a specified price that is not for the account of either a broker or dealer;

"foreign non-reporting issuer" means an issuer

(a) that is not incorporated under the laws of Canada or a jurisdiction,

(b) that is not a reporting issuer in any jurisdiction or a reporting issuer equivalent in Manitoba and New Brunswick, and

(c) that has issued securities that trade on a marketplace in Canada;

"market maker" means any dealer that holds itself out as being willing to buy and sell a security for its own account on a regular or continuous basis;

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

"principal transaction" means a transaction executed through the facilities of a marketplace in which a marketplace participant, as principal,

(a) purchases securities from its customer, or

(b) sells securities to its customer; and

"short sale" means a sale of a security that the seller does not beneficially own.

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.

1.3 Interpretation - For the purpose of the definition of short sale in section 1.1, a seller is considered

(a) to beneficially own a security if the seller has legal authority to sell the security; and

(b) not to beneficially own a security if the seller has borrowed the security.

PART 2 MANIPULATION AND FRAUD

2.1 Price Manipulation, Deceptive Trading 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, if the person or company knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security; or

¹ A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to one or more jurisdictions, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the National Instrument.

- (b) perpetrates a fraud on any person or company.

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

2.2 Attempted Manipulation - 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, in an attempt to

- (a) create a misleading appearance of trading activity in, or an artificial price for, a security; or
- (b) perpetrate a fraud on any person or company.

PART 3 SHORT SELLING

3.1 Short Selling

- (1) A person or company shall not make a short sale of a security through the facilities of a marketplace below the price at which the last sale of a board lot was displayed by the data consolidator.
- (2) Subsection (1) does not apply to the sale of a security if
 - (a) the seller has purchased or has entered into an unconditional contract, binding on both parties, to purchase the security, but has not yet received it;
 - (b) the seller beneficially owns a security that is convertible into or exchangeable for a security and has tendered the security for conversion or exchange or has issued irrevocable instructions to convert or exchange the security;
 - (c) the seller has an option to purchase or acquire the security and has exercised the option; or
 - (d) the seller is making a sale of the security for an arbitrage account, if the seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available to the seller and the seller accepts the offer immediately.
- (3) Subsection (1) does not apply to the trading of debt securities.

PART 4 FRONT RUNNING AND INSIDER TRADING

4.1 Front Running

- (1) A person or company shall not purchase or sell as principal or agent on a marketplace securities of a particular class or a derivative of those securities with knowledge of an order for the purchase or sale of securities of that class or a derivative of those securities, or knowledge of a potential purchase or sale of securities of that class or a derivative of those securities, if that information has not been generally disclosed.
- (2) A person or company shall not inform, other than in the necessary course of business, another person or company of an order for the purchase or sale of securities or of the potential purchase or sale of securities on a marketplace, if that information has not been generally disclosed.

4.2 Insider Trading of Securities of Foreign Non-Reporting Issuer

- (1) A person or company in a special relationship with a foreign non-reporting issuer shall not purchase or sell on a marketplace in Canada securities of that issuer with the knowledge of a material fact or material change with respect to that issuer that has not been generally disclosed.
- (2) A person or company in a special relationship with a foreign non-reporting issuer shall not inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to that issuer before the material fact or material change has been generally disclosed.
- (3) A person or company that proposes to make a take-over bid for securities of a foreign non-reporting issuer, or to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a foreign non-reporting issuer or to acquire a substantial portion of its assets shall not inform another person or company of a material fact or material change with respect to that issuer before the material fact or material change has been generally disclosed, except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

(4) For the purposes of this section, a person or company in a special relationship with a foreign non-reporting issuer means

(a) a person or company that is an insider, affiliated entity or associate of,

(i) that issuer,

(ii) a person or company that is proposing to make a take-over bid for the securities of that issuer, or

(iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with that issuer or to acquire a substantial portion of its assets;

(b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of that issuer or with or on behalf of a person or company described in subparagraph (a)(ii) or (iii);

(c) a person who is a director, officer or employee of that issuer or of a person or company described in subparagraph (a)(ii) or (iii) or paragraph (b);

(d) a person or company that learned of the material fact or material change with respect to that issuer while the person or company was a person or company described in paragraph (a), (b) or (c); and

(e) a person or company that learns of a material fact or a material change with respect to that issuer from any other person or company described in this subsection, including a person or company described in this paragraph, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

(5) For the purposes of subsection (1), a security of the foreign non-reporting issuer includes

(a) a put, call, option or other right or obligation to purchase or sell securities of the issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer.

