

The Ontario Securities Commission

CSA NOTICE OF APPROVAL

FINAL AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION* AND NATIONAL INSTRUMENT 23-101 *TRADING RULES*

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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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CSA NOTICE OF APPROVAL

AMENDMENTS TO

NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

AND

NATIONAL INSTRUMENT 23-101 *TRADING RULES*

TABLE OF CONTENTS

CSA Notice of Approval	1
Annex A – Description of Notable Changes to the Proposed Amendments	4
Annex B – Amendments to National Instrument 21-101 <i>Marketplace Operation</i>	7
Annex C – Amendments to National Instrument 23-101 <i>Trading Rules</i>	29
Annex D – Blackline Showing Changes to National Instrument 21-101	33
Annex E – Blackline Showing Changes to National Instrument 23-101	112
Annex F – List of Commenters	135
Annex G – Comment Summary and CSA Responses	136
Annex H – Local Matters	145

CSA NOTICE OF APPROVAL

FINAL AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION* AND NATIONAL INSTRUMENT 23-101 *TRADING RULES*



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Notice of Approval

Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*

June 25, 2015

Introduction

The Canadian Securities Administrators (the CSA or we) have approved amendments (the Amendments) to the following:

- National Instrument 21-101 *Marketplace Operation* (NI 21-101), including:
 - Form 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* (Form 21-101F1);
 - Form 21-101F2 *Initial Operation Report Alternative Trading System* (Form 21-101F2);
 - Form 21-101F3 *Quarterly Report of Marketplace Activities* (Form 21-101F3);
 - Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* (Form 21-101F4);
 - Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5); and
 - Form 21-101F6 *Cessation of Operations Report for Information Processor* (Form 21-101F6 and, together with Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F4, and Form 21-101F5, the Forms);
- National Instrument 23-101 *Trading Rules* (NI 23-101);
- Companion Policy 21-101CP (21-101CP); and
- Companion Policy 23-101CP (23-101CP and, together with NI 21-101, 21-101CP and NI 23-101, the Marketplace Rules).

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **October 1, 2015**. Implementation of certain of the Amendments is discussed in greater detail below.

We are publishing the text of the Amendments in Annexes B and C to this notice, together with certain other relevant information at Annexes A through H of this notice. Text of the Amendments is also available on the websites of the CSA jurisdictions, including at:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The substance and purpose of the Amendments is to update the Marketplace Rules to reflect developments that have occurred since they were last revised. The Amendments include revisions to the requirements applicable to marketplaces' and information processors' systems and business continuity planning and other various areas where we identified that updates or additional guidance are required.

The Amendments apply to marketplaces, including alternative trading systems (ATs), recognized quotation and trade reporting systems (QTRSs), recognized exchanges, and information processors.

Background

We initially published proposed amendments to the Marketplace Rules on April 24, 2014. After considering the comments received in response to the initial publication, we have made changes to certain parts of NI 21-101, 21-101CP, the Forms, NI 23-101 and 23-101CP. For additional background on the substance and purpose of the proposed amendments, please refer to the notice published with the proposed amendments on April 24, 2014.

Proposed amendments to section 8.6 of NI 21-101 regarding the transparency exemption for government debt securities were initially published along with the additional proposed amendments to the Marketplace Rules on April 24, 2014. The CSA has since approved amendments to section 8.6 of NI 21-101, which took effect on December 31, 2014. Please see notice of the CSA's approval of these amendments, published October 23, 2014.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 8 commenters. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex F of this notice and a summary of their comments, together with our responses, is contained in Annex G of this notice.

Summary of Changes to the Proposed Amendments

See Annex A of this notice for a summary of notable changes made to the proposed amendments to NI 21-101, the Forms, and 21-101CP since initial publication in April 2014. No notable changes have been made to the proposed amendments to NI 23-101 and 23-101CP.

Implementation of the Amendments

The Amendments introduce certain new requirements in relation to the information required to be filed by marketplaces in the Forms as well as new requirements for the annual certification of the information in a marketplace's Form 21-101F1 or Form 21-101F2 and the annual filing by a marketplace of an updated and consolidated Form 21-101F1 or Form 21-101F2. We do not expect marketplaces to provide the new information required by the Forms as of the effective date of the Amendments. Instead, we expect that marketplaces will provide this new information at the time that they file their updated and consolidated Form 21-101F1 or Form 21-101F2.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex H of this notice.

Annexes

- A. Description of notable changes to the Marketplace Rules from the proposed amendments published on April 24, 2014.
- B. Amendments to NI 21-101 and Schedule of Changes to Companion Policy 21-101CP.
- C. Amendments to NI 23-101 and Schedule of Changes to Companion Policy 23-101CP.

- D. Blackline showing changes to NI 21-101, 21-101CP and the Forms.
- E. Blackline showing changes to NI 23-101 and 23-101CP.
- F. List of commenters who provided submissions on the proposed amendments published on April 24, 2014.
- G. Summary of comments, together with the CSA's response to the comments, on the proposed amendments.
- H. Local matters.

Questions

Please refer your questions to any of the following:

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ANNEX A

Description of Notable Changes to the Proposed Amendments

This Annex describes the notable changes to the Marketplace Rules from the proposed amendments published for comment on April 24, 2014. It contains the following sections:

1. Marketplace systems and business continuity planning;
2. Use of marketplace participants' trading information for research; and
3. Provision of data to an information processor.

1. MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

We have revised NI 21-101 and certain of the Forms to account for issues raised by the commenters in areas related to business continuity planning, the use of uniform test symbols in marketplace production environments, material changes to marketplace technology requirements and the information required to be provided in Form 21-101F1 and Form 21-101F2.

(i) Business continuity planning

In our April 24, 2014 notice of proposed amendments to the Marketplace Rules, we noted that the increase in marketplace fragmentation for listed equities has made the recovery process in the case of a disaster significantly more complex and that a successful industry-wide business continuity test is key to any realistic expectation of a Canadian capital markets recovery from a major disaster within a reasonable length of time. Consequently, we have amended NI 21-101 to include a requirement for the mandatory participation in industry-wide business continuity tests as determined by a regulation services provider, regulator, or in Québec, a securities regulatory authority, as initially proposed. However, in response to comments, we have revised the requirement such that a "participant dealer", as defined in Part 1 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), rather than a "marketplace participant" must participate in the tests. As defined, a "participant dealer" means a marketplace participant that is an investment dealer. The effect of this change is that buy-side institutional investors will not be required to participate in industry-wide business continuity tests, reflecting the fact that such participants have historically not participated in these tests.

We have also revised subsection 12.4(2) of NI 21-101 such that a marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system operated by or on behalf of the marketplace that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within 2 hours following the declaration of a disaster by the marketplace. We have similarly revised subsection 14.6(3) of NI 21-101 to require an information processor to establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical information technology systems can resume operation within one hour following the declaration of a disaster by the information processor.

Lastly, we have included guidance in section 14.3 of 21-101CP to reflect the CSA's expectation that the policies and procedures required by section 12.4 of NI 21-101 will form part of the entity's business continuity and disaster recovery plans.

(ii) Uniform test symbols in production environments

As initially proposed, we have amended NI 21-101, at section 12.3.1, to require a marketplace to use uniform test symbols for the purpose of testing to be performed in the production environment. We have included guidance in section 14.2.1 of 21-101CP to reflect the CSA's view that the use of uniform test symbols is in furtherance to a marketplace's obligation under section 5.7 of NI 21-101 to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

We have also include guidance in section 14.2.1 of 21-101CP to reflect our view that the use of uniform test symbols is not intended to facilitate stress testing by marketplace participants. To the extent that the use of test symbols may negatively impact the performance of a marketplace's production environment, our view is that a marketplace may suspend access to a test symbol where its use reasonably represents undue risk to the operation or performance of the marketplace's production environment. We also note our view that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of NI 23-103.

We will be consulting with industry stakeholders on the implementation of uniform test symbols in advance of the new provision taking effect.

(iii) Material changes to marketplace technology requirements

As we indicated in the notice of the proposed amendments, the failure of a marketplace's systems can have wide-reaching and unintended consequences. A marketplace beginning operations or making a material change to its systems can therefore negatively impact many other parties if these actions are not carried out in a careful manner. In our view, marketplace participants and service vendors must have a reasonable opportunity to adapt to the systems changes demanded by the launch of new marketplaces and material changes to a marketplace's technology requirements.

We had initially proposed amendments to section 12.3 of NI 21-101 in order to codify practices regarding the launch of new marketplaces and the implementation of material changes to a marketplace's technology requirements, which have been established by OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes*. As proposed, these amendments would have prohibited the launch of new marketplaces and the implementation of material changes to a marketplace's technology requirements until at least three months following notification of the marketplace of the completion of the regulatory review process.

Due to different practices in the various CSA jurisdictions, we have removed these provisions from section 12.3 and they will be retained in OSC Staff Notice 21-706.

(iv) Information in Form 21-101F1 and Form 21-101F2

We have also revised the proposed amendments to Exhibit G to Form 21-101F1 and Form 21-101F2 to clarify the kind of information that a marketplace should provide regarding its business continuity and disaster recovery plans. In particular, Exhibit G has been revised to require information about the creation, management, and oversight of the plans; escalation procedures; internal and external communications procedures; and triggering scenarios included in a marketplace's business continuity and disaster recovery plans.

2. USE OF MARKETPLACE PARTICIPANTS' TRADING INFORMATION FOR RESEARCH

Background

Subsection 5.10(1) of NI 21-101 prohibits a marketplace from providing a marketplace participant's order and trade information to a person or company other than the market participant, a securities regulatory authority or an RSP unless (i) the marketplace participant has consented in writing, (ii) the release of the order and trade information is required by applicable law or NI 21-101, or (iii) the order and trade information was disclosed by another person or company, and the disclosure was lawful. An unintended consequence to the previous amendments to the Marketplace Rules was that all marketplaces, including exchanges, were prohibited from providing order and trade information for capital markets research without the written consent of all of their marketplace participants. In Ontario, an exemption order was granted to marketplaces to allow them to provide marketplace participants' data for capital markets research.¹

Amendments

As we indicated in the notice that accompanied the proposed amendments, we support capital markets research and our view is that marketplaces should be permitted to provide third parties with marketplace participants' order and trade information to carry out this research, provided that appropriate safeguards are in place to prevent the inappropriate use and disclosure of that information.

However, in response to comments made on the proposed amendments, we have revised subsection 5.10(1.1) of NI 21-101 to impose certain obligations directly on a marketplace that proposes to disclose a marketplace participant's order and trade information for purposes of capital markets research. In particular, we have revised the subsection to provide that, in order for a marketplace to release a marketplace participant's order or trade information, the marketplace must reasonably believe that the information will be used solely for the purpose of capital markets research. In the event that the information would identify, directly or indirectly, a marketplace participant or client of the market participant, the marketplace must also reasonably believe that the information is required for the purpose of the capital markets research and that the research is not intended for the purpose of identifying a particular marketplace participant or a client of the marketplace participant or identifying a trading strategy, transactions, or market positions of the marketplace participant or its client.

We have also included guidance in subsection 7.7(0.2) of 21-101CP to reflect our expectation that, in order for a marketplace to reasonably believe that the information will be used for the purpose of capital markets research, the marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Similarly, where the information to be released to the

¹ Available at http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20131003_210_alpha-trading.htm

recipient could identify a marketplace participant or a client of a marketplace participant, our expectation is that the marketplace will make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or client or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.

We have also included guidance in subsection 7.7(0.3) of 21-101CP reflecting our view that marketplaces should exercise caution when considering releasing order or trade information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, our view is that a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.

Lastly, we have revised subsection 5.10(1.1) of NI 21-101 to include additional requirements on a recipient of information released by a marketplace when the recipient proposes onward disclosure of the information for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the result of the research prior to publication.

3. PROVISION OF DATA TO AN INFORMATION PROCESSOR

In the notice accompanying the proposed amendments to the Marketplace Rules, we expressed the view that, given the important role that an information processor (or information vendor, in its absence) plays in a multiple marketplace environment for listed equity securities, an information processor must receive accurate and timely information from marketplaces. This view is reflected in the amendments to sections 7.1 and 7.2 of NI 21-101, which codify guidance initially in 21-101 CP. These sections now prohibit a marketplace from making pre- and post-trade information available to any person or company before it makes that information available to an information processor or an information vendor.

We have revised section 9.1 of 21-101CP to indicate that, in order to comply with new subsections 7.1(3) and 7.2(2) of NI 21-101, we expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.

ANNEX B**Amendments to
National Instrument 21-101 Marketplace Operation**

1. **National Instrument 21-101 Marketplace Operation is amended by this Instrument.**
2. **National Instrument 21-101 Marketplace Operation is amended by replacing “shall” wherever it occurs with “must”.**
3. **Section 1.1 is amended**
 - (a) **in paragraph (c) of the definition of “government debt security” by adding “in Canada” after “body”,**
 - (b) **in the definition of “information processor” by adding “and, in Québec, that is a recognized information processor” after “Form 21-101F5”,**
 - (c) **in subparagraph (a)(iv) of the definition of “marketplace” by replacing “,” with “;”,**
 - (d) **in the definition of private enterprise by replacing “Accouting” with “Accounting”, and**
 - (e) **by adding the following definition:**

“participant dealer” means a participant dealer as defined in Part 1 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*;
4. **Section 1.4 is amended**
 - (a) **in subsection (1) by deleting “Alberta and”, and**
 - (b) **by replacing “Commodity Futures Act” with “Commodity Futures Act” wherever it occurs.**
5. **Section 3.2 is amended**
 - (a) **in subsection (1) by replacing “Form” with “applicable form” after “in the manner set out in the”,**
 - (b) **by adding the following subsection:**
 - (1.1) A marketplace that has entered into an agreement with a regulation services provider under NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the applicable exhibit to its regulation services provider at least 45 days before implementing the change.,
 - (c) **in subsection (3) by replacing “Form” with “applicable form” after “amendment to the information provided in the”, and**
 - (d) **by adding the following subsections:**
 - (4) The chief executive officer of a marketplace, or an individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace’s current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the applicable form.
 - (5) A marketplace must file an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year..
6. **Paragraph 4.1(1)(c) is amended by adding “unmodified” before “auditor’s report”.**
7. **Section 5.1 is amended by replacing “,” with “;” wherever it occurs.**

8. **Section 5.7 is amended by deleting an additional space after “not”.**
9. **Section 5.10 is amended**
- (a) **in subsection (1) by replacing “;” with “,” wherever it occurs, and**
- (b) **by adding the following subsections:**
- (1.1) Despite subsection (1), a marketplace may release a marketplace participant’s order or trade information to a person or company if the marketplace
- (a) reasonably believes that the information will be used solely for the purpose of capital markets research,
 - (b) reasonably believes that if information identifying, directly or indirectly, a marketplace participant or a client of the marketplace participant is released,
 - (i) it is required for the purpose of the capital markets research, and
 - (ii) that the research is not intended for the purpose of
 - (A) identifying a particular marketplace participant or a client of the marketplace participant, or
 - (B) identifying a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant,
 - (c) has entered into a written agreement with each person or company that will receive the order and trade information from the marketplace that provides that
 - (i) the person or company must
 - (A) not disclose to or share any information with any person or company if that information could, directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace’s consent, other than as provided under subparagraph (ii) below,
 - (B) not publish or otherwise disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or a client of the marketplace participant,
 - (C) not use the order and trade information, or provide it to any other person or company, for any purpose other than capital markets research,
 - (D) keep the order and trade information securely stored at all times,
 - (E) keep the order and trade information for no longer than a reasonable period of time after the completion of the research and publication process, and
 - (F) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided,
 - (ii) the person or company may disclose order or trade information used in connection with research submitted to a publication if
 - (A) the information to be disclosed will be used solely for the purposes of verification of the research carried out by the person or company,
 - (B) the person or company must notify the marketplace prior to disclosing the information for verification purposes, and

- (C) the person or company must obtain written agreement from the publisher and any other person or company involved in the verification of the research that the publisher or the other person or company will
 - (I) maintain the confidentiality of the information,
 - (II) use the information only for the purposes of verifying the research,
 - (III) keep the information securely stored at all times,
 - (IV) keep the information for no longer than a reasonable period of time after the completion of the verification, and
 - (V) immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided, and
 - (iii) the marketplace has the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.
- (1.2) A marketplace that releases a marketplace participant's order or trade information under subsection (1.1) must
- (a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement, and
 - (b) take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement..
10. **Section 5.12 is amended by deleting “.” after “the marketplace must”.**
11. **In the following provisions “key services and systems” is replaced with “key services or systems”:**
- (a) **Paragraph 5.12(b);**
 - (b) **Paragraph 5.12(c).**
12. **Paragraph 5.12(e) is amended by deleting “,” after “on behalf of the marketplace”.**
13. **National Instrument 21-101 Marketplace Operation is amended by adding the following section:**
- 5.13 Access Arrangements with a Service Provider**
- If a third party service provider provides a means of access to a marketplace, the marketplace must ensure the third party service provider complies with the written standards for access that the marketplace has established pursuant to paragraph 5.1(2)(a) when providing the access services..
14. **In the following provisions “,” is replaced with “,”:**
- (a) **Paragraph 6.7(1)(a);**
 - (b) **Paragraph 6.7(1)(b).**
15. **Section 7.1 is amended by adding the following subsection:**
- (3) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor..

