



Rethink
your stock
exchange.

NEO EXCHANGE
neostockexchange.com

155 University Avenue, Suite 400
Toronto, Ontario M5H 3B7
T. 416.933.5900

BY EMAIL

July 17, 2019

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission, New Brunswick
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
E-Mail: comments@osc.gov.on.ca

-and-

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-Mail: consultation-en-cours@lautorite.qc.ca

Dear Mesdames and Sirs:

Re: Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and Proposed Changes to Companion Policy 21-101CP (the “Proposed Amendments”)

We thank the CSA for its continued work on streamlining regulatory requirements. Many of the marketplace reporting requirements that are the subject of these changes made sense when they were

implemented but it has become clear that the information is available in other ways or is not required on a regular basis.

We are pleased to provide our comments on the Proposed Amendments as well as further amendments for consideration. We also have some feedback on the proposed enhancements to the systems-related requirements. One general observation is that this set of amendments provides an opportunity to move to more flexible, risk-based requirements, whereby changes or concerns drive the degree of reporting (e.g., too many incidents occur or there are issues detected in an oversight or other review). A good example, which we discuss later on, is the annual independent systems review requirement.

1. Streamlining reporting requirements

(a) Quarterly Housekeeping Filings

We have not found the monthly filings to be unduly burdensome, but agree with the proposal to change to quarterly filings.

(b) Exhibits to Forms 21-101F1 and 21-101F2

Exhibits C and D

The parts of the Proposed Amendments relating to eliminating certain organizational information for the marketplace and its affiliates will be very helpful. Please consider an alternative to filing the applicable exhibit if the marketplace posts on its website the information about its officers, directors, etc.

Other Exhibits

We also note that we support the changes to Exhibit B to limit reporting to 5%+ security holders. We ask that this level of materiality be incorporated into recognition order provisions relating to shareholder obligations. Also, as a suggestion, the second item regarding “Principal business or occupation and title” could be amended to include “..., if any”, as shareholders may be individuals who do not have an occupation and title.

Please consider including streamlining of Exhibit E. The list of items that must be described contains some duplicative and/or interrelated requirements with respect to order entry and execution (see 4, 6 and 7) and routing (see 4 and 8) that make the exhibit unnecessarily repetitive.

(c) Form 21-101F3

We applaud the proposed elimination of the specified duplicative requirements in this quarterly form. We request that the following requirements also be removed as part of the Proposed Amendments:

Part A – General Marketplace Information

- There is no need to provide any information in section 3 beyond the name of the marketplace (currently, name(s) under which business is conducted and main street address are required). This is all in the Form 21-101F1 and it doesn’t seem likely that there will be any confusion as

to which marketplace is which for the foreseeable future.

- It would be a significant burden reduction if section 4 and 5 relating to lists of amendments to the information provided in Form 21-101F1 or F2¹ were combined into one section that lists any amendments filed and approved but not implemented. It is not reasonable to ask marketplaces to send summaries of previously filed information (sometimes over multiple quarters), especially in cases where the amendment is outstanding because it remains under review by the regulator(s). The only information that is not already in the hands of staff relates to approved changes that have not been implemented and that should be the only quarterly filing requirement.
- In respect of Systems, we do not believe that a cost-benefit analysis would support providing the log and summary description of the systems failure, malfunctions, delays or security incidents during the quarter. Marketplaces are required to report anything material and CSA members have the ability to verify the process and accuracy of the information that is retained during oversight reviews. If a marketplace is found to have not reported any of the above appropriately, quarterly summaries could be imposed.
- We suggest that changes to section 7, in respect of Systems Changes, be considered. Any significant changes to the systems and technology used by the marketplace to support the listed items would be filed in the Form 21-101F1. We acknowledge, however, that it would likely be of value to CSA oversight staff to retain the element relating to status of changes that are under development.

Part B – Marketplace Activity Information

We appreciate the significant deletions that have been made to this Part of the Form 21-101F3, but question why the rest of the items relating to exchange-traded equity and debt – other than the options trading information and section 6 regarding routing activities – could not also be sourced from IIROC.