4.3 Defences

(1) A person or company does not contravene section 4.1 or 4.2

(a) if the person or company reasonably believed that the information in the case of section 4.1, or the material fact or material change in the case of section 4.2, had been generally disclosed; or

(b) if the person or company reasonably believed that the other party to the purchase or sale of the securities or the person or company informed of the information in the case of section 4.1, or the material fact or material change in the case of section 4.2, as the case may be, had knowledge of the information or the material fact or material change.

(2) A person or company does not contravene subsection 4.1(1) or 4.2(1)

(a) if the purchase or sale was entered into as agent of another person or company under a specific unsolicited order from that other person or company to purchase or sell;

(b) if the purchase or sale was made under participation in an automatic dividend reinvestment plan, share purchase plan or other similar automatic plan that was entered into by the person or company before the acquisition of knowledge of the material fact or material change;

(c) if the purchase or sale was made to fulfil a legally binding obligation entered into by the person or company before the acquisition of knowledge of the information in the case of section 4.1, or the material fact or material change, in the case of section 4.2; or

(d) if

(i) no director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities had actual knowledge of the information in the case of section 4.1,

or the material fact or material change, in the case of section 4.2, and

- (ii) no advice was given with respect to the purchase or sale of the securities to the director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities by a director, partner, officer, employee or agent of the person or company who had actual knowledge of the information in the case of section 4.1, or the material fact or material change, in the case of section 4.2.

- (3) A person or company does not contravene sections 4.1 and 4.2 if the person or company purchases or sells securities of a foreign non-reporting issuer as agent or trustee for a person or company who does not contravene section 4.1 or 4.2 by reason of paragraph (2)(b) or (c) of this section.

PART 5 BEST EXECUTION

5.1 Best Execution

- (1) A dealer acting as agent for a customer shall make reasonable efforts to ensure that the customer receives the best execution price on a purchase or sale of securities by the customer.
- (2) Without limiting the generality of subsection (1), a dealer acting as agent for a customer shall not execute a transaction on a marketplace that could be filled at a better price on another marketplace or with a market maker displayed in the consolidated market display.
- (3) In order to satisfy the requirement in subsection (1), a dealer shall make reasonable efforts to use facilities providing information regarding orders and a means to execute orders.

PART 6 DISPLAY REQUIREMENTS FOR MARKETPLACE PARTICIPANTS AND MARKET MAKERS

- 6.1 Marketplace Participants - Pre-trade Transparency** - Each marketplace participant shall immediately provide to a marketplace in which it is a marketplace participant the ask price, bid price

and size of all orders received from customers for securities, unless

- (a) in the case of equity securities or preferred securities, the order has a total value in excess of \$100,000; or
- (b) in the case of options, the order is for over 100 contracts.

6.2 Market Maker Display Requirements for Non-Exchange Traded Securities - Equity Securities and Preferred Securities

- (1) **Pre-trade Transparency** - Unless the order has been submitted to a marketplace, each market maker for equity securities or preferred securities, that are non-exchange-traded securities shall provide to the data consolidator, in the format required by the data consolidator, for every order that has a total value of \$100,000 or less
 - (a) the ask price, bid price and size of all of the market maker's orders; and
 - (b) the ask price, bid price and size of any of the market maker's customer limit orders that would improve the ask or bid price of the market maker's orders.

- (2) **Post-trade Transparency** - Unless the trade has been executed on a marketplace, each market maker for equity securities or preferred securities, that are non-exchange-traded securities shall provide to the data consolidator, in the format required by the data consolidator, accurate and timely information regarding all trades of equity securities or preferred securities, including details as to the type, issuer, series and class of security, the volume, the price and the time of the trade.

- (3) **Reporting Procedure** - Subsection (2) does not apply to a market maker with respect to a purchase of securities by the market maker from or through another market maker.

- (4) **Consolidated Feed** - The data consolidator shall produce a consolidated feed showing the information on the consolidated market display and the information provided to the data consolidator by each market maker under subsections (1) and (2).

6.3 Market Maker Display Requirements for Non-Exchange-Traded Securities - Debt Securities

- (1) **Pre-trade Transparency** - Unless the order has been submitted to a marketplace, each market maker for debt securities shall provide to an information processor, in the format required by the information processor
 - (a) the ask price, bid price and size of all of the market maker's orders; and
 - (b) the ask price, bid price and size of any of the market maker's customer limit orders that would improve the ask or bid price of the market maker's orders.

- (2) **Post-trade Transparency** - Unless the trade has been executed on a marketplace, each market maker for debt securities shall provide to an information processor, in the format required by the information processor, accurate and timely information regarding all trades of debt securities, including details as to the type, issuer, series and class of the security and the volume, the price and the time of the trade.

- (3) **Reporting Procedure** - Subsection (2) does not apply to a market maker with respect to a purchase of securities by the market maker from or through another market maker.