-
16. **Section 7.2 is amended by renumbering it as subsection 7.2(1) and by adding the following subsection:**
- (2) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor..
17. **Subsection 8.1(5) is amended by replacing “interdealer” with “inter-dealer”.**
18. **Section 8.4 is amended by replacing “interdealer” with “inter-dealer”.**
19. **Section 10.1 is amended**
- (a) **by adding “,” after “disclose”,**
- (b) **by adding “,” after “website”,**
- (c) **by adding “,” after “including”,**
- (d) **by adding “,” after “but not limited to”, and**
- (e) **by deleting “.” after “information related to”.**
20. **In the following provisions “,” is replaced with “,”:**
- (a) **Paragraph 10.1(a);**
- (b) **Paragraph 10.1(b);**
- (c) **Paragraph 10.1(c);**
- (d) **Paragraph 10.1(d);**
- (e) **Paragraph 10.1(e);**
- (f) **Paragraph 10.1(f).**
21. **Paragraph 10.1(g) is amended by replacing “; and” with “,”.**
22. **Paragraph 10.1(h) is amended by replacing “.” with “,”.**
23. **Section 10.1 is amended by adding the following paragraphs:**
- (i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and
- (j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing, and any policies and procedures relating to a marketplace’s use of uniform test symbols for purposes of testing in its production environment..
24. **Subparagraph 11.2(1)(c)(xviii) is amended by replacing “,” with “,”.**
25. **Section 11.2.1 is amended**
- (a) **in paragraph (a) by deleting “,” following “the information required by the regulation services provider”,**
- (b) **in paragraph (a) by adding “and in the manner requested by the regulation services provider,” after “in electronic form”,**
- (c) **in paragraph (b) by deleting “,” following “under securities legislation”, and**
- (d) **in paragraph (b) by adding “and in the manner requested by the securities regulatory authority” after “in electronic form”.**
-

26. Subsection 11.3(1) is amended

- (a) *in paragraph (f) by deleting “and”,*
- (b) *in paragraph (g) by replacing “.” with “,” after “subsections 13.1(2) and 13.1(3)”, and*
- (c) *by adding the following paragraphs:*
 - (h) a copy of any agreement referred to in section 5.10; and
 - (i) a copy of any agreement referred to in paragraph 5.12(c)..

27. Section 12.1 is amended

- (a) *by replacing “For each of its systems that support” with “For each system, operated by or on behalf of the marketplace, that supports”,*
- (b) *by replacing “,” with “,” wherever it occurs,*
- (c) *in paragraph (c) by deleting “or delay”, and*
- (d) *in paragraph (c) by adding “, delay or security breach and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the marketplace’s internal review of the failure, malfunction, delay or security breach.” after “malfunction”.*

28. National Instrument 21-101 Marketplace Operation is amended by adding the following section:

12.1.1 Auxiliary Systems – For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must

- (a) develop and maintain an adequate system of information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and
- (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material security breach and provide timely updates on the status of the breach, the resumption of service, where applicable, and the results of the marketplace’s internal review of the security breach..

29. Subsection 12.2(1) is replaced with:

- (1) A marketplace must annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that the marketplace is in compliance with
 - (a) paragraph 12.1(a),
 - (b) section 12.1.1, and
 - (c) section 12.4..

30. Paragraph 12.2(2)(b) is replaced with the following:

- (b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end..

31. Section 12.3 is amended

- (a) *by replacing subsection (3) with the following:*
 - (3) A marketplace must not begin operations before

- (a) it has complied with paragraphs (1)(a) and (2)(a),
- (b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and
- (c) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.,

(b) by adding the following subsection:

- (3.1) A marketplace must not implement a material change to the systems referred to in section 12.1 before

- (a) it has complied with paragraphs (1)(b) and (2)(a), and
- (b) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed., **and**

(c) in subsection (4) by replacing “Paragraphs 12.3(1)(b) and 2(b) do” with “Subsection (3.1) does”.

32. National Instrument 21-101 Marketplace Operation is amended by adding the following section:

12.3.1 Uniform Test Symbols

A marketplace must use uniform test symbols, as set by a regulator, or in Québec, the securities regulatory authority, for the purpose of performing testing in its production environment..

33. Section 12.4 is replaced with the following:

12.4 Business Continuity Planning

- (1) A marketplace must
 - (a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and
 - (b) test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing, can resume operations within two hours following the declaration of a disaster by the marketplace.
- (3) A recognized exchange or quotation and trade reporting system, that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system.
- (4) A regulation services provider, that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider..

34. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**12.4.1 Industry-Wide Business Continuity Tests**

A marketplace, recognized clearing agency, information processor, and participant dealer must participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority..

35. In the following provisions “and settled” is replaced with “to a clearing agency”:

(a) **Subsection 13.1(2);**

(b) **Subsection 13.1(3).**

36. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**13.2 Access to Clearing Agency of Choice**

(1) A marketplace must report a trade in a security to a clearing agency designated by a marketplace participant.

(2) Subsection (1) does not apply to a trade in a security that is a standardized derivative or an exchange-traded security that is an option..

37. Section 14.4 is amended

(a) **in subsection (4) by adding “or changes to an electronic connection” after “in a timely manner an electronic connection”, and**

(b) **by adding the following subsections:**

(6.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the income statement and the statement of cash flow of the information processor and any other information necessary to demonstrate the financial condition of the information processor within 90 days after the end of the financial year of the person or company.

(7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days of the start of the financial year of the person or company..

38. Section 14.5 is amended

(a) **by replacing “,” with “,” wherever it occurs, and**

(b) **by replacing subparagraph (d)(ii) with the following:**

(ii) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end, and.

39. Section 14.6 is replaced by the following:**14.6 Business Continuity Planning**

An information processor must

(a) develop and maintain reasonable business continuity plans, including disaster recovery plans,

(b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and

- (c) establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.

40. Section 14.7 is amended

- (a) **by replacing** “with this Instrument, or other than a securities regulatory authority, unless:” **with** “with this Instrument or a securities regulatory authority, unless”, **and**
- (b) **in subsection (a) by replacing** “,” **with** “,”.

41. Section 14.8 is amended

- (a) **by deleting** “.” **after** “but not limited to”, **and**
- (b) **by replacing** “,” **with** “,” **wherever it occurs**.

42. Form 21-101F1 is amended

- (a) **by replacing** “shall” **wherever it occurs with** “must”,
- (b) **by replacing** “should” **wherever it occurs with** “must”, **and**
- (c) **under “Type of Filing” by adding** “; AMENDMENT No.” **after** “AMENDMENT”.

43. Exhibit C of Form 21-101F1 is amended by adding “and the Board mandate” **after** “including their mandates”.

44. Exhibit D of Form 21-101F1 is amended

- (a) **in paragraph 6 by deleting** “.” **wherever it occurs**,
- (b) **by deleting** “,” **wherever it occurs, and**
- (c) **by adding** “,” **after** “private enterprises”.

45. Exhibit E of Form 21-101F1 is amended

- (a) **by replacing** “not be limited” **with** “is not limited”,
- (b) **by replacing** “Description” **wherever it occurs with** “A description”, **and**
- (c) **by adding the following to the end of the exhibit:**

The filer must provide all material contracts related to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing..

46. Exhibit F of Form 21-101F1 is amended

- (a) **by adding** “,” **after** “routing, trading, execution, data”, **and**
- (b) **by adding the following sections:**
4. A copy of the marketplace’s policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.
 5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
 6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established,

maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.

7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

47. Exhibit G of Form 21-101F1 is replaced with the following:

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
2. How the impact of risks are measured according to qualitative and quantitative criteria.
3. The documentation process for acceptable residual risks with related offsets.
4. The development of management's action plan to implement a risk response to a risk that has not been accepted..

48. Exhibit I of Form 21-101F1 is amended by replacing "Filer" wherever it occurs with "filer".

49. Exhibit J of Form 21-101F1 is amended by replacing "Exhibit E.4" with "Exhibit E item 4".

50. Exhibit K of Form 21-101F1 is amended

- (a) **in section 4 by adding "Please identify if the marketplace participant accesses the marketplace through co-location." after "or other access.",**
- (b) **in section 5 by deleting "." after "indicating for each", and**
- (c) **in section 5 by replacing "," wherever it occurs with ".,"**

51. Exhibit M of Form 21-101F1 is amended

- (a) **in section 2 by adding "a copy of" after "and its members, provide", and**
- (b) **by deleting "." after "regulation services provider" after the box following section 2.**

52. Exhibit N of Form 21-101F1 is amended by adding "Marketplace Operation" after "21-101".

53. Form 21-101F2 is amended

- (a) **in the title by replacing “INITIAL OPERATION REPORT” with “INFORMATION STATEMENT”,**
- (b) **by replacing “should” wherever it occurs with “must”,**
- (c) **by replacing “shall” wherever it occurs with “must”,**
- (d) **under “Type of Filing” by adding “, AMENDMENT No.” after “AMENDMENT”, and**
- (e) **in subsection 12 of the Instructions by adding “name of” after “contracted with [“.**

54. Exhibit E of Form 21-101F2 is amended

- (a) **by replacing “not be” with “is not”,**
- (b) **by replacing “Description” wherever it occurs with “A description”, and**
- (c) **by adding the following to the end of Exhibit E:**

The filer must provide all material contracts relating to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing..

55. Exhibit F of Form 21-101F2 is amended

- (a) **by deleting “the” after “including any function associated with”,**
- (b) **by adding “data” after “clearing and settlement,” and**
- (c) **by adding the following sections:**

4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.
5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*..

56. Exhibit G of Form 21-101F2 is replaced with the following:

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.

2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.

4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.

IT Risk Assessment

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
2. How the impact of risks are measured according to qualitative and quantitative criteria.
3. The documentation process for acceptable residual risks with related offsets.
4. The development of management's action plan to implement a risk response to a risk that has not been accepted..

57. *Exhibit I of Form 21-101F2 is amended by adding "list" after "If this is an initial filing,".*

58. *Exhibit J of Form 21-101F2 is amended*

(a) *in section 1 by replacing "Exhibit E.4" with "Exhibit E item 4", and*

(b) *in section 2 by deleting "," after "institution".*

59. *Exhibit K of Form 21-101F2 is amended*

(a) *in section 4 by adding "Please identify if the marketplace participant accesses the marketplace through co-location." after "access.",*

(b) *in section 5 by deleting ":" after "for each", and*

(c) *in section 5 by replacing "," wherever it occurs with ",".*

60. *Exhibit N of Form 21-101F2 is amended by adding "Marketplace Operation" after "21-101".*

61. *Form 21-101F3 is amended by replacing "should" wherever it occurs with "must".*

62. *Section 4 of Part A of Form 21-101F3 is replaced with the following:*

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..

63. *Section 5 of Part A of Form 21-101F3 is replaced with the following:*

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..

64. *Section 6 of Part A of Form 21-101F3 is replaced with the following:*

6. Systems – If any outages occurred at any time during the period for any system relating to trading activity, including trading, routing or data, provide the date, duration, reason for the outage and its resolution..

65. *Section 7 of Part A of Form 21-101F3 is replaced with the following:*

7. Systems Changes – A brief description of any significant changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing that were planned, under development, or implemented during the quarter. Please provide the current status of the changes that are under development..

66. **Section 8 of Part A of Form 21-101F3 is repealed.**
67. **Section 1 of Part B in Chart 2 of Form 21-101F3 is amended**
- (a) **by deleting “%” wherever it occurs, and**
- (b) **by deleting “% Number of exchange traded securities that are”.**
68. **Section 1 of Part B in Chart 3 of Form 21-101F3 is amended by deleting “%” wherever it occurs.**
69. **Section 1 of Part B of Form 21-101F3 is amended by replacing “third-party” with “third party” in item 6 beneath Chart 5.**
70. **Section 1 of Part B of Form 21-101F3 is amended by deleting item 7 beneath Chart 6.**
71. **Section 2 of Part B of Form 21-101F3 is amended**
- (a) **by adding “during the quarter” after “regular trading hours” in item 1,**
- (b) **by replacing “the 10 most traded fixed income securities” with “each fixed income security traded” in item 2, and**
- (c) **by deleting “(based on the value of the volume traded) for trades executed” in item 2.**
72. **Section 2 of Part B in Chart 8 of Form 21-101F3 is replaced with the following:**

Chart 8 – Traded fixed income securities

Category of Securities	Value Traded	Number of Trades
Domestic Unlisted Debt Securities – Government 1. Federal [Enter issuer, maturity, coupon]		
2. Federal Agency [Enter issuer, maturity, coupon]		
3. Provincial and Municipal [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities – Other [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Government [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – Other [Enter issuer, maturity, coupon]		

73. **Section 4 of Part B in Chart 15 of Form 21-101F3 is amended**
- (a) **by deleting “%” wherever it occurs, and**
 - (b) **by deleting “of” before “Volume”.**
74. **Section 4 of Part B in Chart 16 of Form 21-101F3 is amended by deleting “%” wherever it occurs.**
75. **Section 4 of Part B of Form 21-101F3 is amended by deleting item 6 beneath Chart 18.**
76. **Form 21-101F4 is amended by replacing “shall” with “must” wherever it occurs.**
77. **Form 21-101F5 is amended**
- (a) **by replacing “INITIAL OPERATION REPORT FOR” with “INFORMATION STATEMENT” in the title,**
 - (b) **in “Type of Filing” by adding “. AMENDMENT No.” after “AMENDMENT”,**
 - (c) **by replacing “should” wherever it occurs with “must”,**
 - (d) **by replacing “shall” wherever it occurs with “must”, and**
 - (e) **by adding “,” after “National Instrument 21-101” under the heading “Exhibits”.**
78. **Section 1 of Exhibit C of Form 21-101F5 is amended**
- (a) **by adding “,” after “standing committees of the board”, and**
 - (b) **by adding “,” after “previous year”.**
79. **Section 1 of Exhibit G of Form 21-101F5 is amended**
- (a) **by replacing “system” with “System” in paragraph 3,**
 - (b) **by replacing “Description” with “A description” in paragraph 5.**
80. **Section 2 of Exhibit J of Form 21-101F5 is amended**
- (a) **by replacing “exists” with “exist”, and**
 - (b) **by adding “provide” after “National Instrument 21-101,”.**
81. **Section 3 of Exhibit K of Form 21-101F5 is amended by replacing “who” with “that”.**
82. **Form 21-101F6 is amended by replacing “shall” with “must” wherever it occurs.**
83. The Instrument comes into force on October 1, 2015.

Schedule 1

**Changes to
Companion Policy 21-101CP Marketplace Operation**

1. The changes to Companion Policy 21-101CP are set out in this Schedule.
2. **Section 1.1 is changed by replacing** “Instruments,” **with** “Instrument and N1 23-101,” **immediately before** “which were adopted at a time when”.
3. **Subsection 2.1(1) is changed**
 - (a) **by replacing** “Paragraphs (c) and (d)” **with** “Subparagraphs (a)(iii) and (a)(iv)” **immediately before** “of the definition of “marketplace””, **and**
 - (b) **by replacing** “of” **with** “for” **immediately after** “that internalizes its orders”.
4. **Subsection 2.1(8) is changed by replacing** “paragraph (c)” **with** “subparagraph (a)(iii)” **immediately after** “to be operating a marketplace under”.
5. **Subsection 3.3(1) is changed by adding** “Canadian” **immediately after** “exempted from this requirement by the”.
6. **Section 6.1 is changed by replacing subsection (4) with the following:**

- (4) Under subsection 3.2(1) of the Instrument, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets

A change would be considered to significantly impact the marketplace if it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or result in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the regulation services provider.

The following types of changes are considered to be significant changes as they would always have a significant impact:

- (a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;
- (b) new or changes to order types, and
- (c) changes in the fees and the fee model of the marketplace.