(d) Timing for Fee Amendments

It is often the case that the review of fee change proposals takes longer than the current seven day period, so it is understandable why the CSA would propose to lengthen it to 15; however, there are isolated cases where a change is non-controversial and only mirrors existing fees of other marketplaces. In those cases it would be helpful to have a mechanism for requesting the shorter period, without having to prepare an exemption application. We also would like to suggest that a clear schedule be defined for market data fee changes that are submitted by marketplaces and/or imposed by the OSC/other lead regulators, so that all marketplaces are subject to similar timing and are required to proceed with fee changes on the same date to avoid unnecessary additional, albeit temporary, burden on other industry stakeholders.

¹ Section 4: A list of all amendments in the information in Form 21-101F1 or 21-101F2 that were filed with the Canadian securities regulatory authorities and implemented during the period covered by the report. The list must include a brief description of each amendment, the date filed and the date implemented.

Section 5: A list of all amendments in the information in Form 21-101F1 or 21-101F2 that have been filed with the Canadian securities regulatory authorities but not implemented as of the end of the period covered by the report. The list must include a brief description of each amendment, the date filed and the reason why it was not implemented.

2. Financial Reporting

The Proposed Amendments relating to financial reporting would have the effect of removing several key differences between public and private company reporting. We ask that the CSA reconsider the addition of the requirement that recognized exchanges file interim financial statements within 45 days of the end of the interim period. We do not, in fact, have that requirement in our recognition order; we currently have 60 days to file. Forty-five days may be appropriate for the TMX Group, as it is a public company, but it should not be imposed on private exchanges. We also ask that the period for filing audited financial statements be extended to 120 days from year end, unless the exchange is a public company, as it would allow us to schedule our board meetings in a more efficient way.

Further, based on our understanding, the Proposed Amendment regarding disclosure of the accounting principles used to prepare statements and the statement of compliance with IFRS would add considerable work for exchanges that are not public companies and would, to some degree, conflict with the terms of NEO's recognition order.

3. Systems requirements

The addition of "cyber resilience" as an information technology general control and the shift to "security incident" instead of "security breach" are understandable adjustments to reflect current areas of concern with respect to technology. The proposed revisions to paragraph 12.1(a), however, make the distinction between clauses (i) and (ii) unclear, i.e. what is the difference between "adequate internal controls over those systems" and "adequate information technology general controls"?

With the broadening of the reportable items, especially things that may, but have not yet happened, it becomes even more important to have a clear definition of what is material. The current test of "if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology" is not of assistance to smaller organizations such as ours. Our COO may be informed of many items that we do not consider "material" in the normal course. Please consider a test relating to significant impact on the operation of the exchange or on its users or vendors, such as an actual or potential interruption of core services (trading and market data), or that the marketplace should establish in its policies and procedures what it considers material.

Vulnerability Assessments

Based on previous experience with independent systems reviews, we suggest that there be clarification of the CSA's view on what would constitute a "qualified party" for performing an assessment.

More importantly, this is an expensive undertaking and NEO made the decision not to perform such assessments unless we have experienced a new risk or changed our technology. Please consider removing the annual requirement and building in such triggers instead (which could include a catch-all item for "when requested by the marketplace's regulator(s)").

System Reviews

Please consider whether this requirement can be moved to every second year, with the contingency that it be annual if the previous report has significant findings or the entity has made significant technology changes over the year. Independent systems reviews are very expensive and marketplace

technology has come a long way, generally experiencing far fewer issues than when the system review requirement was originally put in place. We also request that there be flexibility in the due date. We receive certain reports early each year for the previous calendar year from our vendors (“subservice organizations” under the ISR), which our auditor cannot properly include in the ISR as it is due no later than 60 days after the calendar year end.

Again, we appreciate both the continuing work by the CSA to reduce burden on regulated entities and this opportunity to provide feedback on the Proposed Amendments.

Thank you for your consideration.

Yours truly,

“Cindy Petlock”

Chief Legal Officer
Neo Exchange Inc.

cc: Market Regulation, OSC
Jos Schmitt, CEO, Neo Exchange
Joacim Wiklander, COO, Neo Exchange