- (4) **Consolidated Feed** - The information processor shall produce a consolidated feed showing the information provided to the information processor under sections 8.1 and 8.2 of NI 21-101 and the information provided to the information processor by each market maker under subsections (1) and (2).

PART 7 PRINCIPAL TRADING

7.1 Principal Trading

(1) A marketplace participant that receives an order having a total value of \$100,000 or less to buy or sell a security traded on a marketplace shall not execute a principal transaction for that security unless the marketplace participant buys at a higher price or sells at a lower price than the best bid or best offer displayed in the consolidated market.

(2) Subsection (1) does not apply to the trading of debt securities.

with the requirements set under subsection (1) either

(a) directly if it has been approved to do so by a Canadian securities regulatory authority; or

(b) through an approved agent.

10.2 Monitoring and Enforcement by an Approved Agent for ATs and Trades Not Executed on a Marketplace

(1) An approved agent shall set requirements for a marketplace or a dealer executing trades that have not been executed on a marketplace

(a) that prohibit the marketplace or the dealer from engaging in any of the conduct prohibited under the Instrument; and

(b) to enter into an agreement with the marketplace or the dealer which states that the marketplace or the dealer shall

(i) act in accordance with subsections 5.1(1) and (3) and Part 6 of this Instrument;

(ii) comply with the requirements adopted by the approved agent to enable the approved agent to carry out its obligations under this Instrument; and

(iii) provide to the approved agent the information set out in Part 11 of this Instrument.

PART 8 REGULATORY HALTS

8.1 Regulatory Halts - If a securities regulatory authority, a recognized exchange or a recognized quotation and trade reporting system makes a decision to prohibit trading in a particular security, no marketplace shall permit trading in that security during the period in which the prohibition is in effect.

PART 9 TRADING HOURS

9.1 Trading Hours - Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.

PART 10 MONITORING AND ENFORCEMENT

10.1 Monitoring and Enforcement by a Recognized Exchange or a Recognized Quotation and Trade Reporting System

(1) Each recognized exchange and each recognized quotation and trade reporting system shall set requirements that

(a) prohibit marketplace participants from engaging in any of the conduct prohibited under this Instrument; and

(b) require marketplace participants to act in accordance with subsections 5.1(1) and (3) and section 6.1.

(2) Each recognized exchange and each recognized quotation and trade reporting system shall monitor and enforce compliance

(2) An approved agent shall monitor and enforce compliance with the requirements set out in this subsection.

10.3 Coordination of Monitoring and Enforcement - Each recognized exchange, recognized quotation and trade reporting system and approved agent shall enter into agreements with other recognized exchanges, recognized quotation and trade reporting systems and approved agents to coordinate the performance of the requirements in this Part.

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Application of this Part - This Part does not apply to a dealer that is an ATS.

11.2 Audit Trail Requirements for Orders Regarding Equity Securities, Preferred Securities and Options

(1) **Recording Requirements for Receipt or Origination of an Order** - Each dealer shall record immediately following the receipt or origination of an order for equity securities, preferred securities or options, specific information relating to that order including,

- (a) the order identifier;
- (b) the type, issuer, class, series and symbol of the security;
- (c) the number of shares or contracts to which the order applies;
- (d) the exercise price, if applicable;
- (e) whether the order is a buy or sell order;
- (f) whether the order is a short sale order, if applicable;
- (g) whether the order is a market order or limit order or other special type of order;
- (h) the date and time the order is originated or received by the dealer;
- (i) the type of account for which the order is submitted (retail, wholesale, employee, proprietary);
- (j) the client account number;
- (k) the date on which the order expires, and if the time the order expires is less than one day, the time when the order expires; and
- (l) the currency of the order.

(2) **Recording Requirements for Transmission of an Order** - Each dealer shall record immediately following the transmission of an order for equity securities, preferred securities or options to a dealer or marketplace specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.1(1)(a);
- (b) the dealer identifier assigned to the dealer transmitting the order and the dealer

identifier assigned to the dealer or marketplace to which the order is transmitted;

- (c) the number of shares or contracts and price;
- (d) the date and time the order is transmitted;
- (e) the type of account for which the order is submitted (retail, wholesale, employee, proprietary);
- (f) the client account number; and
- (g) the currency of the order.

(3) **Recording Requirements for Modification or Cancellation of an Order** - Each dealer shall record immediately following the modification or cancellation of an order for equity securities, preferred securities or options specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.1(1)(a);
- (b) the date the order was first originated or received;
- (c) the date and time the modification or cancellation was originated or received;
- (d) whether the order was cancelled or modified on the instructions of the client or the dealer; and
- (e) in the case of modification, any of the information in subsection 11.1(1) which has been changed.