The following may be considered by the Canadian securities regulatory authorities as significant changes, depending on whether they have a significant impact:

- (d) new or changes to the services provided by the marketplace, including the hours of operation;
- (e) new or changes to the means of access to the market or facility and its services;
- (f) new or changes to types of securities traded on the marketplace;
- (g) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;
- (h) new or changes to types of marketplace participants;
- (i) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;

- (j) changes to the corporate governance of the marketplace, including changes to the composition requirements for the board of directors or any board committees and changes to the mandates of the board of directors or any board committees;
- (k) changes in control over marketplaces;
- (l) changes in affiliates that provide services to or on behalf of the marketplace;
- (m) new or changes in outsourcing arrangements for key marketplace services or systems; and
- (n) new or changes in custody arrangements..

7. Section 6.1 is changed by replacing subsection (5) with the following:

- (5) Changes to information in Form 21-101F1 or Form 21-101F2 that
 - (a) do not have a significant impact on the marketplace, its market structure, marketplace participants, investors, issuers or the Canadian capital markets, or
 - (b) are housekeeping or administrative changes such as
 - (i) changes in the routine processes, policies, practices, or administration of the marketplace,
 - (ii) changes due to standardization of terminology,
 - (iii) corrections of spelling or typographical errors,
 - (iv) necessary changes to conform to applicable regulatory or other legal requirements,
 - (v) minor system or technology changes that would not significantly impact the system or its capacity, and
 - (vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace,

would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument..

8. Subsection 6.1(6) is changed

- (a) **by replacing “The” with “As indicated in subsection (4) above, the” at the beginning of the subsection,**
- (b) **by removing “generally” immediately after “Canadian securities regulatory authorities”, and**
- (c) **by replacing “fee structure” wherever it occurs with “fee model”.**

9. Section 6.1 is changed by adding the following subsections:

- (8.1) In order to ensure records regarding the information in a marketplace’s Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify, within 30 days after the end of each calendar year, that the information contained in the marketplace’s Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and the marketplace is operating as described in the applicable form. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be filed pursuant to subsection 3.2(5) of the Instrument. The certification under subsection 3.2(4) is also separate and apart from the form of certification in Form 21-101F1 and Form 21-101F2.
- (8.2) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument..

10. Subsection 6.1(9) is changed by adding “calendar” before “quarter” wherever it occurs.

11. Section 7.7 is changed by adding the following subsections:

- (0.1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used solely for capital markets research and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. However, if the marketplace decides to disclose this information, it must ensure that certain terms and conditions are met to ensure that the marketplace participant's information is not misused.
- (0.2) In order for a marketplace to disclose a marketplace participant's order or trade information, subparagraphs 5.10(1.1)(a)-(b) of the Instrument require a marketplace to reasonably believe that the information will be used by the recipient solely for the purposes of capital markets research and to reasonably believe that if information identifying, directly or indirectly, a marketplace participant, or a client of the marketplace participant is released, the information is necessary for the research and that the purpose of the research is not intended to identify the marketplace participant or client or to identify a trading strategy, transactions, or market positions of the marketplace participant or client. The Canadian securities regulatory authorities expect that a marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, the Canadian securities regulatory authorities also expect the marketplace to make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or a client of the marketplace participant or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.
- (0.3) In considering releasing order or trade information, the Canadian securities regulatory authorities expect a marketplace to exercise caution regarding information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.
- (0.4) Subparagraph 5.10(1.1)(c) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that the person or company agrees to use the order and trade information only for capital markets research purposes. In the view of the Canadian securities regulatory authorities, commercialization of the information by the recipient, for example by using the information for the purposes of trading, advising others to trade or for reverse engineering a trading strategy, would not constitute use of the information for capital markets research purposes.
- (0.5) Subparagraph 5.10(1.1)(c)(i) of the Instrument provides that the agreement must also prohibit the recipient from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data.
- (0.6) To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that recipients will not publish or disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times and that the data is kept for no longer than a reasonable period of time following the completion of the research and publication process.
- (0.7) The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and have the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the agreement or of the confidentiality of the information provided. In the view of the Canadian securities regulatory authorities, reasonable steps in the event of an

actual or apparent breach of the agreement or of the confidentiality of the information may include the marketplace seeking an injunction preventing any unauthorized use or disclosure of the information by a recipient.

- (0.8) Subparagraph 5.10(1.1)(c)(ii) of the Instrument provides for a limited carve-out from the restraints on the use and disclosure of the information by a recipient for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the research prior to the publication of the results of the research. In particular, clause 5.10(1.1)(c)(ii)(C) requires a marketplace to enter into a written agreement with a person or company receiving order or trade information from the marketplace that provides that the person or company may disclose information used in connection with research submitted to a publication so long as the person or company obtains a written agreement from the publisher and anyone involved in the verification of the research that provides for certain restrictions on the use and disclosure of the information by the publisher or the other person or company. A marketplace may consider requiring a person or company that proposes to disclose order or trade information pursuant to subparagraph 5.10(1.1)(c)(ii) to acknowledge that it has obtained the agreement required by clause 5.10(1.1)(c)(ii)(C) at the time that it notifies the marketplace prior to disclosing the information for verification purposes, as required by clause 5.10(1.1)(c)(ii)(B)..

12. **Subsection 7.7(1) is changed by replacing “shall” with “must”.**

13. **Companion Policy 21-101CP is changed by adding the following section:**

7.10 Access Arrangements with a Service Provider – If a third party service provider provides a means of access to a marketplace, section 5.13 of the Instrument requires the marketplace to ensure the third party service provider complies with the written standards for access the marketplace has established pursuant to paragraph 5.1(2)(a) of the Instrument when providing access services. A marketplace must establish written standards for granting access to each of its services under paragraph 5.1(2)(a) and the Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that these written standards are complied with when access to its platform is provided by a third party..

14. **Section 9.1 is changed by replacing subsection (2) with the following:**

- (2) In complying with sections 7.1 and 7.2 of the Instrument, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade..

15. **Section 9.1 is changed by adding the following subsection:**

- (2.1) Subsections 7.1(3) and 7.2(2) prohibit a marketplace from making available order and trade information to any person or company before it makes the information available to the information processor or, if there is no information processor, to an information vendor. The Canadian securities regulatory authorities acknowledge that there may be differences between the time at which a marketplace participant that takes in market data directly from a marketplace receives the order and trade information and the time at which a marketplace participant that takes in market data from the information processor receives the information. However, in complying with subsections 7.1(3) and 7.2(2) of the Instrument, the Canadian securities regulatory authorities expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace..

16. **Section 14.1 is changed by adding “whether operating in-house or outsourced.” immediately after “section 12.1 of the Instrument”.**

17. **Subsection 14.1(1) is changed**

- (a) **by adding “© 5 Management Guidelines,” immediately after “COBIT”, and**
- (b) **by adding “, © 2012 ISACA, IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management.” immediately after “IT Governance Institute”.**

18. **Section 14.1 is changed by adding the following subsection:**

- (2.1) Paragraph 12.1(c) of the Instrument refers to a material security breach. A material security breach or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of

the Instrument or any system that shares network resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the regulator. The onus would be on the marketplace to document the reasons for any security breach it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security breach. The criteria for public disclosure of a security breach should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected..

19. Section 14.1 is changed by replacing subsection (3) with the following:

- (3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment to ensure that the marketplace is in compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The focus of the assessment of any systems that share network resources with trading-related systems required under subsection 12.2(1)(b) would be to address potential threats from a security breach that could negatively impact a trading-related system. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority..

20. Section 14.1 is changed by adding the following subsection:

- (3.1) The Canadian securities regulatory authorities also note the critical importance of an appropriate system of cyber-security controls over the systems described in section 12.1 of the Instrument. We further note that, as a matter of best practices, marketplaces may also conduct a vulnerability assessment of these controls in addition to the independent systems review required by subsection 12.2(1) of the Instrument. To the extent that a marketplace carries out, or engages an independent party to carry out on its behalf, a vulnerability assessment and prepares a report of that assessment as part of the development and maintenance of the controls required by section 12.1 of the Instrument, we expect a marketplace to provide that report to the regulator or, in Québec, the securities regulatory authority in addition to the report required to be provided by subsection 12.2(2) of the Instrument..

21. Subsection 14.2(1) is changed by adding the following paragraph:

The Canadian securities regulatory authorities consider a material change to a marketplace's technology requirements to include a change that would require a person or company interfacing with or accessing the marketplace to incur a significant amount of systems-related development work or costs in order to accommodate the change or to fully interact with the marketplace as a result of the change. Such material changes could include changes to technology requirements that would significantly impact a marketplace participant's trading activities, such as the introduction of an order type, or significant changes to a regulatory feed that a regulation services provider takes in from the marketplace..

22. Section 14.2 is changed by adding the following subsections:

- (2.1) Paragraph 12.3(3)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (2.2) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(3.1) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted..

23. Companion Policy 21-101CP is changed by adding the section:**14.2.1 Uniform Test Symbols**

- (1) Section 12.3.1 of the Instrument requires a marketplace to use uniform test symbols for the purpose of performing testing in its production environment. In the view of the Canadian securities regulatory authorities, the use of uniform test symbols is in furtherance to a marketplace's obligations at section 5.7 of the Instrument to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.
- (2) The use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace's production environment; it is not intended to enable stress testing by marketplace participants. The Canadian securities regulatory authorities are of the view that a marketplace may suspend access to a test symbol where its use in a particular circumstance reasonably represents undue risk to the operation or performance of the marketplace's production environment. The Canadian securities regulatory authorities also note that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces..

24. Companion Policy 21-101CP is changed by replacing section 14.3 with the following:**14.3 Business Continuity Planning**

- (1) Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.
- (2) Paragraph 12.4(1)(b) of the Instrument also requires a marketplace to test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (3) Section 12.4 of the Instrument also establishes requirements for marketplaces meeting a minimum threshold of total dollar value of trading volume, recognized exchanges or quotation and trade reporting systems that directly monitor the conduct of their members, and regulation services providers that have entered into a written agreement with a marketplace to conduct market surveillance to establish, implement, and maintain policies and procedures reasonably designed to ensure that critical systems can resume operation within certain time limits following the declaration of a disaster. In fulfilling the requirement to establish, implement and maintain the policies and procedures prescribed by section 12.4, the Canadian securities regulatory authorities expect that these policies and procedures will form part of the entity's business continuity and disaster recovery plans and that the entities subject to the requirements at subsections 12.4(2) to (4) of the Instrument will be guided by their own business continuity plans in terms of what constitutes a disaster for purposes of the requirements..

25. Companion Policy 21-101CP is changed by adding the following section:

- 14.4 Industry-Wide Business Continuity Tests** – Section 12.4.1 of the Instrument requires a marketplace, recognized clearing agency, information processor, and participant dealer to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority. The Canadian securities regulatory authorities expect that marketplaces will make their production environments available for purposes of all industry-wide business continuity tests..

26. Section 15.1 is changed

- (a) **by deleting** “that” **immediately after** “Subsection 13.1(1) of the Instrument requires”,
- (b) **by replacing** “shall” **with** “to” **immediately after** “trades executed through a marketplace”, **and**
- (c) **by removing** “either” **immediately after** “registered as a dealer under securities legislation”.

27. **Companion Policy 21-101CP is changed by adding the following section:**
- 15.2 Access to Clearing Agency of Choice** – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.
- The Canadian securities regulatory authorities are of the view that where a clearing agency performs only clearing services (and not settlement or depository services) for equity or other cash-product marketplaces in Canada, it would need to have access to the existing securities settlement and depository infrastructure on non-discriminatory and reasonable commercial terms.
- Subsection 13.2(2) of the Instrument provides that subsection 13.2(1) does not apply to trades in standardized derivatives or exchange-traded securities that are options..
28. **Subsection 16.2 is changed by inserting** “In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority.” **after** “to act as an information processor.”.
29. **Section 16.3 is changed in the heading of the section by replacing “to” with “in”.**
30. **Companion Policy 21-101CP is changed by adding the following section:**
- 16.3.1 Filing of Financial Statements** – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited..
31. These changes become effective on October 1, 2015.

ANNEX C**Amendments to
National Instrument 23-101 Trading Rules**

1. **National Instrument 23-101 Trading Rules is amended by this Instrument.**
2. **National Instrument 23-101 Trading Rules is amended by replacing “shall” wherever it occurs with “must”.**
3. **Section 5.1 is amended by**
 - (a) **replacing “no person or company” with “a person or company”, and**
 - (b) **adding “not” before “execute a trade”.**
4. **Section 6.7 is amended by**
 - (a) **replacing “no person or company” with “a person or company”, and**
 - (b) **adding “not” before “send an order to an exchange”.**
5. **Section 6.8 is amended by adding “, except for paragraph 6.3(1)(c),” after “In Québec, this Part”.**
6. **Section 7.1 is amended by adding the following subsection:**
 - (3) If a recognized exchange has entered into a written agreement under section 7.2, the recognized exchange must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized exchange and the conduct of the exchange’s members, and that enable the regulation services provider to effectively monitor trading on the exchange and across marketplaces..
7. **National Instrument 23-101 Trading Rules is amended by replacing section 7.2 with the following:**
 - 7.2 **Agreement between a Recognized Exchange and a Regulation Services Provider** – A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will:
 - (a) monitor the conduct of the members of the recognized exchange,
 - (b) monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3), and
 - (c) enforce the requirements set under subsection 7.1(1)..
8. **National Instrument 23-101 Trading Rules is amended by adding the following section:**
 - 7.2.1 **Obligations of a Recognized Exchange to a Regulation Services Provider** – A recognized exchange that has entered into a written agreement with a regulation services provider must
 - (a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:
 - (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.1(1), and
 - (ii) the conduct of the recognized exchange, including the compliance of the recognized exchange with the requirements set under subsection 7.1(3) ; and
 - (b) comply with all orders or directions made by the regulation services provider..

9. **Section 7.3 is amended by adding the following subsection:**
- (3) If a recognized quotation and trade reporting system has entered into a written agreement under section 7.4, the recognized quotation and trade reporting system must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized quotation and trade reporting system and the conduct of the quotation and trade reporting system's users, and that enable the regulation services provider to effectively monitor trading on the recognized quotation and trade reporting system and across marketplaces..
10. **National Instrument 23-101 Trading Rules is amended by replacing section 7.4 with the following:**
- 7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider** – A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will
- (a) monitor the conduct of the users of the recognized quotation and trade reporting system,
- (b) monitor the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3), and
- (c) enforce the requirements set under subsection 7.3(1)..
11. **National Instrument 23-101 Trading Rules is amended by adding the following section:**
- 7.4.1 Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider** – A recognized quotation and trade reporting system that has entered into a written agreement with a regulation services provider must
- (a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:
- (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.3(1), and
- (ii) the conduct of the recognized quotation and trade reporting system, including the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3); and
- (b) comply with all orders or directions made by the regulation services provider..
12. **Section 10.2 is amended by replacing “an agreement” with “a written agreement” before “with a regulation services provider that provides”.**
13. This Instrument comes into force on October 1, 2015.

SCHEDULE 1

**Changes to
Companion Policy 23-101CP Trading Rules**

1. The changes to Companion Policy 21-101CP are set out in this Schedule.
 2. **Subparagraph 6.3(c)(ii) is changed by replacing “displayed” with “displayed”.**
 3. **Subsection 6.4(1) is changed by replacing “shall” with “must”.**
 4. **Companion Policy 23-101CP is changed by replacing section 7.1 with:**
- 7.1 Monitoring and Enforcement of Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System** – Under section 7.1 of the Instrument, a recognized exchange will set its own requirements governing the conduct of its members. Under section 7.3 of the Instrument, a recognized quotation and trade reporting system will set its own requirements governing the conduct of its users. The recognized exchange or recognized quotation and trade reporting system can monitor and enforce these requirements either directly or indirectly through a regulation services provider. A regulation services provider is a person or company that provides regulation services and is either a recognized exchange, recognized quotation and trade reporting system or a recognized self-regulatory entity.

If a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with a regulation services provider, it is expected that the requirements adopted by the recognized exchange or recognized quotation and trade reporting system under Part 7 of the Instrument will consist of all of the rules of the regulation services provider that relate to trading. For example, if a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with IIROC, the rules adopted by the recognized exchange or recognized quotation and trade reporting system are all of IIROC's Universal Market Integrity Rules. Clock synchronization, trade markers and trading halt requirements would be examples of these adopted rules that relate to the regulation services provider's monitoring of trading on the recognized exchange or recognized quotation and trade reporting system and across marketplaces.

We are of the view that all of the rules of the regulation services provider related to trading must be adopted by a recognized exchange or recognized quotation and trade reporting system that has entered into a written agreement with the regulation services provider given the importance of these rules in the context of effectively monitoring trading on and across marketplaces. We note that the regulation services provider is required to monitor the compliance of, and enforce, the adopted rules as against the members of the recognized exchange or users of the recognized quotation and trade reporting system. The regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules but it is the applicable securities regulatory authority that will enforce these rules against the recognized exchange or recognized quotation and trade reporting system.

Sections 7.2 and 7.4 of the Instrument require the recognized exchange or recognized quotation and trade reporting system that chooses to have the monitoring and enforcement performed by the regulation services provider to enter into an agreement with the regulation services provider in which the regulation services provider agrees to enforce the requirements of the recognized exchange or recognized quotation and trade reporting system adopted under subsection 7.1(1) and 7.3(1).

Specifically, sections 7.2 and 7.4 require the written agreement between a recognized exchange or recognized quotation and trade reporting system and its regulation services provider to provide that the regulation services provider will monitor and enforce the requirements set under subsection 7.1(1) or 7.3(1) and monitor the requirements adopted under subsection 7.1(3) or 7.3(3).

Paragraph 7.2.1(a)(i) mandates that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces. The reference to monitoring trading “across marketplaces” refers to the instance where particular securities are traded on multiple marketplaces. Where particular securities are only traded on one marketplace, the reference to “across marketplaces” may not apply in all circumstances.

Paragraph 7.2.1(a)(ii) requires that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the compliance of the recognized exchange with the requirements adopted under subsection 7.1(3). As well, subsection 7.2.1(b) requires a recognized exchange to comply with all orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized

exchange's members on the recognized exchange and with the regulation services provider's oversight of the compliance of the recognized exchange with the requirements adopted under 7.1(3)..

5. These changes become effective on October 1, 2015.

ANNEX D

Blackline Showing Changes to National Instrument 21-101 *Marketplace Operation*

NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Instrument

“accounting principles” means accounting principles as defined in National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;

"alternative trading system",

- (a) in every jurisdiction other than Ontario, means a marketplace that
 - (i) is not a recognized quotation and trade reporting system or a recognized exchange, and
 - (ii) does not
 - (A) require an issuer to enter into an agreement to have its securities traded on the marketplace,
 - (B) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,
 - (C) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and
 - (D) discipline subscribers other than by exclusion from participation in the marketplace, and
- (b) in Ontario has the meaning set out in subsection 1(1) of the *Securities Act* (Ontario);

"ATS" means an alternative trading system;

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

"exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of this Instrument and NI 23-101;

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

"government debt security" means

- (a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,
- (b) a debt security issued or guaranteed by any municipal corporation or municipal body in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (c) a debt security issued or guaranteed by a crown corporation or public body in Canada,
- (d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the *Education Act* (Ontario), or

- (e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l'île de Montréal that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"information processor" means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5 and, in Québec, that is a recognized information processor;

"inter-dealer bond broker" means a person or company that is approved by IIROC under IIROC Rule 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IIROC Rule 36 and IIROC Rule 2100 Inter-Dealer Bond Brokerage Systems, as amended;

"market integrator" [repealed]

"marketplace",

- (a) in every jurisdiction other than Ontario, means
- (i) an exchange,
 - (ii) a quotation and trade reporting system,
 - (iii) a person or company not included in clause (i) or (ii) that
 - (A) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
 - (B) brings together the orders for securities of multiple buyers and sellers, and
 - (C) 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
 - (iv) a dealer that executes a trade of an exchange-traded security outside of a marketplace, but does not include an inter-dealer bond broker; and
- (b) in Ontario has the meaning set out in subsection 1(1) of the *Securities Act* (Ontario);

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

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

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

and the person or company's representatives;

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

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

"participant dealer" means a participant dealer as defined in Part 1 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*;

"private enterprise" means a private enterprise as defined in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"publicly accountable enterprise" means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107

Acceptable Accounting Principles and Auditing Standards;

"recognized exchange" means

- (a) in Ontario, a recognized exchange as defined in subsection 1(1) of the *Securities Act* (Ontario),
- (b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization, and
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

- (a) in every jurisdiction other than British Columbia, Ontario and Québec, 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,
- (b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange,
- (b.1) in Ontario, a recognized quotation and trade reporting system as defined in subsection 1(1) of the *Securities Act* (Ontario), and
- (c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization;

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

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

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

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

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

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

"trading volume" means the number of securities traded;

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

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

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

1.3 Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

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

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

1.4 Interpretation – Security

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

1.5 Interpretation – NI 23-101

Terms defined or interpreted in NI 23-101 and used in this Instrument have the respective meanings ascribed to them in NI 23-101.

PART 2 APPLICATION

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

PART 3 MARKETPLACE INFORMATION

3.1 Initial Filing of Information

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system Form 21-101F1.
- (2) A person or company must not carry on business as an ATS unless it has filed Form 21-101F2 at least 45 days before the ATS begins to carry on business as an ATS.

3.2 Change in Information

- (1) Subject to subsection (2), a marketplace must not implement a significant change to a matter set out in Form 21-101F1 or in Form 21-101F2 unless the marketplace has filed an amendment to the information provided in Form 21-101F1 or in Form 21-101F2 in the manner set out in the Form applicable form at least 45 days before implementing the change.
- (1.1) A marketplace that has entered into an agreement with a regulation services provider under NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the applicable exhibit to its regulation services provider at least 45 days before implementing the change.
- (2) A marketplace must file an amendment to the information provided in Exhibit L – Fees of Form 21-101F1 or Exhibit L – Fees of Form 21-101F2, as applicable, at least seven business days before implementing a change to the information provided in Exhibit L – Fees.
- (3) For any change involving a matter set out in Form 21-101F1 or Form 21-101F2 other than a change referred to in subsection (1) or (2), a marketplace must file an amendment to the information provided in the Form applicable form by the earlier of
 - (a) the close of business on the 10th day after the end of the month in which the change was made, and
 - (b) if applicable, the time the marketplace discloses the change publicly.
- (4) The chief executive officer of a marketplace, or an individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace's current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the applicable form.
- (5) A marketplace must file an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year.

3.3 Reporting Requirements

A marketplace must file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the marketplace has carried on business.

3.4 Ceasing to Carry on Business as an ATS

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

3.5 Forms Filed in Electronic Form

A person or company that is required to file a form or exhibit under this Instrument must file that form or exhibit in electronic form.

PART 4 MARKETPLACE FILING OF AUDITED FINANCIAL STATEMENTS

4.1 Filing of Initial Audited Financial Statements

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system, together with Form 21-101F1, audited financial statements for its latest financial year that
 - (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or IFRS,
 - (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

- (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an unmodified auditor's report.
- (2) A person or company must not carry on business as an ATS unless it has filed, together with Form 21-101F2, audited financial statements for its latest financial year.

4.2 Filing of Annual Audited Financial Statements

- (1) A recognized exchange and a recognized quotation and trade reporting system must file annual audited financial statements within 90 days after the end of its financial year in accordance with the requirements outlined in subsection 4.1(1).
- (2) An ATS must file annual audited financial statements.

PART 5 MARKETPLACE REQUIREMENTS

5.1 Access Requirements

- (1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (2) A marketplace must
 - (a) establish written standards for granting access to each of its services; ~~and~~
 - (b) keep records of
 - (i) each grant of access including 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.
- (3) A marketplace must not
 - (a) permit unreasonable discrimination among clients, issuers and marketplace participants; ~~or~~
 - (b) impose any burden on competition that is not reasonably necessary and appropriate.

5.2 No Restrictions on Trading on Another Marketplace – A marketplace ~~shall~~must not prohibit, condition, or otherwise limit, directly or indirectly, a marketplace participant from effecting a transaction on any marketplace.

5.3 Public Interest Rules

- (1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system
 - (a) ~~shall~~must not be contrary to the public interest; and
 - (b) ~~shall~~must be designed to
 - (i) ensure compliance with securities legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade, and
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

(2) **[repealed]**

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

- (a) require compliance with securities legislation; and
- (b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.
- 5.5 Filing of Rules** – A recognized exchange or a recognized quotation and trade reporting system ~~shall~~must file all rules, policies and other similar instruments, and all amendments thereto.
- 5.6 [repealed]**
- 5.7 Fair and Orderly Markets** – A marketplace must take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.
- 5.8 Discriminatory Terms** – A marketplace must not impose terms that have the effect of discriminating between orders that are routed to the marketplace and orders that are entered on that marketplace for execution.
- 5.9 Risk Disclosure for Trades in Foreign Exchange-Traded Securities**
- (1) A marketplace that is trading foreign exchange-traded securities must provide each marketplace participant with disclosure in substantially the following words:
- “The securities traded by or through the marketplace are not listed on an exchange in Canada and may not be securities of a reporting issuer in Canada. As a result, there is no assurance that information concerning the issuer is available or, if the information is available, that it meets Canadian disclosure requirements.”
- (2) Before the first order for a foreign exchange-traded security is entered onto the marketplace by a marketplace participant, the marketplace must obtain an acknowledgement from the marketplace participant that the marketplace participant has received the disclosure required in subsection (1).
- 5.10 Confidential Treatment of Trading Information**
- (1) A marketplace must not release a marketplace participant’s order or trade information to a person or company, other than the marketplace participant, a securities regulatory authority or a regulation services provider unless
- (a) the marketplace participant has consented in writing to the release of the information;^{7.2}
- (b) the release of the information is required by this Instrument or under applicable law;^{7.3} or
- (c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.
- (1.1) Despite subsection (1), a marketplace may release a marketplace participant’s order or trade information to a person or company if the marketplace
- (a) reasonably believes that the information will be used solely for the purpose of capital markets research,
- (b) reasonably believes that if information identifying, directly or indirectly, a marketplace participant or a client of the marketplace participant is released,
- (i) it is required for the purpose of the capital markets research, and
- (ii) that the research is not intended for the purpose of
- (A) identifying a particular marketplace participant or a client of the marketplace participant, or
- (B) identifying a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant,
- (c) has entered into a written agreement with each person or company that will receive the order and trade information from the marketplace that provides that
- (i) the person or company must
- (A) not disclose to or share any information with any person or company if that information could, directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace’s consent, other than as provided under subparagraph (ii) below,

- (B) not publish or otherwise disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or a client of the marketplace participant,
 - (C) not use the order and trade information, or provide it to any other person or company, for any purpose other than capital markets research,
 - (D) keep the order and trade information securely stored at all times,
 - (E) keep the order and trade information for no longer than a reasonable period of time after the completion of the research and publication process, and
 - (F) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided,
- (ii) the person or company may disclose order or trade information used in connection with research submitted to a publication if
- (A) the information to be disclosed will be used solely for the purposes of verification of the research carried out by the person or company,
 - (B) the person or company must notify the marketplace prior to disclosing the information for verification purposes, and
 - (C) the person or company must obtain written agreement from the publisher and any other person or company involved in the verification of the research that the publisher or the other person or company will
 - (I) maintain the confidentiality of the information,
 - (II) use the information only for the purposes of verifying the research,
 - (III) keep the information securely stored at all times,
 - (IV) keep the information for no longer than a reasonable period of time after the completion of the verification, and
 - (V) immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided, and
- (iii) the marketplace has the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.
- (1.2) A marketplace that releases a marketplace participant's order or trade information under subsection (1.1) must
- (a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement, and
 - (b) take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.
- (2) A marketplace must not carry on business unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's order or trade information, including
- (a) limiting access to order or trade information of marketplace participants to
 - (i) employees of the marketplace, or
 - (ii) persons or companies retained by the marketplace to operate the system or to be responsible for compliance by the marketplace with securities legislation; and
 - (b) implementing standards controlling trading by employees of the marketplace for their own accounts.

- (3) A marketplace must not carry on business as a marketplace unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

5.11 Management of Conflicts of Interest

A marketplace must establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides.

5.12 Outsourcing

If a marketplace outsources any of its key services or systems to a service provider, which includes affiliates or associates of the marketplace, the marketplace must:

- (a) establish and maintain policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements,
- (b) identify any conflicts of interest between the marketplace and the service provider to which key services ~~and~~or systems are outsourced, and establish and maintain policies and procedures to mitigate and manage such conflicts of interest,
- (c) enter into a contract with the service provider to which key services ~~and~~or systems are outsourced that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,
- (d) maintain access to the books and records of the service providers relating to the outsourced activities,
- (e) ensure that the securities regulatory authorities have access to all data, information and systems maintained by the service provider on behalf of the marketplace, for the purposes of determining the marketplace's compliance with securities legislation,
- (f) take appropriate measures to determine that service providers to which key services or systems are outsourced establish, maintain and periodically test an appropriate business continuity plan, including a disaster recovery plan,
- (g) take appropriate measures to ensure that the service providers protect the marketplace participants' proprietary, order, trade or any other confidential information, and
- (h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.

5.13 Access Arrangements with a Service Provider

If a third party service provider provides a means of access to a marketplace, the marketplace must ensure the third party service provider complies with the written standards for access that the marketplace has established pursuant to paragraph 5.1(2)(a) when providing the access services.

PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSS

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

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

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

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

- (a) exchange-traded securities;

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

6.4 [repealed]**6.5 [repealed]****6.6 [repealed]****6.7 Notification of Threshold**

- (1) An ATS must notify the securities regulatory authority in writing if,
 - (a) during at least two of the preceding three months of operation, the total dollar value of the trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total dollar value of the trading volume for the month in that type of security on all marketplaces in Canada;^{7,8}
 - (b) during at least two of the preceding three months of operation, the total trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total trading volume for the month in that type of security on all marketplaces in Canada;^{7,8} or
 - (c) during at least two of the preceding three months of operation, the number of trades on the ATS for a month in any type of security is equal to or greater than 10 percent of the number of trades for the month in that type of security on all marketplaces in Canada.
- (2) An ATS must provide the notice referred to in subsection (1) within 30 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 [repealed]

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

6.10 [repealed]**6.11 Risk Disclosure to Non-Registered Subscribers**

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

"Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers."
- (2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS ~~shall~~must obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

6.12 [repealed]**6.13 [repealed]****PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES****7.1 Pre-Trade Information Transparency – Exchange-Traded Securities**

- (1) A marketplace that displays orders of exchange-traded securities to a person or company ~~shall~~must provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.
- ~~(3) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.~~

7.2 Post-Trade Information Transparency – Exchange-Traded Securities—

- ~~(1) A marketplace shallmust provide accurate and timely information regarding trades for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.~~
- ~~(2) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor.~~

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

- (1) A marketplace that displays orders of foreign exchange-traded securities to a person or company shallmust provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed by the marketplace to an information vendor.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

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

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

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

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

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

- (1) A marketplace that displays orders of government debt securities to a person or company shallmust provide to an information processor accurate and timely information regarding orders for government debt securities displayed by the marketplace as required by the information processor.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.
- (3) A marketplace shallmust provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.
- (4) An inter-dealer bond broker shallmust provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.
- (5) An inter-dealer bond broker shallmust provide to an information processor accurate and timely information regarding details of trades of government debt securities executed through the ~~inter-dealer~~inter-dealer bond broker as required by the information processor.

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

- (1) A marketplace that displays orders of corporate debt securities to a person or company ~~shall~~must provide accurate and timely information regarding orders for designated corporate debt securities displayed by the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.
- (3) A marketplace ~~shall~~must provide accurate and timely information regarding details of trades of designated corporate debt securities executed on the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (4) An inter-dealer bond broker ~~shall~~must provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (5) A dealer executing trades of corporate debt securities outside of a marketplace ~~shall~~must provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- 8.3 Consolidated Feed – Unlisted Debt Securities** – An information processor ~~shall~~must produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 8.1 and 8.2.
- 8.4 Compliance with Requirements of an Information Processor** – A marketplace, ~~interdealer~~inter-dealer bond broker or dealer that is subject to this Part ~~shall~~must comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.
- 8.5 [repealed]**
- 8.6 Exemption for Government Debt Securities** – Section 8.1 does not apply until January 1, 2018.