(4) **Recording Requirements for Execution of an Order** - Each dealer shall record immediately following the execution of an order for equity securities, preferred securities or options specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.1(1)(a);
- (b) the date and time the order was first originated or received;
- (c) whether the order was fully or partially executed;

- (d) the identifier assigned to the dealer or marketplace where the order is executed;
- (e) the date and time of the execution of the order;
- (f) the number of shares or contracts; and
- (g) the price at which the order was executed.

(5) **Transmittal of Order Information to a Marketplace** - For orders executed on a marketplace, each dealer shall transmit in electronic form within 90 seconds after execution of an order the order information set out in subsections (1) to (4) of this section to the approved agent of the marketplace, in the format required by the approved agent.

(6) **Transmittal of Order Information to an Approved Agent for Orders not Executed on a Marketplace** - For orders not executed through a marketplace, each dealer shall transmit in electronic form within 90 seconds after execution of an order the order information set out in subsections (1) to (4) of this section to an approved agent, in the format required by the approved agent.

11.3 Audit Trail Requirements for Orders Regarding Debt Securities

(1) **Recording Requirements for Receipt or Origination of an Order** - Each dealer shall record immediately following the receipt or origination of an order for debt securities specific information relating to that order including,

- (a) the order identifier;
- (b) the dealer identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order;
- (e) whether the order is a buy, sell or cross;
- (f) the date and time the order is originated or received by the dealer;
- (g) the type of account for which the order is submitted (retail, wholesale, employee, proprietary);

- (h) the client account number; and
- (i) the currency of the order.

(2) **Recording Requirements for Transmission of an Order** - Each dealer shall record immediately following the transmission of an order for debt securities to a dealer or marketplace specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.2(1)(a);
- (b) the dealer identifier assigned to the dealer transmitting the order and the dealer identifier assigned to the dealer or marketplace to which the order is transmitted;
- (c) the face amount or unit price of the order;
- (d) the date and time the order is transmitted;
- (e) the type of account for which the order is submitted (retail, wholesale, employee, proprietary);
- (f) the client account number; and
- (g) the currency of the order.

(3) **Recording Requirements for Modification or Cancellation of an Order** - Each dealer shall record immediately following the modification or cancellation of an order for debt securities specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.2(1)(a);
- (b) the date the order was first originated or received;
- (c) the date and time the modification or cancellation was originated or received;
- (d) whether the order was cancelled or modified on the instructions of the client or the dealer; and
- (e) in the case of modification, any of the information in subsection 11.2(1) which has been changed.

(4) **Recording Requirements for Execution of an Order** - Each dealer shall record immediately following the execution of an order for debt securities specific information relating to that order including,

- (a) the order identifier referred to in paragraph 11.2(1)(a)
- (b) the date and time the order was first originated or received;
- (c) whether the order was fully or partially executed;
- (d) the identifier assigned to the dealer or marketplace on which the order is executed;
- (e) the date and time of the execution of the order; and
- (f) the face amount or unit price of the order.

(5) **Transmittal of Order Information to a Marketplace** - For orders executed on a marketplace, each dealer shall transmit in electronic form within 90 seconds after execution of an order the order information set out in subsections (1) to (4) of this section to the approved agent of the marketplace, in the format required by the approved agent.

(6) **Transmittal of Order Information to an Approved Agent for Orders not Executed on a Marketplace** - For orders not executed through a marketplace, each dealer shall transmit in electronic form within 90 seconds after execution of an order the order information set out in subsections (1) to (4) of this section to an approved agent, in the format required by the approved agent.

11.4 Synchronization of Clocks - Each dealer shall synchronize the clocks used for recording the time and date of any event that must be recorded pursuant to this Part to the clock used by

- (a) the marketplace where the order is executed, if the marketplace is an exchange,
- (b) the approved agent of the ATS, if the order is executed on an ATS, or
- (c) an approved agent, if the order is not executed through a marketplace,

and the dealer shall maintain the synchronization of such clocks in conformity with procedures established by the marketplace or the approved agent.

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.