PART 9 [repealed]**PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS**

- 10.1 Disclosure by Marketplaces** – A marketplace must publicly disclose₂ on its website₂ information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including₂ but not limited to₂ information related to:
- (a) all fees, including any listing, trading, data, co-location and routing fees charged by the marketplace, an affiliate or by a party to which services have directly or indirectly been outsourced or which directly or indirectly provides those services₂;
 - (b) how orders are entered, interact and execute₂;
 - (c) all order types₂;
 - (d) access requirements₂;
 - (e) the policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides₂;
 - (f) any referral arrangements between the marketplace and service providers₂;
 - (g) where routing is offered, how routing decisions are made₂; ~~and₂~~

- (h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest,
- ~~(i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and~~
- ~~(j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing, and any policies and procedures relating to a marketplace's use of uniform test symbols for purposes of testing in its production environment.~~

10.2 [repealed]

10.3 [repealed]

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

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

11.2 Other Records

- (1) As part of the records required to be maintained under section 11.1, a marketplace ~~shall~~must include the following information in electronic form:
 - (a) a record of all marketplace participants who have been granted access to trading in the marketplace;
 - (b) daily trading summaries for the marketplace including
 - (i) a list of securities traded,
 - (ii) transaction volumes
 - (A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and
 - (B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,
 - (c) a record of each order which must include
 - (i) the order identifier assigned to the order by the marketplace,
 - (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
 - (iii) the identifier assigned to the marketplace where the order is received or originated,
 - (iv) each unique client identifier assigned to a client accessing the marketplace using direct electronic access,
 - (v) the type, issuer, class, series and symbol of the security,
 - (vi) the number of securities to which the order applies,
 - (vii) the strike date and strike price, if applicable,
 - (viii) whether the order is a buy or sell order,
 - (ix) whether the order is a short sale order, if applicable,

- (x) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
 - (xi) the date and time the order is first originated or received by the marketplace,
 - (xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account,
 - (xiii) the date and time the order expires,
 - (xiv) whether the order is an intentional cross,
 - (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
 - (xvi) the currency of the order,
 - (xvii) whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order was routed, and
 - (xviii) whether the order is a directed-action order, and whether the marketplace marked the order as a directed-action order or received the order marked as a directed-action order, and
- (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including
- (i) the identifier assigned to the marketplace where the order was executed,
 - (ii) whether the order was fully or partially executed,
 - (iii) the number of securities bought or sold,
 - (iv) the date and time of the execution of the order,
 - (v) the price at which the order was executed,
 - (vi) the identifier assigned to the marketplace participant on each side of the trade,
 - (vii) whether the transaction was a cross,
 - (viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,
 - (ix) the marketplace trading fee for each trade, and
 - (x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.

11.2.1 Transmission in Electronic Form – A marketplace ~~shall~~must transmit

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

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~~must keep

- (a) all records required to be made under sections 11.1 and 11.2;
 - (b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1;
 - (c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1 and 12.4, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;
 - (d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;
 - (e) the acknowledgement obtained under subsection 5.9(2) or 6.11(2);
 - (f) a copy of any agreement referred to in section 8.4 of NI 23-101; ~~and~~
 - (g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3);
 - ~~(h) a copy of any agreement referred to in section 5.10; and~~
 - ~~(i) a copy of any agreement referred to in paragraph 5.12(c).~~
- (2) During the period in which a marketplace is in existence, the marketplace ~~shall~~must keep
- (a) all organizational documents, minute books and stock certificate books;
 - (b) copies of all forms filed under Part 3; and
 - (c) in the case of an ATS, copies of all notices given under section 6.7.

11.4 [repealed]**11.5 Synchronization of Clocks**

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

PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

12.1 System Requirements – ~~For each of its systems~~system, operated by or on behalf of the marketplace, that ~~supports~~supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace ~~shall~~must

- (a) develop and maintain
 - (i) an adequate system of internal control over those systems; ~~and~~
 - (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support; ~~and~~
- (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,
 - (i) make reasonable current and future capacity estimates; ~~and~~

- (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and
- (c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction ~~or delay, delay or security breach~~ and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the marketplace's internal review of the failure, malfunction, delay or security breach.

12.1.1 Auxiliary Systems – For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must

- (a) develop and maintain an adequate system of information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, and
- (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material security breach and provide timely updates on the status of the breach, the resumption of service, where applicable, and the results of the marketplace's internal review of the security breach.

12.2 System Reviews

- (1) ~~For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall~~ A marketplace must annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that ~~the marketplace~~ is in compliance with
 - (a) paragraph 12.1(a),
 - (b) section 12.1.1, and
 - (c) section 12.4.
- (2) A marketplace ~~shall~~ must provide the report resulting from the review conducted under subsection (1) to
 - (a) its board of directors, or audit committee, promptly upon the report's completion, and
 - (b) ~~to the regulator or, in Québec, the securities regulatory authority, within 30 days of~~ by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.

12.3 Availability of Marketplace Technology Requirements and Testing Facilities

- (1) A marketplace ~~shall~~ must make publicly available all technology requirements regarding interfacing with or accessing the marketplace in their final form,
 - (a) if operations have not begun, for at least three months immediately before operations begin; and
 - (b) if operations have begun, for at least three months before implementing a material change to its technology requirements.
- (2) After complying with subsection (1), a marketplace ~~shall~~ must make available testing facilities for interfacing with or accessing the marketplace,
 - (a) if operations have not begun, for at least two months immediately before operations begin; and
 - (b) if operations have begun, for at least two months before implementing a material change to its technology requirements.
- (3) A marketplace ~~shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).~~ must not begin operations before

- (a) it has complied with paragraphs (1)(a) and (2)(a).
- (b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and
- (c) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.
- (3.1) A marketplace must not implement a material change to the systems referred to in section 12.1 before
- (a) it has complied with paragraphs (1)(b) and (2)(a), and
- (b) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.
- (4) ~~Paragraphs 12.3(1)(b) and (2)(b) do~~ Subsection (3.1) does not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if
- (a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and
- (b) the marketplace publishes the changed technology requirements as soon as practicable.

12.3.1 Uniform Test Symbols

A marketplace must use uniform test symbols, as set by a regulator, or in Québec, the securities regulatory authority, for the purpose of performing testing in its production environment.

12.4 Business Continuity Planning

- (1) A marketplace must
- (a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and
- (2) ~~A marketplace must b)~~ test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing, can resume operations within two hours following the declaration of a disaster by the marketplace.
- (3) A recognized exchange or quotation and trade reporting system, that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system.
- (4) A regulation services provider, that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider.

12.4.1 Industry-Wide Business Continuity Tests

A marketplace, recognized clearing agency, information processor, and participant dealer must participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority.

PART 13 CLEARING AND SETTLEMENT**13.1 Clearing and Settlement**

- (1) All trades executed on a marketplace ~~shall~~must be reported to and settled through a clearing agency.
- (2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber ~~shall~~must enter into an agreement that specifies whether the trade ~~shall~~must be reported ~~and settled to a clearing agency~~ by
 - (a) the ATS;
 - (b) the subscriber; or
 - (c) an agent for the subscriber that is a clearing member of a clearing agency.
- (3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber ~~shall~~must enter into an agreement that specifies whether the trade ~~shall~~must be reported ~~and settled to a clearing agency~~ by
 - (a) the ATS; or
 - (b) an agent for the subscriber that is a clearing member of a clearing agency.

13.2 Access to Clearing Agency of Choice

- (1) A marketplace must report a trade in a security to a clearing agency designated by a marketplace participant.
- (2) Subsection (1) does not apply to a trade in a security that is a standardized derivative or an exchange-traded security that is an option.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR**14.1 Filing Requirements for an Information Processor**

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

14.2 Change in Information

- (1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor ~~shall~~must file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.
- (2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor ~~shall~~must, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

- (1) If an information processor intends to cease carrying on business as an information processor, the information processor ~~shall~~must file a report on Form 21-101F6 at least 30 days before ceasing to carry on that business.
- (2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor ~~shall~~must file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

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

- (a) provide information to the information processor in accordance with Part 7 or 8, as applicable; and
 - (b) comply with any other reasonable requirements set by the information processor.
- (2) An information processor ~~shall~~must provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.
- (3) An information processor ~~shall~~must keep such books, records and other documents as are reasonably necessary for the proper recording of its business.
- (4) An information processor ~~shall~~must establish in a timely manner an electronic connection or changes to an electronic connection to a marketplace, inter-dealer bond broker or dealer that is required to provide information to the information processor.
- (5) An information processor ~~shall~~must provide prompt and accurate order and trade information and ~~shall~~must not unreasonably restrict fair access to such information.
- (6) An information processor must file annual audited financial statements within 90 days after the end of its financial year that
- (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,
 - (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and
 - (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor's report.
- (6.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the income statement and the statement of cash flow of the information processor and any other information necessary to demonstrate the financial condition of the information processor within 90 days after the end of the financial year of the person or company.
- (7) An information processor must file its financial budget within 30 days after the start of a financial year.
- (7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days of the start of the financial year of the person or company.
- (8) An information processor must file, within 30 days after the end of each calendar quarter, the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.
- (9) An information processor must file, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information required by the Instrument, including where the list of designated securities can be found.

14.5 System Requirements – An information processor ~~shall~~must,

- (a) develop and maintain
 - (i) an adequate system of internal controls over its critical systems;₂ and
 - (ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support;₂
- (b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,
 - (i) make reasonable current and future capacity estimates for each of its systems;₂ and

- (ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner;²
- (c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a) and section ~~14.6~~^{14.6};
- (d) provide the report resulting from the review conducted under paragraph (c) to
 - (i) its board of directors or the audit committee promptly upon the report's completion, and
 - (ii) the regulator or, in Québec, the securities regulatory authority, ~~within 30 days of~~ by the earlier of the 30th day after providing the report it to its board of directors or the audit committee; ~~or the 60th day after the calendar year end,~~ and
- (e) promptly notify the following of any failure, malfunction or material delay of its systems or equipment
 - (i) the regulator or, in Québec, the securities regulatory authority;² and
 - (ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.

14.6 Business Continuity Planning

~~(1)~~—An information processor must

- ~~(a)~~ develop and maintain reasonable business continuity plans, including disaster recovery plans;²
- ~~(2)~~ An information processor must b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and
- ~~(c)~~ establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.

14.7 Confidential Treatment of Trading Information

An information processor must not release order and trade information to a person or company other than the marketplace, inter-dealer bond broker or dealer that provided this information in accordance with this Instrument, ~~or other than~~ a securities regulatory authority, unless:

- (a) the release of that information is required by this Instrument or under applicable law;² or
- (b) the information processor received prior approval from the securities regulatory authority.

14.8 Transparency of Operations of an Information Processor

An information processor must publicly disclose on its website information reasonably necessary to enable a person or company to understand the information processor's operations or services it provides including, but not limited to:

- (a) all fees charged by the information processor for the consolidated data;²
- (b) a description of the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities;²
- (c) access requirements;² and
- (d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor.

PART 15 EXEMPTION

15.1 Exemption

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

10. Market Regulation is being conducted by:
- the exchange
 - the quotation and trade reporting system
 - regulation services provider other than the filer (see Exhibit M)

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the exchange or quotation and trade reporting system, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect ~~shall~~must be furnished instead of such Exhibit.

Except as provided below, if the filer, recognized exchange or recognized quotation and trade reporting system files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer, recognized exchange or recognized quotation and trade reporting system, must, in order to comply with subsections 3.2(1), 3.2(2) or 3.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide a clean and a blacklined version showing changes from the previous filing.

If the filer, recognized exchange or recognized quotation and trade reporting system has otherwise filed the information required by the previous paragraph pursuant to section 5.5 of National Instrument 21-101, it is not required to file the information again as an amendment to an Exhibit. However, if supplementary material relating to a filed rule is contained in an Exhibit, an amendment to the Exhibit must also be filed.

Exhibit A – Corporate Governance

1. Legal status:
 - Corporation
 - Partnership
 - Sole Proprietorship
 - Other (specify):
2. Except where the exchange or quotation and trade reporting system is a sole proprietorship, indicate the following:
 1. Date (DD/MM/YYYY) of formation.
 2. Place of formation.
 3. Statute under which exchange or quotation and trade reporting system was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.
4. Provide the policies and procedures to address potential conflicts of interest arising from the operation of the marketplace or the services it provides, including those related to the commercial interest of the marketplace, the interests of its owners and its operators, the responsibilities and sound functioning of the marketplace, and those between the operations of the marketplace and its regulatory responsibilities.

Exhibit B – Ownership

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the exchange or recognized quotation and trade reporting system. For each of the persons listed in the Exhibit, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest.

4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.
5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

In the case of an exchange or quotation and trade reporting system that is publicly traded, if the exchange or quotation and trade reporting system is a corporation, please only 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.

Exhibit C – Organization

1. A list of partners, directors, officers, governors, and members of the board of directors and any standing committees of the board, 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. Principal business or occupation and title.
 3. Dates of commencement and expiry of present term of office or position .
 4. Type of business in which each is primarily engaged and current employer.
 5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
 6. Whether the person is considered to be an independent director.
2. A list of the committees of the board, including their mandates and the Board mandate.

Exhibit D – Affiliates

1. For each affiliated entity of the exchange or quotation and trade reporting system provide the name, head office address and describe the principal business of the affiliate.
2. For each affiliated entity of the exchange or quotation and trade reporting system
 - (i) to which the exchange or quotation and trade reporting system has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace*, including order entry, trading, execution, routing and data, or
 - (ii) with which the exchange or quotation and trade reporting system has any other material business relationship, including loans, cross-guarantees, etc.

provide the following information:

1. Name and address of the affiliate.
2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.
3. A description of the nature and extent of the contractual and other agreements with the exchange and quotation and trade reporting system, and the roles and responsibilities of the affiliate under the arrangement.
4. A copy of each material contract relating to any outsourced functions or other material relationships.
5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.
6. For the latest financial year of the affiliated entity, financial statements, which may be unaudited, prepared in accordance with:

- a. Canadian GAAP applicable to publicly accountable enterprises; or
- b. Canadian GAAP applicable to private enterprises; or
- c. IFRS.

Where the affiliated entity is incorporated or organized under the laws of a foreign jurisdiction, such financial statements may also be prepared in accordance with:

- a. U.S. GAAP; or
- b. accounting principles of a designated foreign jurisdiction as defined under National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

Exhibit E – Operations of the Marketplace

Describe in detail the manner of operation of the market or facility and its associated functions. This ~~should~~must include, but ~~is not~~is limited to, a description of the following:

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.
3. The hours of operation.
4. A description of the services offered by the marketplace, including, but not limited to, order entry, co-location, trading, execution, routing and data.
5. A list of the types of orders offered, including, but not limited to, a description of the features and characteristics of orders.
6. Procedures regarding the entry, display and execution of orders. If indications of interest are used, please describe the information they include and list the types of recipients.
7. ~~Description~~A description of how orders interact, including, but not limited to, the priority of execution for all order types.
8. ~~Description~~A description of order routing procedures.
9. ~~Description~~A description of order and trade reporting procedures.
10. ~~Description~~A description of procedures for clearance and settlement of transactions.
11. The safeguards and procedures of the marketplace to protect trading information of marketplace participants.
12. Training provided to participants and a copy of any materials provided both with respect to systems of the marketplace, the requirements of the marketplace, and the rules of the regulation services providers, if applicable.
13. Steps taken to ensure that marketplace participants have knowledge of and comply with the requirements of the marketplace.

The filer must provide all policies, procedures and trading manuals related to the operation of the marketplace and, if applicable, the order router.

The filer must provide all material contracts related to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing.

Exhibit F – Outsourcing

Where the exchange or quotation and trade reporting system has outsourced the operation of key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace* to an arms-length third party, including any function

associated with the routing, trading, execution, data clearing and settlement and, if applicable, surveillance, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the exchange or quotation and trade reporting system and the roles and responsibilities of the arms-length party under the arrangement.
3. A copy of each material contract relating to any outsourced function.
4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 Marketplace Operation.
5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 Marketplace Operation.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 Marketplace Operation to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 Marketplace Operation to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 Marketplace Operation.

Exhibit G – Systems and Contingency Planning

General

Provide:

- For each
1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feedfeeds, co-location and if applicable, market surveillance, and trade clearing, describe:
 2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.

7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.
4. Current and future capacity estimates.

IT Risk Assessment

2. Procedures for reviewing system capacity.

Please describe the IT risk assessment framework, including:

3. Procedures for reviewing system security.
 1. How the probability and likelihood of IT threats are considered.
4. Procedures to conduct stress tests.
 2. How the impact of risks are measured according to qualitative and quantitative criteria.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant
 3. The documentation- process for acceptable residual risks with related offsets.
6. Procedures to test business continuity and disaster recovery plans.
 4. The development of management's action plan to implement a risk response to a risk that has not been accepted.

Exhibit H – Custody of Assets

PART 1: If the exchange or quotation and trade reporting system proposes to hold funds or securities of a marketplace participant on a regular basis, a description of the controls that will be implemented to ensure the safety of the funds or securities.

PART 2: If any other person or company, other than the exchange or quotation and trade reporting system, will hold or safeguard funds or securities of a marketplace participant on a regular basis, provide the name of the person or company and a description of the controls that will be implemented to ensure the safety of the funds or securities.

Exhibit I – Securities

1. List the types of securities listed on the exchange or quoted on the quotation and trade reporting system. If this is an initial filing, list the types of securities the Filer/filer expects to list or quote.
2. List the types of any other securities that are traded on the marketplace or quoted on the quotation and trade reporting system, indicating the exchange(s) on which such securities are listed. If this is an initial filing, list the types of securities the Filer/filer expects to trade.

Exhibit J – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the marketplace described in Exhibit E- item 4, including trading on the exchange or quotation and trade reporting system.
2. Describe the classes of marketplace participants.
3. Describe the exchange or quotation and trade reporting service's criteria for access to the services of the marketplace.
4. Describe any differences in access to the services offered by the marketplace to different groups or classes of marketplace participants.
5. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the services of the exchange or quotation and trade reporting system.
6. Describe any procedures that will be involved in the suspension or termination of a marketplace participant.
7. Describe the exchange or quotation and trade reporting system's arrangements for permitting clients of marketplace participants to have access to the marketplace. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit K – Marketplace Participants

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

1. Name.
2. Date of becoming a marketplace participant.
3. Describe the type of trading activities primarily engaged in by the marketplace participant (e.g., agency trading, proprietary trading, registered trading, market making).
4. The class of participation or other access. Please identify if the marketplace participant accesses the marketplace through co-location.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each:
 - (i) whether they were denied or limited access;_{7.2}
 - (ii) the date the marketplace took such action;_{7.2}
 - (iii) the effective date of such action;_{7.2} and
 - (iv) the nature and reason for any denial or limitation of access.

Exhibit L – Fees

A description of the fee model and all fees charged by the marketplace, or by a party to which services have been directly or indirectly outsourced, including, but not limited to, fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, how such fees are set, and any fee rebates or discounts and how the rebates and discounts are set.

Exhibit M – Regulation

Market Regulation is being conducted by:

the exchange or QTRS

1. Provide a description of the regulation performed by the exchange or QTRS, including the structure of the department performing regulation, how the department is funded, policies and procedures in place to ensure confidentiality and the management of conflicts of interest, and policies and procedures relating to conducting an investigation.
2. If more than one entity is performing regulation services for a type of security and the filer is conducting market regulation for itself and its members, provide a copy of the contract between the filer and the regulation services provider providing for co-ordinated monitoring and enforcement under section 7.5 of National Instrument 23-101 *Trading Rules*.

a regulation services provider other than the filer (provide a copy of the contract between the filer and the regulation services provider.)

Exhibit N – Acknowledgement

The form of acknowledgement required by subsection 5.9(2) of National Instrument 21-101-101 Marketplace Operation.

CERTIFICATE OF EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20__

(Name of exchange or quotation and trade reporting system)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

FORM 21-101F2
INITIAL OPERATION REPORT
INFORMATION STATEMENT
ALTERNATIVE TRADING SYSTEM

TYPE OF FILING:

INITIAL OPERATION REPORT **AMENDMENT : AMENDMENT No.**
 identification:

1. Full name of alternative trading system:
2. Name(s) under which business is conducted, if different from item 1:
3. If this filing makes a name change on behalf of the alternative trading system in respect of the name set out in Item 1 or Item 2, enter the previous name and the new name.

Previous name:

New name:

4. Head office

Address:

Telephone:

Facsimile:

5. Mailing address (if different):

6. Other offices

Address:

Telephone:

Facsimile:

7. Website address:

8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:

9. Counsel

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

10. The ATS is
- a member of _____.(name of the recognized self-regulatory entity)
- a registered dealer
11. If this is an initial operation report, the date the alternative trading system expects to commence operation:
12. The ATS has contracted with [name of regulation services provider] to perform market regulation for the ATS and its subscribers.

EXHIBITS

File all Exhibits with the Initial Operation Report. For each Exhibit, include the name of the ATS, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect ~~shall~~must be furnished instead of such Exhibit.

If the ATS files an amendment to the information provided in its Initial Operation Report and the information relates to an Exhibit filed with the Initial Operation Report or a subsequent amendment, the ATS must, in order to comply with subsection 3.2(1), 3.2(2) or 3.2(3) of National Instrument 21-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The ATS must provide a clean and blacklined version showing changes from the previous filing.

Exhibit A – Corporate Governance

1. Legal status:
- Corporation
- Partnership
- Sole Proprietorship
- Other (specify):
2. Except where the ATS is a sole proprietorship, indicate the following:
1. Date (DD/MM/YYYY) of formation.
2. Place of formation.
3. Statute under which the ATS was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent amendments.
4. Provide the policies and procedures to address conflicts of interest arising from the operation of the marketplace or the services it provides, including those related to the commercial interest of the marketplace, the interests of its owners and its operators, and the responsibilities and sound functioning of the marketplace.

Exhibit B – Ownership

A list of the registered or beneficial holders of securities of, partnership interests in, or other ownership interests in, the ATS. For each of the persons listed in the Exhibit, please provide the following:

1. Name.
2. Principal business or occupation and title.
3. Ownership interest.
4. Nature of the ownership interest, including a description of the type of security, partnership interest or other ownership interest.

5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

In the case of an ATS that is publicly traded, if the ATS is a corporation, please only provide a list of each shareholder that directly owns five percent or more of a class of a voting security of the ATS.

Exhibit C – Organization

1. A list of partners, directors, officers, governors, and members of the board of directors and any standing committees of the board, 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. Principal business or occupation and title.
 3. Dates of commencement and expiry of present term of office or position.
 4. Type of business in which each is primarily engaged and current employer.
 5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
 6. Whether the person is considered to be an independent director.
2. A list of the committees of the board, including their mandates.

Exhibit D – Affiliates

1. For each affiliated entity of the ATS provide the name, head office address and describe the principal business of the affiliate.
2. For each affiliated entity of the ATS
 - (i) to which the ATS has outsourced any of its key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace*, including order entry, trading, execution, routing and data, or
 - (ii) with which the ATS has any other material business relationship, including loans, cross-guarantees, etc.provide the following information:
 1. Name and address of the affiliate.
 2. The name and title of the directors and officers, or persons performing similar functions, of the affiliate.
 3. A description of the nature and extent of the contractual and other agreement with the ATS, and the roles and responsibilities of the affiliate under the arrangement.
 4. A copy of each material contract relating to any outsourced functions or other material relationship.
 5. Copies of constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents.

Exhibit E – Operations of the Marketplace

Describe in detail the manner of operation of the market and its associated functions. This ~~should~~must include, but is not ~~be~~ limited to, a description of the following:

1. The structure of the market (e.g., call market, auction market, dealer market).
2. Means of access to the market or facility and services, including a description of any co-location arrangements.

3. The hours of operation.
4. A description of the services offered by the marketplace including, but not limited to, order entry, co-location, trading, execution, routing and data.
5. A list of the types of orders offered, including, but not limited to, a description of the features and characteristics of orders.
6. Procedures regarding the entry, display and execution of orders. If indications of interest are used, please describe the information they include and list the types of recipients.
7. ~~Description~~ A description of how orders interact, including, but not limited to, the priority of execution for all order types.
8. ~~Description~~ A description of order routing procedures.
9. ~~Description~~ A description of order and trade reporting procedures.
10. ~~Description~~ A description of procedures for clearance and settlement of transactions.
11. The safeguards and procedures of the marketplace to protect trading information of marketplace participants.
12. Training provided to participants and a copy of any materials provided both with respect to systems of the marketplace, the requirements of the marketplace, and the rules of the regulation services providers, if applicable.
13. Steps taken to ensure that marketplace participants have knowledge of and comply with the requirements of the marketplace.

The filer must provide all policies, procedures and trading manuals related to the operation of the marketplace and, if applicable, the order router.

The filer must provide all material contracts relating to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing.

Exhibit F – Outsourcing

Where the ATS has outsourced the operation of key services or systems affecting the market or facility described in Exhibit E – *Operations of the Marketplace* to an arms-length third party, including any function associated with—the routing, trading, execution, clearing and settlement, data and co-location, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the ATS and the roles and responsibilities of the arms-length party under the arrangement.
3. A copy of each material contract relating to any outsourced function.
4. A copy of the marketplace's policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 Marketplace Operation.
5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 Marketplace Operation.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 Marketplace Operation to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.

7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

Exhibit G – Systems and Contingency Planning

General

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance, and trade clearing, describe:
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

Business Continuity Planning

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

Systems Capacity

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
 2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
 3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
 4. The message protocols supported by the marketplace's systems.
 5. The transmission protocols used by the marketplace's systems.
1. Current and future capacity estimates.

IT Risk Assessment

2. Procedures for reviewing system capacity.

Please describe the IT risk assessment framework, including:

3. Procedures for reviewing system security.
 1. How the probability and likelihood of IT threats are considered.
4. Procedures to conduct stress tests.
 2. How the impact of risks are measured according to qualitative and quantitative criteria.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant
 3. The documentation process for acceptable residual risks with related offsets.
6. Procedures to test business continuity and disaster recovery plans.
 4. The development of management's action plan to implement a risk response to a risk that has not been accepted.

Exhibit H – Custody of Assets

1. If the ATS proposes to hold funds or securities of a marketplace participant on a regular basis, a description of the controls that will be implemented to ensure the safety of the funds or securities.
2. If any other person or company, other than the ATS, will hold or safeguard funds or securities of a marketplace participant on a regular basis, provide the name of the person or company and a description of the controls that will be implemented to ensure the safety of the funds or securities.

Exhibit I – Securities

List the types of securities that are traded on the ATS, indicating the exchange(s) on which such securities are listed. If this is an initial filing, list the types of securities the ATS expects to trade.

Exhibit J – Access to Services

1. A complete set of all forms, agreements or other materials pertaining to access to the services of the marketplace described in Exhibit E-item 4, including trading on the ATS.
2. Describe the classes of marketplace participants (i.e. dealer, institution, or retail).
3. Describe the ATS's criteria for access to the services of the marketplace.
4. Describe any differences in access to the services offered by the marketplace to different groups or classes of marketplace participants.
5. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the services of the ATS.
6. Describe any procedures that will be involved in the suspension or termination of a marketplace participant.
7. Describe the ATS's arrangements for permitting clients of marketplace participants to have access to the marketplace. Provide a copy of any agreements or documentation relating to these arrangements.

Exhibit K – Marketplace Participants

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

1. Name.
2. Date of becoming a marketplace participant.
3. Describe the type of trading activities primarily engaged in by the marketplace participant (e.g., agency trading, proprietary trading, registered trading, market making).
4. The class of participation or other access. Please identify if the marketplace participant accesses the marketplace through co-location.
5. Provide a list of all persons or entities that were denied or limited access to the marketplace, indicating for each:
 - (i) whether they were denied or limited access;
 - (ii) the date the marketplace took such action;
 - (iii) the effective date of such action; and
 - (iv) the nature and reason for any denial or limitation of access.

Exhibit L – Fees

A description of the fee model and all fees charged by the marketplace, or by a party to whom services have been directly or indirectly outsourced, including, but not limited to, fees relating to connecting to the market or facility, access, data, regulation (if applicable), trading, routing, and co-location, how such fees are set and any fee rebates or discounts and how the rebates or discounts are set.

Exhibit M – Regulation

The ATS has contracted with regulation services provider _____ to perform market regulation for ATS and its subscribers. Provide a copy of the contract between the filer and the regulation services provider.

Exhibit N – Acknowledgement

The form of acknowledgement required by subsections 5.9(2) and 6.11(2) of National Instrument 21-404-101 Marketplace Operation.

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)

FORM 21-101F3
QUARTERLY REPORT OF MARKETPLACE ACTIVITIES
[in force December 31, 2012]

A – General Marketplace Information

1. Marketplace Name:
2. Period covered by this report:
3. Identification
 - A. Full name of marketplace (if sole proprietor, last, first and middle name):
 - B. Name(s) under which business is conducted, if different from item A:
 - C. Marketplace main street address:
4. ~~Attach as **Exhibit A** a current list of all marketplace participants at the end of the period covered by this report, identifying those market participants that are using the marketplace's co-location services, if any. For each marketplace participant, indicate the number of trader IDs that may access the marketplace.~~
5. ~~Attach as **Exhibit B** a list of all marketplace participants granted, denied or limited access to the marketplace during the period covered by this report, indicating for each marketplace participant: (a) whether they were granted, denied or limited access; (b) the date the marketplace took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access.~~6. 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.
- 7.5. 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.
- 8.6. Systems – If any outages occurred at any time during the period for any system relating to trading activity, including trading, routing or data, provide the date, duration and reason for the outage and its resolution.
7. Systems Changes – A brief description of any significant changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing that were planned, under development, or implemented during the quarter. Please provide the current status of the changes that are under development.

B – Marketplace Activity Information**Section 1 – Equity Marketplaces Trading Exchange-Listed Securities**

1. **General trading activity** – For each type of security traded on the marketplace, provide the details (where appropriate) requested in the form set out in **Chart 1**. The information ~~should~~must be provided for transactions executed at the opening of the market, during regular trading hours, and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 1 – General trading activity for equity marketplaces trading exchange-listed securities

Category of Securities	Volume		Value		Number of Trades	
	Transparent	Non-transparent	Transparent	Non-transparent	Transparent	Non-transparent
Exchange-Traded Securities						
1. Equity (includes preferred shares)						
2. Exchange-						

traded funds (ETFs)						
3. Debt securities						
4. Options						
Foreign Exchange-Traded Securities						
1. Equity (includes preferred shares)						
2. ETFs						
3. Debt securities						
4. Options						

2. **Crosses** – Provide the details (where appropriate) requested in the form set out in **Chart 2** below for each type of cross executed on the marketplace for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 2 – Crosses

Types of Crosses	%-Volume	%-Value	%-Number of Trades
% of exchange-traded securities that are			
1. Intentional Crosses ¹			
2. Internal crosses			
3. Other crosses			

3. **Order information** – Provide the details (where appropriate) requested in the form set out in **Chart 3** below for each type of order in exchange traded securities executed on the marketplace for orders entered at the opening of the market, during regular trading and after hours during the quarter. Enter “none”, “N/A”, or “0” where appropriate.

Chart 3 – Order information

Types of Orders	Number of Orders	%-Orders Executed	%-Orders Cancelled ²
1. Anonymous ³			
2. Fully transparent			
3. Pegged Orders			
4. Fully hidden			
5. Separate dark facility of a transparent market			
6. Partially hidden (reserve)			
7. Total number of orders entered during the quarter			

4. **Trading by security** – Provide the details requested in the form set out in **Chart 4** below for the 10 most traded securities on the marketplace (based on the volume of securities traded) for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

¹ See definition of an Internal and Intentional Cross in Section 1.1 of the Universal Market Integrity Rules.

² By cancellations, we mean “pure” cancellations, i.e. cancellations that do not result in a new and amended order.

³ Orders executed under ID 001.

Chart 4 – Most traded securities

Category of Securities	Volume	Value	Number of Trades
Exchange-Traded Securities			
1. Equity (includes preferred shares) [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
2. ETFs [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
3. Debt [Enter issuer, maturity and coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
Foreign Exchange-Traded Securities			
1. Equity (includes preferred shares) [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
2. ETFs [Name of Securities] 1. 2. 3. 4.			

5. 6. 7. 8. 9. 10.			
3. Debt [Name of Securities] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			

5. Trading by marketplace participant – Provide the details requested in the form set out in **Chart 5** below for the top 10 marketplace participants (based on the volume of securities traded). The information ~~should~~must be provided for the total trading volume, including for trades executed at the opening of the market, during regular trading and after hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate. Where a marketplace’s marketplace participants are dealers and non-dealers, the marketplace ~~should~~must complete a separate chart for each.

Chart 5 – Concentration of trading by marketplace participant

Marketplace Participant Name	Total Active Volume	Total Passive Volume
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

6. Routing activities – Indicate the percentage of marketplace participants that used marketplace-owned or third- party or affiliated routing services during the reporting period. In addition, provide the information in **Chart 6** below.