Companion Policy 23-101CP Trading Rules

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

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

TABLE OF CONTENTS

| <u>PART</u> | <u>TITLE</u> |
|-------------|-----------------------------------------------------------------------------------------------------------------------|
| PART 1 | INTRODUCTION |
| | 1.1 Introduction |
| | 1.2 Just and Equitable Principles of Trade |
| PART 2 | INTERPRETATION |
| | 2.1 Approved Agent |
| | 2.2 Market Maker |
| | 2.3 Dealer |
| PART 3 | MANIPULATION AND FRAUD |
| | 3.1 Manipulation and Fraud |
| PART 4 | SHORT SELLING |
| | 4.1 Short Selling |
| PART 5 | FRONT RUNNING AND INSIDER TRADING |
| | 5.1 Front Running and Insider Trading |
| PART 6 | BEST EXECUTION |
| | 6.1 Best Execution |
| PART 7 | DISPLAY REQUIREMENTS FOR MARKETPLACE PARTICIPANTS AND MARKET MAKERS |
| | 7.1 Marketplace Participants - Pre-trade Transparency |
| | 7.2 Market Maker Display Requirements for Non-Exchange-Traded Securities - Equity Securities and Preferred Securities |
| | 7.3 Market Maker Display Requirements for Non-Exchange-Traded Securities - Debt Securities |
| PART 8 | PRINCIPAL TRADING |
| | 8.1 Principal Trading |
| PART 9 | TRADING HOURS |
| | 9.1 Trading Hours |
| PART 10 | MONITORING AND ENFORCEMENT |
| | 10.1 Monitoring and Enforcement |
| PART 11 | AUDIT TRAIL REQUIREMENTS |
| | 11.1 Audit Trail Requirements |

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 2 INTERPRETATION

2.1 Approved Agent

The term "approved agent" is defined in section 1.1 of the Instrument. In the case of equity securities, preferred securities or options, a recognized exchange may be an approved agent. If one market regulator is developed, then that market regulator will be the approved agent. For debt securities, the approved agent will likely be the Investment Dealers Association of Canada. If a marketplace, marketplace participant, dealer or market maker is trading both debt securities and equity securities, preferred securities or options, the approved agent would be both the relevant exchange and the Investment Dealers Association of Canada.

2.2 Market Maker

The term "market maker" is defined in section 1.1 of the Instrument. "Regular or continuous basis" does not mean that the dealer must always maintain a posted price for the security. Rather, the dealer must be willing to respond to a customer order at any point in time.

2.3 Dealer

For the purposes of this Instrument, a “dealer” does not include a dealer that is an ATS but does include an inter-dealer bond broker and a market maker.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

- (1) Subsection 2.1(1) of the Instrument prohibits the practices of price 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 2.1(2) of the Instrument provides that despite subsection 2.1(1) of the Instrument, the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Quebec and Saskatchewan. This is because those jurisdictions have comparable provisions to subsection 2.1(1) of the Instrument in their legislation.
- (3) Sections 2.1 and 2.2 apply to any instrument that comes within the definition of security in securities legislation, including non-exchange-traded commodity futures contracts or commodity futures options.
- (4) For the purposes of subsection 2.1(1) and section 2.2 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 ownership. This includes activities such as wash-trading or pre-arranged trades executed in order to give an impression of active trading.
 - (b) Effecting transactions with the intent to induce others to purchase or sell any security.
 - (c) Effecting transactions that have the effect of artificially raising, lowering or maintaining

the price of the security. This includes placing buy or sell orders, or both, to change the price of the securities in an attempt to increase the value of a position (high selling) or to raise the price to attract other trades for the securities, thereby creating demand for the securities that the person or company carrying out the manipulation can satisfy by selling his, her or its securities.

- (d) Entering orders that could reasonably be expected to create an artificial appearance of investor participation in the market.
- (e) 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.
- (f) Effecting transactions if the purpose of the transactions are to defer payment for the securities traded.
- (g) 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 kiting or debit kiting, in which a person or company avoids having to make payment or deliver securities to settle a trade.

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

- (5) 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 2.1(1) and section 2.2 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.
- (6) Sections 2.1 and 2.2 of the Instrument apply 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 2.1 or 2.2 even though it is a transfer with no change in beneficial ownership.
- (7) The Canadian securities regulatory authorities are of the view that section 2.1 of the Instrument does not create a private right of action.

PART 4 SHORT SELLING

- 4.1 Short Selling** - Subsection 3.1(1) of the Instrument refers to what is known as a "zero tick" rule, *i.e.*, a short sale may be made at a price higher than the last sale price or at the same price as the last sale price regardless of whether the last sale price was lower than the last differently priced trade or higher than the last differently priced trade.

PART 5 FRONT RUNNING AND INSIDER TRADING

5.1 Front Running and Insider Trading

- (1) Subsection 4.1(1) of the Instrument prohibits a person or company from purchasing or selling securities on a marketplace in advance of an order for those securities. This is commonly known as "front running".
- (2) Subsection 4.1(2) of the Instrument prohibits a person or company from informing, other than in the necessary course of business, another person or company of an order for securities or the potential purchase or sale of securities on

a marketplace, if that information has not been generally disclosed. This is known as "tipping".