Chart 6 – Routing of marketplace orders

Number of orders executed on the reporting marketplace	
Number of orders routed to away marketplaces (list all marketplaces where orders were routed)	
Number of orders that are marked and treated as Directed Action Orders (DAO)	

~~7. **Co-location** – Indicate the percentage of marketplace participants that are using the marketplace’s co-location services, if any.~~

Section 2 – Fixed Income Marketplaces

1. General trading activity – Provide the details (where appropriate) requested in the form set out in **Chart 7** below for each type of fixed income security traded on the marketplace for transactions executed during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 7 – Fixed income activity

Category of Securities	Value Traded	Number of Trades
Domestic Unlisted Debt Securities – Government		
1. Federal		
2. Federal Agency		
3. Provincial and Municipal		
Domestic Unlisted Debt Securities – Corporate		
Domestic Unlisted Debt Securities – Other		
Foreign Unlisted Debt Securities – Government		
Foreign Unlisted Debt Securities – Corporate		
Foreign Unlisted Debt Securities – Other		

2. Trading by security – Provide the details requested in the form set out in **Chart 8** below for the 10 most traded ~~each~~ fixed income securities security traded on the marketplace ~~(based on the value of the volume traded)~~ for trades executed during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 8 – ~~Most traded~~ Traded fixed income securities

Category of Securities	Value Traded	Number of Trades
Domestic Unlisted Debt Securities – Government 1. Federal [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Federal Agency [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
3. Provincial and Municipal [Enter issuer, maturity, coupon] 1. 2. 3.		

Category of Securities	Value Traded	Number of Trades
4. 5. 6. 7. 8. 9. 10.		
Domestic Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Domestic Unlisted Debt Securities – Other [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign Unlisted Debt Securities – Government [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign Unlisted Debt Securities – Corporate [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		

Category of Securities	Value Traded	Number of Trades
Foreign Unlisted Debt Securities – Other [Enter issuer, maturity, coupon] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		

3. **Trading by marketplace participant** – Provide the details requested in the form set out in **Chart 9** below for the top 10 marketplace participants for trades executed during regular trading hours during the quarter. Enter “None”, “N/A”, or “0” where appropriate. If marketplace participants are dealers and non-dealer institutions, the marketplace ~~should~~must complete a separate chart for each.

Chart 9 – Concentration of trading by marketplace participant

Marketplace Participant Name	Value Traded
1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	

Section 3 – Securities Lending Marketplaces

1. **General lending activity** – Please provide details (where appropriate) requested in the form set out in **Chart 10** below for each type of securities loaned on the marketplace. Enter “None”, “N/A” or “0” where appropriate.

Chart 10 – Lending activity

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
Domestic		
1. Corporate Equity Securities		
1.1. Common Shares		
1.2. Preferred Shares		
2. Non-Corporate Equity Securities (e.g. trust units, partnership units, etc.) (please specify)		
3. Government Debt Securities		
4. Corporate Debt Securities		
5. Other Fixed Income Securities (please specify)		
Foreign		
1. Corporate Equity Securities		
1.1. Common Shares		

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
1.2. Preferred Shares		
2. Non-Corporate Equity Securities (e.g. trust units, partnership units, etc.) (Please specify)		
3. Government Debt Securities		
4. Corporate Debt Securities		
5. Other Fixed Income Securities (please specify)		

2. Trading by marketplace participant – Provide the details requested in the form set out in **Chart 11** and **Chart 12** below for the top 10 borrowers and lenders based on their aggregate value of securities borrowed or loaned, respectively, during the quarter.

Chart 11 – Concentration of activity by borrower

Borrower Name	Aggregate Value of Securities Borrowed During the Quarter
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Chart 12 – Concentration of activity by lender

Lender Name	Aggregate Value of Securities Loaned During the Quarter
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

3. Lending activity by security – Provide the details requested in the form set out in **Chart 13** below for the 10 most loaned securities on the marketplace (based on the quantity of securities loaned during the quarter). Enter “None”, “N/A” or “0” where appropriate.

Chart 13 – Most loaned securities

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
Domestic		
1. Common Shares [Name of Security]		
1.		

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Preferred Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
3. Non-Corporate Equity Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
4. Government Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
5. Corporate Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
6. Other Fixed Income Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
Foreign		
1. Common Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
2. Preferred Shares [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
3. Non-Corporate Equity Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
4. Government Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7.		

Category of Securities	Quantity of Securities Lent During the Quarter	Aggregate Value of Securities Lent During the Quarter
8. 9. 10.		
5. Corporate Debt Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		
6. Other Fixed Income Securities [Name of Security] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.		

Section 4 – Derivatives Marketplaces in Quebec

1. **General trading activity** – For each category of product traded on the marketplace, provide the details (where appropriate) requested in the form set out in **Chart 14** below. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options should be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information must be provided for transactions executed in the early session, during the regular session, and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 14 – General trading activity

Category of Product	Volume	Number of Trades	Open Interest (Number/End of Quarter)
Futures Products			
1(a) Interest rate – short term			
1(b) Interest rate – long term			
2. Index			
3. ETF			
4. Equity			
5. Currency			
6. Energy			
7. Others, please specify			
Options Products			
1(a) Interest rate -short term			
1(b) Interest rate – long term			

Category of Product	Volume	Number of Trades	Open Interest (Number/End of Quarter)
2. Index			
3. ETF			
4. Equity			
5. Currency			
6. Energy			
7. Others, please specify			

2. Trades resulting from pre-negotiation discussions – Provide the details (where appropriate) requested in the form set out in **Chart 15** below by product and for each type of trade resulting from pre-negotiation discussions. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options ~~should~~must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information ~~should~~must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 15 – Trades resulting from pre-negotiation discussions

Type of Trade	% of Volume	% Number of Trades
Futures Products		
A. Cross		
B. Pre-arranged		
C. Block		
D. Exchange for physical		
E. Exchange for risk		
F. Riskless basis cross		
G. Others, please specify		
Options Products		
A. Cross		
B. Pre-arranged		
C. Block		
D. Others, please specify		

3. Order information – Provide the details (where appropriate) requested in the form set out in **Chart 16** below by product and for each type of order in exchange traded contracts executed on the marketplace. For products other than options on ETFs and equity options, provide the details on a product-by-product basis in the appropriate category. Details for options on ETFs and equity options ~~should~~must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information ~~should~~must be provided for orders entered in the early session, during the regular session and in the extended session during the quarter. Enter “none”, “N/A”, or “0” where appropriate.

Chart 16 – Order Information

Type of Orders	% Volume	% Number of Trades
1. Anonymous		
2. Fully transparent		
3. Pegged orders		
4. Fully hidden		

Type of Orders	%-Volume	%-Number of Trades
5. Separate dark facility of a transparent market		
6. Partially hidden (reserve, for example, iceberg orders)		

4. **Trading by product** – Provide the details requested in the form set out in **Chart 17** below. For each product other than options on ETFs and equity options, list the most actively-traded contracts (by volume) on the marketplace that in the aggregate constitute at least 75% of the total volume for each product during the quarter. The list must include at least 3 contracts. For options on ETFs and equity options, list the 10 most actively traded classes by volume. Details for options on ETFs and equity options should must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information should must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter “None”, “N/A”, or “0” where appropriate.

Chart 17 – Most traded contracts

Category of Product	Volume	Number of Trades	Open Interest (Number/End of Quarter)
Futures Products			
1. Name of products – 3 most-traded contracts (or more as applicable) 1. 2. 3.			
Options Products			
2. ETF [Classes] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
3. Equity [Classes] 1. 2. 3. 4. 5. 6. 7. 8. 9. 10.			
4. Other listed options (specify for each) – 3 most traded contracts (or more as applicable) 1. 2. 3.			

5. **Concentration of trading by marketplace participant** – Provide the details requested in the form set out in **Chart 18** below. For each product other than options on ETFs and equity options, list the top marketplace participants whose aggregate

trading (by volume) constituted at least 75% of the total volume traded. The list must include at least 3 marketplace participants. For options on ETFs and equity options, provide the top 10 most active marketplace participants (by volume). The information ~~should~~must be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information ~~should~~must be provided for trades executed in the early session, during the regular session and in the extended session during the quarter. Enter "None", "N/A", or "0" where appropriate.

Chart 18 – Concentration of trading by marketplace participant

Product Name	Marketplace Participant Name	Volume
Futures		
Product Name (specify for each)	1. 2. 3. (more if necessary)	
Options		
ETF	1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	
Equity	1. 2. 3. 4. 5. 6. 7. 8. 9. 10.	
Other options (specify for each)	1. 2. 3. (more if necessary)	

6. ~~Co-location~~

~~Indicate the percentage of marketplace participants that are using the marketplace's co-location services, if any.~~

C – Certificate of Marketplace

The undersigned certifies that the information given in this report relating to the marketplace is true and correct.

DATED at _____ this ____ day of _____, 20__

(Name of Marketplace)

(Name of director, officer or partner – please type or print)

nature of director, officer or partner)

cial capacity – please type or print)

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

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

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the ATS, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect ~~shall~~must be furnished instead of such Exhibit.

Exhibit A

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

Exhibit B

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

Exhibit C

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

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this ____ day of _____, 20__

(Name of alternative trading system)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

FORM 21-101F5
INITIAL OPERATION REPORT FOR INFORMATION STATEMENT
INFORMATION PROCESSOR

TYPE OF FILING:

INITIAL FORM **AMENDMENT ; AMENDMENT No.**

GENERAL INFORMATION

1. Full name of information processor:
2. Name(s) under which business is conducted, if different from item 1:
3. If this filing makes a name change on behalf of the information processor in respect of the name set out in item 1 or item 2, enter the previous name and the new name:

Previous name:

New name:
4. Head office

Address:

Telephone:

Facsimile:
5. Mailing address (if different):
6. Other offices

Address:

Telephone:

Facsimile:
7. Website address:
8. Contact employee

Name and title:

Telephone number:

Facsimile:

E-mail address:
9. Counsel

Firm name:

Contact name:

Telephone number:

Facsimile:

E-mail address:

10. List of all marketplaces, dealers or other parties for which the information processor is acting or for which it proposes to act as an information processor. For each marketplace, dealer or other party, provide a description of the function(s) which the information processor performs or proposes to perform.
11. List all types of securities for which information will be collected, processed, distributed or published by the information processor. 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.

Exhibits

File all Exhibits with the Initial Form. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect ~~shall~~must be furnished instead of such Exhibit.

If the information processor files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the information processor must, in order to comply with sections 14.1 and 14.2 of National Instrument 21-404-101, provide a description of the change, the expected date of the implementation of the change, and file a complete and updated Exhibit. The information processor must provide a clean and a blacklined version showing changes from the previous filing.

Exhibit A – Corporate Governance

1. Legal status:
 - Corporation
 - Sole Proprietorship
 - Partnership
 - Other (specify):
2. 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) of formation.
 - b) Place of formation.
 - c) Statute under which the information processor was organized.
3. Provide a copy of the constating documents (including corporate by-laws), shareholder agreements, partnership agreements and other similar documents, and all subsequent documents.
4. Provide the policies and procedures which promote independence of the information processor from the marketplaces, inter-dealer bond brokers and dealers that provide data.
5. Provide the policies and procedures which address the potential conflicts of interest between the interests of the information processor and its owners, partners, directors and officers.

Exhibit B – Ownership

List any person or company who owns 10 percent or more of the information processor's outstanding shares or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the information processor. Provide the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis through which such person exercises or may exercise such control or direction.

Exhibit C – Organization

1. A list of the partners, directors, governors, and members of the board of directors and any standing committees of the board, or persons performing similar functions, who presently hold or have held their offices or positions during the

previous year, identifying those individuals with overall responsibility for the integrity and timeliness of data reported to and displayed by the system (the "System") of the information processor, indicating the following for each:

1. Name.
2. Principal business or occupation and title.
3. Dates of commencement and expiry of present term of office or position.
4. Type of business in which each is primarily engaged and current employer.
5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.
6. Whether the person is considered to be an independent director.
7. A list of the committees of the board, including their mandates.
8. A narrative or graphic description of the organizational structure of the information processor.

Exhibit D – Staffing

A description of the personnel qualifications for each category of professional, non-professional and supervisory employee employed by the information processor. Detail whether the personnel are employed by the information processor or a third party, identifying the employees responsible for monitoring the timeliness and integrity of data reported to and displayed by the System.

Exhibit E – Affiliates

For each affiliated entity of the information processor, and for any person or company with whom the information processor has a contractual or other agreement relating to the operations of the information processor, including loans or cross-guarantees, 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.
4. Date of incorporation in present form.
5. Description of nature and extent of affiliation and/or contractual or other agreement with the information processor.
6. Description of business or functions of the affiliates.
7. If a person or company has ceased to be an affiliated entity of the information processor during the previous year or ceased to have a contractual or other agreement relating to the operation of the information processor during the previous year, provide a brief statement of the reasons for termination of the relationship.

Exhibit F – Services

A description in narrative form of each service or function performed by the information processor. Include a description of all procedures utilized for the collection, processing, distribution, validation and publication of information with respect to orders and trades in securities.

Exhibit G – System and Operations

1. Describe the manner of operation of the System of the information processor that collects, processes, distributes and publishes information in accordance with National Instruments 21-101 and 23-101. This description ~~should~~must include the following:

1. The means of access to the System.

2. Procedures governing entry and display of quotations and orders in the System including data validation processes.
 3. A description of any measures used to verify the timeliness and accuracy of information received and disseminated by the ~~system~~System, including the processes to resolve data integrity issues identified.
 4. The hours of operation of the System.
 5. ~~Description~~A description of the training provided to users of the System and any materials provided to the users.
2. Include a list of all computer hardware utilized by the information processor to perform the services or functions listed in Exhibit F, indicating:
 1. Manufacturer, and manufacturer's equipment and identification number.
 2. Whether purchased or leased (if leased, duration of lease and any provisions for purchase or renewal).
 3. Where such equipment (exclusive of terminals and other access devices) is physically located.
 3. Provide a description of the measures or procedures implemented by the information processor to provide for the security of any system employed to perform the functions of an information processor. This ~~should~~must include a general description of any physical and operational safeguards designed to prevent unauthorized access to the system.
 4. Provide a description of 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.
 5. Describe the business continuity and disaster recovery plans of the information processor, and provide any relevant documentation.
 6. List 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. Provide the total number of interruptions which have lasted two minutes or less.
 7. Describe the procedures for reviewing system capacity, and indicate current and future capacity estimates.
 8. Quantify in appropriate units of measure the limits on the information processor's capacity to receive, collect, process, store or display the data elements included within each function.
 9. Identify the factors (mechanical, electronic or other) which account for the current limitations on the capacity to receive, collect, process, store or display the data elements included within each function described in section 8 above.
 10. Describe the procedures for conducting stress tests.

Exhibit H – Outsourcing

Where the information processor has outsourced the operation of any aspect of the services listed in Exhibit F to an arms-length third party, including any function related to the collection, consolidation, and dissemination of data, provide the following information:

1. Name and address of person or company to whom the function has been outsourced.
2. A description of the nature and extent of the contractual or other agreement with the information processor, and the roles and responsibilities of the arms-length third party under the arrangement.
3. A copy of each material contract relating to any outsourced function.

Exhibit I – Financial Viability

1. Provide a business plan with pro forma financial statements and estimates of revenue.

2. Discuss the financial viability of the information processor in the context of having sufficient financial resources to properly perform its functions.

Exhibit J – Fees and Revenue Sharing

1. Provide a complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the information processor for its information services. This would include all fees to provide data and fees to receive the data from the information processor.
2. Where arrangements ~~exists~~exist to share revenue from the sale of data disseminated by the information processor with marketplaces, inter-dealer bond brokers and dealers that provide data to the information processor in accordance with National Instrument 21-101, provide a complete description of the arrangements and the basis for these arrangements.

Exhibit K – Reporting to the Information Processor

1. List all persons and entities that provide data to the information processor in accordance with the requirements of National Instrument 21-101.
2. Provide a complete set of all forms, agreements and other materials pertaining to the provision of data to the information processor.
3. A description of any specifications or criteria required of marketplaces, inter-dealer bond brokers or dealers ~~who~~that provide securities information to the information processor for collection, processing for distribution or publication. Identify those specifications or 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 or criteria.
4. For each instance during the past year in which any person or entity has been prohibited or limited to provide data by the information processor, indicate the name of each such person or entity and the reason for the prohibition or limitation.

Exhibit L – Access to the Services of the Information Processor

1. A list of all persons and entities who presently subscribe or who have notified the information processor of their intention to subscribe to the services of the information processor.
2. The form of contract governing the terms by which persons may subscribe to the services of an information processor.
3. A description of any specifications or 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 or criteria. This applies to limits relating to providing information to the information processor and the limits relating to accessing the consolidated feed distributed by the information processor.
4. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the information processor, indicate the name of each such person and the reason for the prohibition or limitation.