- (3) Subsections 4.2(1) and (2) of the Instrument prohibit a person or company from trading with knowledge of an undisclosed material fact or material change with respect to a foreign non-reporting issuer or tipping another person or company as to such information. While Canadian securities legislation in most jurisdictions and corporate legislation in some jurisdictions also prohibit insider trading and tipping, they do so with respect to reporting issuers and generally with respect to non-reporting issuers incorporated under the applicable corporate legislation. Subsections (1) and (2) of section 4.2 of the Instrument only apply if the issuer is not incorporated under the laws of Canada or a jurisdiction and is not a reporting issuer. These subsections are necessary because an ATS may trade foreign securities.
- (4) Section 4.3 of the Instrument contains defences to the prohibitions in sections 4.1 and 4.2 of the Instrument. One of the factors the Canadian securities regulatory authorities will look at in determining whether the person or company had actual knowledge for the purposes of paragraph 4.3(2)(d) of the Instrument is whether and to what extent the person or company has implemented and maintained reasonable policies and procedures to prevent contraventions of sections 4.1 and 4.2 of the Instrument by persons making or influencing investment decisions on its behalf and to prevent transmission of information contrary to sections 4.1 and 4.2 of the Instrument. These policies and procedures are commonly known as a "Chinese Wall".

PART 6 BEST EXECUTION

6.1 Best Execution

- (1) Subsection 5.1(1) of the Instrument requires a dealer acting as agent for a customer to make reasonable efforts to ensure that the customer receives the best execution price on a purchase or sale of securities by the customer. The Canadian securities regulatory authorities are of the view that in making reasonable efforts, a dealer should also consider whether it would be appropriate in the particular circumstances to look at markets outside of Canada.

- (2) Subsection 5.1(2) of the Instrument prohibits a dealer acting as agent for a customer in any marketplace from "trading through" a better-priced order on another marketplace or with a market maker. In an environment where there are multiple competing marketplaces, it is important that all investors have access to the best price for their orders at time of execution. Without consolidation of these markets, fragmentation may occur if investors are not given information about the best price available or if they are unable to access the best price. In order to mitigate possible negative effects of fragmenting the markets, it is critical for these markets to be integrated to prevent trading through a better price existing in another marketplace.
- (3) The Canadian securities regulatory authorities are of the view that in satisfying its fiduciary obligations to its customer, a dealer should make reasonable efforts to obtain a lower price on an order to buy or a higher price on an order to sell than is currently available in the consolidated market display by posting a better bid or offer. In order to achieve this price improvement for a customer, the dealer should have an order management system that has the capability of providing price improvement.

PART 7 DISPLAY REQUIREMENTS FOR MARKETPLACE PARTICIPANTS AND MARKET MAKERS

seconds after receipt would not need to be provided to a marketplace.

7.1 Marketplace Participants - Pre-trade Transparency

- (1) Section 6.1 of the Instrument provides that each marketplace participant shall immediately provide to a marketplace in which it is a marketplace participant the ask price, bid price and size of orders received from customers for exchange-traded securities. The marketplace is obligated under National Instrument 21-101, Part 7 to provide the data to the data consolidator.
- (2) There is an exception provided to marketplace participants for equity or preferred securities (orders that have a value in excess of \$100,000) and for options (for any order over 100 contracts). The Canadian securities regulatory authorities recognize that the display of block size orders would add to market transparency. In practice, however, the handling of block size orders differs from other orders. For example, dealers often negotiate terms and conditions with respect to the handling of block size orders. One of the major objectives in proposing order display requirements is to improve the handling and execution opportunities afforded to customers that lack the power to negotiate better terms. Because most investors that trade in block size have such power, the Canadian securities regulatory authorities have chosen not to mandate the display of block size orders.
- (3) There is no requirement for the marketplace participant to provide trade information regarding exchange-traded securities in this Instrument because the marketplace is required to send certain information about trades executed on the marketplace to the data consolidator under Part 7 of National Instrument 21-101.
- (4) Assuming that a marketplace participant is not relying on the exception provided in section 6.1 of the Instrument, the Canadian securities regulatory authorities expect that an order will be displayed by the marketplace participant as soon as practicable after receipt which, under normal market conditions, would require display of the order no later than 30 seconds after receipt. The Canadian securities regulatory authorities also note that any order that is cancelled or withdrawn within 30

7.2 Market Maker Display Requirements for Non-Exchange-Traded Securities - Equity Securities and Preferred Securities

- (1) Subsection 6.2(1) of the Instrument provides that each market maker that holds itself out as willing to buy or sell an equity or preferred security that is non-exchange traded shall provide to the data consolidator the ask price, bid price and size of the market maker's orders and the ask price, bid price and size of any of the market maker's customer limit orders that would improve the ask or bid price of the market maker's orders, unless the order has been submitted to a marketplace. The term customer limit order is defined in the Instrument as an order to buy or sell a security at a specified price that is not for the account of either a broker or dealer. The term customer limit order is intended to include an order transmitted by a broker or dealer on behalf of a customer. There is an exception provided for orders that have a value in excess of \$100,000. As discussed in section 6.1 above, the Canadian securities regulatory authorities recognize that the handling of block size orders differs from other orders.
- (2) Subsection 6.2(2) of the Instrument requires that a market maker for equity or preferred securities that are non-exchange-traded provide certain information regarding all executed trades of those securities to the data consolidator, unless the trade has been executed on a marketplace.
- (3) The requirement to provide the display of pre-trade and post-trade information set out in section 6.2 of the Instrument will be implemented in stages over a one year period. It is expected that, initially, this information will be provided to the data consolidator on an end of day basis. Details concerning implementation including the specified time to provide the information initially will be decided by the data consolidator. It is expected that, within one year, the required information will be provided to the data consolidator in real-time.

7.3 Market Maker Display Requirements for Non-Exchange-Traded Securities - Debt Securities

- (1) Subsection 6.3(1) of the Instrument provides that each market maker that holds itself out as willing to buy or sell a debt security shall

provide to an information processor the ask price, bid price and size of the market maker's orders and the ask price, bid price and size of any of the market maker's customer limit orders that would improve the ask or bid price of the market maker's orders, unless the order has been submitted to a marketplace.

- (2) Subsection 6.3(2) of the Instrument requires each market maker for debt securities to provide certain information regarding executed trades of those debt securities to an information processor, unless the trade has been executed on a marketplace.
- (3) The requirement to provide the display of pre-trade and post-trade information set out in section 6.3 of the Instrument will be implemented in stages over a one year period. It is expected that, initially, this information will be provided to the information processor on an end of day basis. Details concerning implementation including the specified time to provide the information initially will be decided by the information processor. It is expected that, within one year, the required information will be provided to the information processor in real-time.

PART 8 PRINCIPAL TRADING

8.1 Principal Trading - Section 7.1 of the Instrument prohibits principal transactions by a marketplace participant for orders that have a total value of \$100,000 or less unless the marketplace participant buys at a higher price or sells at a lower price than the best bid or best offer displayed in the consolidated market. Principal transactions should be made as market conditions warrant and the Canadian securities regulatory authorities would expect that principal transactions will not be made unless the marketplace participant is confident that the principal transaction achieves best price execution for the customer's order.

PART 9 TRADING HOURS

9.1 Trading Hours

- (1) Section 9.1 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 10 MONITORING AND ENFORCEMENT

10.1 Monitoring and Enforcement

- (1) Subsection 10.1(2) of the Instrument provides that a recognized exchange and a recognized quotation and trade reporting system shall monitor and enforce compliance with requirements set under subsection 10.1(1) directly if it has been approved to do so by the Canadian securities regulatory authorities or through an approved agent. At this time, all exchanges in Canada have been approved for this purpose.
- (2) Section 10.2 requires an approved agent to set requirements for a marketplace or dealer who executes trades that are not executed on a marketplace and to enter into an agreement with the marketplace and the dealer. A self-regulatory entity may be approved to act as an approved agent. For example, the Canadian securities regulatory authorities expect that the Investment Dealers Association of Canada will be the approved agent for ATSS, inter-dealer bond brokers and market makers trading a debt security.

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Audit Trail Requirements

- (1) Section 11.1 of the Instrument imposes obligations on dealers to record in electronic form and to report certain items of information with respect to orders of exchange-traded equity securities, preferred securities or options that they receive. Order information must be transmitted to the marketplace where the order is executed if the marketplace is an exchange, or to an approved agent, if the marketplace is an ATS or if the order is not executed on a marketplace. Section 11.2 of the Instrument applies to debt securities.
- (2) 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.
The marketplace or approved agent can
establish additional requirements relating
to the transmission of information.

Ontario Securities Commission Rule 23-501 Designation as Market Participant

**ONTARIO SECURITIES COMMISSION RULE
RULE 23-501
DESIGNATION AS MARKET PARTICIPANT**

- 1.1 Alternative Trading System** - An alternative trading system is designated as a market participant for the purposes of the Act.¹
- 1.2 Information Processor** - An information processor is designated as a market participant for the purposes of the Act.

¹ Designation of a recognized quotation and trade reporting system has been deleted because of the budget bill amendments.

Ontario Securities Commission Rule 23-502 The Reported Market

**ONTARIO SECURITIES COMMISSION RULE 23-502
THE REPORTED MARKET**

TABLE OF CONTENTS

| <u>PART</u> | <u>TITLE</u> |
|-------------|-----------------------------------------|
| PART 1 | DEFINITIONS AND INTERPRETATION |
| 1.1 | Definitions |
| 1.2 | Interpretation- NI 21-101 and NI 23-101 |
| PART 2 | TRADE REPORTING REQUIREMENTS |
| 2.1 | Trade Reporting Requirements |
| 2.2 | Trade Reports |
| 2.3 | Time to Report Information |
| 2.4 | Reporting Procedure |
| 2.5 | Synchronization of Clocks |

**ONTARIO SECURITIES COMMISSION RULE 23-502
THE REPORTED MARKET**

PART 1 DEFINITIONS AND INTERPRETATION

- 1.1 Definitions** - In this Instrument
- “designated trade reporting information processor” means an information processor that complies with Part 15 of NI 21-101 and has been designated by the Commission to receive the information required to be reported under this instrument;
- “NI 21-101” means National Instrument 21-101 Marketplace Operation
- “NI 23-101” means National Instrument 23-101 Trading Rules
- 1.2 Interpretation- NI 21-101 and NI 23-101** - Terms defined or interpreted in NI 21-101 and NI 23-101 and used in this Instrument have the respective meanings ascribed to them in NI 21-101 and in NI 23-101.

PART 2 TRADE REPORTING REQUIREMENTS

- 2.1 Trade Reporting Requirements** - Every dealer shall provide a trade report for every purchase or sale of a security made by or through it, as principal or agent, to a designated trade reporting information processor in accordance with this rule except a trade that is,
- (a) a distribution by or on behalf of an issuer;
 - (b) a trade made in reliance on an exemption set out in securities legislation;
 - (c) reported to the data consolidator in accordance with 6.2 Of NI 23-101;
 - (d) reported to the information processor in accordance with 6.3 Of NI 23-101; or
 - (e) made through the facilities of a marketplace.
- 2.2 Trade Reports**
- (1) **Trade Reports for Equity Securities, Preferred Securities and Options** - Every dealer shall record the following information when a trade for equity securities, preferred securities or options is executed outside the marketplace

- (a) security identification symbol;
- (b) number of shares or contracts;
- (c) price of the transaction;
- (d) execution time for any transaction not reported within 30 seconds of execution;
- (e) identifier for seller or seller's agent;
- (f) identifier for purchaser or purchaser's agent (if any);
- (g) a symbol indicating whether the transaction is a cross (if applicable) and
- (h) the fee charged by the marketplace for the execution.

reporting information processor in accordance with the following provisions:

- (a) The dealer, if any, through or by whom the sale is made shall send the trade report to the designated trade reporting information processor.
- (b) Where the sale is not made by or through a registered dealer, the dealer by or through whom the purchase is made shall send the trade report to the designated trade reporting information processor.

(2) **Trade Reports for Debt Securities** - Every dealer shall record the following information when a trade for debt securities is executed outside of a marketplace

- (a) bond identification symbol or issue;
- (b) face amount of the entire trade;
- (c) unit price;
- (d) execution time for any transaction not reported within 30 seconds of execution;
- (e) identifier for seller or seller's agent;
- (f) identifier for purchaser or purchaser's agent;
- (g) a symbol indicating whether the transaction is a cross (if applicable); and
- (h) the fee charged by the dealer .

2.5 Synchronization of Clocks - Each dealer for equity securities, preferred securities, debt securities or options shall synchronize the clocks used for recording the time and date of any event that must be recorded pursuant to this Part to the clock used by the designated trade reporting information processor and the dealer shall maintain the synchronization of such clocks in conformity with procedures established by the designated trade reporting information processor.

2.3 Time to Report Information - Each dealer shall transmit in electronic form within 90 seconds after execution, a trade report for all trades executed and required to be reported under this instrument.

2.4 Reporting Procedure - Every purchase or sale in a security that is required to be reported under section 2.1 shall be reported to the designated trade

Companion Policy 23-502CP The Reported Market

**COMPANION POLICY 23-502CP
TO ONTARIO SECURITIES COMMISSION RULE 23-502
THE REPORTED MARKET**

PART 1 REPORTING REQUIREMENTS

1.1 Reporting Requirements

- (1) At this time, the securities regulatory authority will enforce compliance directly or indirectly, with the requirements of this Instrument and OSC Rule 23-501. At a later date, the Canadian securities regulatory authorities will consider whether there is an appropriate approved agent to monitor and enforce compliance with this Instrument and OSC Rule 23-501.