Exhibit M – Selection of Securities for which Information Must Be Reported to the Information Processor

Where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with National Instrument 21-101, describe the manner of selection and communication of these securities. This description ~~should~~must include the following:

1. The criteria used to determine the securities for which information must be reported and the data which must be reported to the information processor.
2. The process for selection of the securities, including a description of the parties consulted in the process and the frequency of the selection process.
3. The process to communicate the securities selected and data to be reported to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by National Instrument 21-101. The description ~~should~~must include where this information is located.

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____, 20____

(Name of information processor)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

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

1. Identification:
 - A. Full name of information processor:
 - B. Name(s) under which business is conducted, if different from item 1A:
2. Date information processor proposes to cease carrying on business:
3. If cessation of business was involuntary, date information processor ceased to carry on business:

Exhibits

File all Exhibits with the Cessation of Operations Report. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect ~~shall~~must be furnished instead of such Exhibit.

Exhibit A

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

Exhibit B

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

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this ____ day of _____, 20__

(Name of information processor)

(Name of director, officer or partner – please type or print)

(Signature of director, officer or partner)

(Official capacity – please type or print)

COMPANION POLICY 21-101 CP
MARKETPLACE OPERATION

PART 1 INTRODUCTION

1.1 Introduction – Exchanges, quotation and trade reporting systems and ATs are marketplaces that provide a market facility or venue on which securities can be traded. The areas of interest from a regulatory perspective are in many ways similar for each of these marketplaces since they may have similar trading activities. The regulatory regime for exchanges and quotation and trade reporting systems arises from the securities legislation of the various jurisdictions. Exchanges and quotation and trade reporting systems are recognized under orders from the Canadian securities regulatory authorities, with various terms and conditions of recognition. ATs, which are not recognized as exchanges or quotation and trade reporting systems, are regulated under National Instrument 21-101 Marketplace Operation (the Instrument) and National Instrument 23-101 Trading Rules (NI 23-101). The ~~Instruments, Instrument and NI 23-101~~, which were adopted at a time when new types of markets were emerging, provide the regulatory framework that allows and regulates the operation of multiple marketplaces.

The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to the Instrument, including:

- (a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and
- (b) the interpretation of various terms and provisions in the Instrument.

1.2 Definition of Exchange-Traded Security – Section 1.1 of the Instrument defines an "exchange-traded security" as a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of the Instrument and NI 23-101.

If a security trades on a recognized exchange or recognized quotation and trade reporting system on a "when issued" basis, as defined in IIROC's Universal Market Integrity Rules, the security would be considered to be listed on that recognized exchange or quoted on that recognized quotation and trade reporting system and would therefore be an exchange-traded security.

If no "when issued" market has been posted by a recognized exchange or recognized quotation and trade reporting system for a security, an ATS may not allow this security to be traded on a "when issued" basis on its marketplace.

A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed on a foreign exchange or quoted on a foreign quotation and trade reporting system, but is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of "foreign exchange-traded security".

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

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

PART 2 MARKETPLACE**2.1 Marketplace**

- (1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. ~~Paragraphs (c) and (d) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATs. A dealer that internalizes its orders for exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.~~ ~~Paragraphs (a)(iii) and (a)(iv)~~ of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATs. A dealer that internalizes its orders for exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.

- (2) Two of the characteristics of a "marketplace" are
- (a) that it brings together orders for securities of multiple buyers and sellers; and
 - (b) that it uses established, non-discretionary methods under which the orders interact with each other.
- (3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it
- (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or
 - (b) receives orders centrally for processing and execution (regardless of the level of automation used).
- (4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."
- (5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:
- (a) 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.
 - (b) A system that merely routes orders for execution to a facility where the orders are executed.
 - (c) A system that posts information about trading interests, without facilities for execution.

In the first two cases, the criteria of multiple buyers and sellers would not be met. In the last two cases, routing systems and bulletin boards do not establish non-discretionary methods under which parties entering orders interact with each other.

- (6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is required to be registered as a dealer under securities legislation.
- (7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IIROC Rule 36 and IIROC Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to Rule 36 or IIROC Rule 2100, but will be subject to all other IIROC requirements applicable to a dealer.
- (8) Section 1.2 of the Instrument contains an interpretation of the definition of "marketplace". The Canadian securities regulatory authorities do not consider a system that only routes unmatched orders to a marketplace for execution to be a marketplace. If a dealer uses a system to match buy and sell orders or pair orders with contra-side orders outside of a marketplace and route the matched or paired orders to a marketplace as a cross, the Canadian securities regulatory authorities may consider the dealer to be operating a marketplace under ~~paragraph (a)(iii)~~ of the definition of "marketplace". The Canadian securities regulatory authorities encourage dealers that operate or plan to operate such a system to meet with the applicable securities regulatory authority to discuss the operation of the system and whether the dealer's system falls within the definition of "marketplace".

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

3.1 Exchange

- (1) Securities legislation of most jurisdictions does not define the term "exchange".
- (2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

- (a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;
 - (b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;
 - (c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or
 - (d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.
- (3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.
- (4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

- (1) Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.
- (2) A quotation and trade reporting system is considered to have "quoted" a security if
- (a) the security has been subject to a listing or quoting process, and
 - (b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

3.3 Definition of an ATS

- (1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as
- (a) requiring listing agreements,
 - (b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,
 - (c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and
 - (d) disciplining subscribers.

A marketplace, other than a quotation and trade reporting system, that engages in any of these activities or meets these criteria would, in the view of the Canadian securities regulatory authorities, be an exchange and would have to be recognized as such in order to carry on business, unless exempted from this requirement by the Canadian securities regulatory authorities.

- (2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be "requirements governing the conduct of subscribers".

- (3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

3.4 Requirements Applicable to ATSS

- (1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.
- (2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.
- (3) Under paragraph 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.
- (4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under paragraph 6.1(a) and all other requirements in the Instrument and in NI 23-101 and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.
- (5) Paragraph 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IROC is the only entity that would come within the definition.
- (6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.
- (7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS and 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 or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) 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, debt securities or options.
- (8) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

PART 4 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

- (1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.
- (2) In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities will look at a number of factors, including
- (a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;

- (b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;
- (c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions;
- (d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors;
- (e) whether the exchange or quotation and trade reporting system has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;
- (f) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and
- (g) whether the exchange or quotation and trade reporting system's process for setting fees is fair, transparent and appropriate, and whether the fees are equitably allocated among the participants, issuers and other users of services, do not have the effect of creating barriers to access and at the same time ensure that the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions.

4.2 Process

Although the basic requirements or criteria for recognition of an exchange or quotation and trade reporting system may be similar in various jurisdictions, the precise requirements and the process for seeking a recognition or an exemption from recognition in each jurisdiction is determined by that jurisdiction.

PART 5 ORDERS

5.1 Orders

- (1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders". However, if those prices or quantities are implied and determinable, for example, by knowing the features of the marketplace, the indications of interest may be considered an order.
- (2) The terminology used is not determinative of whether an indication of interest constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty (i.e. the indication is "actionable"). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. 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 or an implied price, based on understandings or past dealings, will be viewed as an order.
- (3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.
- (4) The securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of the Instrument to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties provided that

- (a) order details are shown only to the negotiating parties,
 - (b) other than as provided by paragraph (a), no actionable indication of interest or order is displayed by either party or the marketplace, and
 - (c) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Instrument.
- (5) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

PART 6 MARKETPLACE INFORMATION AND FINANCIAL STATEMENTS

6.1 Forms Filed by Marketplaces

- (1) The definition of marketplace includes exchanges, quotation and trade reporting systems and ATSS. The legal entity that is recognized as an exchange or quotation and trade reporting system, or registered as a dealer in the case of an ATS, owns and operates the market or trading facility. In some cases, the entity may own and operate more than one trading facility. In such cases the marketplace may file separate forms in respect of each trading facility, or it may choose to file one form covering all of the different trading facilities. If the latter alternative is chosen, the marketplace must clearly identify the facility to which the information or changes apply.
- (2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain proprietary financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.
- (3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and industry participants to be better informed as to how securities trade on the marketplace.
- (4) Under subsection 3.2(1) of the Instrument, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets. ~~The Canadian securities regulatory authorities would consider significant changes to include:~~

A change would be considered to significantly impact the marketplace if it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or result in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the regulation services provider.

The following types of changes are considered to be significant changes as they would always have a significant impact:

- (a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;
- (b) new or changes to order types, and
- (c) changes in the fees and the fee model of the marketplace.

The following may be considered by the Canadian securities regulatory authorities as significant changes, depending on whether they have a significant impact:

- (d) new or changes to the services provided by the marketplace, including the hours of operation;
- (~~ee~~) new or changes to the means of access to the market or facility and its services;
- (~~d~~) ~~new or changes to order types;~~ (ef) new or changes to types of securities traded on the marketplace;

- (fg) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;
- (gh) new or changes to types of marketplace participants;
- (hi) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;
- (ij) changes to the corporate governance of the marketplace, including ~~the structure of its~~ changes to the composition requirements for the board of directors ~~and changes in their~~ any board committees and ~~their~~ changes to the mandates of the board of directors or any board committees;
- (jk) changes in control over marketplaces;
- (kl) changes in affiliates that provide services to or on behalf of the marketplace;
- (lm) new or changes in outsourcing arrangements for key marketplace services or systems; and
- ~~(m)(n)~~ new or changes in custody arrangements; ~~and (n) — changes in fees and the fee model of the marketplace.~~
- (5) ~~Significant changes would not include changes~~ Changes to information in Form 21-101F1 or Form 21-101F2, 2 that
- (a) ~~would do~~ not have an significant impact on the marketplace's its market structure ~~or~~ marketplace participants ~~on~~ investors, issuers or the Canadian capital markets; 2 or
- (b) are housekeeping or administrative changes such as
- (i) changes in the routine processes, policies, practices, or administration of the marketplace,
- (ii) changes due to standardization of terminology,
- (iii) corrections of spelling or typographical errors,
- (iv) necessary changes to conform to applicable regulatory or other legal requirements, ~~and~~
- (v) minor system or technology changes that would not significantly impact the system or its capacity; ~~2~~ and
- (vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace.

~~Such changes~~ would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Instrument.

- (6) ~~The~~ As indicated in subsection (4) above, the Canadian securities regulatory authorities ~~generally~~ consider a change in a marketplace's fees or fee structure model to be a significant change. However, the Canadian securities regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee structure model of marketplaces, marketplaces may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3.2(2) of the Instrument provides that marketplaces may provide information describing the change in fees or fee structure in a shorter timeframe, at least seven business days before the expected implementation date of the change in fees or fee structure.
- (7) For the changes referred to in subsection 3.2(3) of the Instrument, the Canadian securities regulatory authorities may review these filings to ascertain the appropriateness of the categorization of such filings. The marketplace will be notified in writing if there is disagreement with respect to the categorization of the filing.
- (8) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Instrument. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.

- (8.1) In order to ensure records regarding the information in a marketplace's Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify, within 30 days after the end of each calendar year, that the information contained in the marketplace's Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and the marketplace is operating as described in the applicable form. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be filed pursuant to subsection 3.2(5) of the Instrument. The certification under subsection 3.2(4) is also separate and apart from the form of certification in Form 21-101F1 and Form 21-101F2.
- (8.2) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument.
- (9) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the calendar quarter ending March 31), July 30 (for the calendar quarter ending June 30), October 30 (for the calendar quarter ending September 30) and January 30 (for the calendar quarter ending December 31).

6.2 Filing of Financial Statements

Part 4 of the Instrument sets out the financial reporting requirements applicable to marketplaces. Subsections 4.1(2) and 4.2(2) respectively require an ATS to file audited financial statements initially, together with Form 21-101F2, and on an annual basis thereafter. These financial statements may be in the same form as those filed with IROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IROC.

PART 7 MARKETPLACE REQUIREMENTS

7.1 Access Requirements

- (1) Section 5.1 of the Instrument sets out access requirements that apply to a marketplace. The Canadian securities regulatory authorities note that the requirements regarding access for marketplace participants do not restrict the marketplace from maintaining reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace.
- (2) For the purposes of complying with the order protection requirements in Part 6 of NI 23-101, a marketplace should permit fair and efficient access to
- (a) a marketplace participant that directly accesses the marketplace,
 - (b) a person or company that is indirectly accessing the marketplace through a marketplace participant, or
 - (c) another marketplace routing an order to the marketplace.

The reference to "a person or company" in paragraph (b) includes a system or facility that is operated by a person or company.

- (3) The reference to "services" in section 5.1 of the Instrument means all services that may be offered to a person or company and includes all services relating to order entry, trading, execution, routing, data and includes co-location.
- (4) Marketplaces that send indications of interest to a selected smart order router or other system should send the information to other smart order routers or systems to meet the fair access requirements of the Instrument.
- (5) Marketplaces are responsible for ensuring that the fees they set are in compliance with section 5.1 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, a marketplace should consider a number of factors, including
- (a) the value of the security traded,
 - (b) the amount of the fee relative to the value of the security traded,
 - (c) the amount of fees charged by other marketplaces to execute trades in the market,
 - (d) with respect to market data fees, the amount of market data fees charged relative to the market share of the marketplace, and,

- (e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a marketplace unreasonably condition or limit access to its services. With respect to trading fees, it is the view of the Canadian securities regulatory authorities that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a marketplace's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a marketplace's services when taking into account factors including those listed above.

7.2 Public Interest Rules – Section 5.3 of the Instrument sets out the requirements applicable to the rules, policies and similar instruments adopted by recognized exchanges and recognized quotation and trade reporting systems. These requirements acknowledge that recognized exchanges and quotation and trade reporting systems perform regulatory functions. The Instrument does not require the application of these requirements to an ATS's trading requirements. This is because, unlike exchanges, ATSs are not permitted to perform regulatory functions, other than setting requirements regarding conduct in respect of the trading by subscribers on the marketplace, i.e. requirements related to the method of trading or algorithms used by their subscribers to execute trades in the system. However, it is the expectation of the Canadian securities regulatory authority that the requirement in section 5.7 of the Instrument that marketplaces take reasonable steps to ensure they operate in a manner that does not interfere with the maintenance of fair and orderly markets, applies to an ATS's requirements. Such requirements may include those that deal with subscriber qualification, access to the marketplace, how orders are entered, interact, execute, clear and settle.

7.3 Compliance Rules – Section 5.4 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to have appropriate procedures to deal with violations of rules, policies or other similar instruments of the exchange or quotation and trade reporting system. This section does not preclude enforcement action by any other person or company, including the Canadian securities regulatory authorities or the regulation services provider.

7.4 Filing of Rules – Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file all rules, policies and other similar instruments and amendments as required by the securities regulatory authority. Initially, all rules, policies and other similar instruments will be reviewed before implementation by the exchange or quotation and trade reporting system. Subsequent to recognition, the securities regulatory authority may develop and implement a protocol that will set out the procedures to be followed with respect to the review and approval of rules, policies and other similar instruments and amendments.

7.5 Review of Rules – The Canadian securities regulatory authorities review the rules, policies and similar instruments of a recognized exchange or recognized quotation and trade reporting system in accordance with the recognition order and rule protocol issued by the jurisdiction in which the exchange or quotation and trade reporting system is recognized. The rules of recognized exchanges and quotation and trade reporting systems are included in their rulebooks, and the principles and requirements applicable to these rules are set out in section 5.3 of the Instrument. For an ATS, whose trading requirements, including any trading rules, policies or practices, are incorporated in Form 21-101F2, any changes would be filed in accordance with the filing requirements applicable to changes to information in Form 21-101F2 set out in subsections 3.2(1) and 3.2(3) of the Instrument and reviewed by the Canadian securities regulatory authorities in accordance with staff practices in each jurisdiction.

7.6 Fair and Orderly Markets

- (1) Section 5.7 of the Instrument establishes the requirement that a marketplace take reasonable steps to ensure it operates in a way that does not interfere with the maintenance of fair and orderly markets. This applies both to the operation of the marketplace itself and to the impact of the marketplace's operations on the Canadian market as a whole.
- (2) This section does not impose a responsibility on the marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or quotation and trade reporting system that has assumed responsibility for monitoring the conduct of its marketplace participants directly rather than through a regulation services provider. However, marketplaces are expected in the normal course to monitor order entry and trading activity for compliance with the marketplace's own operational policies and procedures. They should also alert the regulation services provider if they become aware that disorderly or disruptive order entry or trading may be occurring, or of possible violations of applicable regulatory requirements.
- (3) Part of taking reasonable steps to ensure that a marketplace's operations do not interfere with fair and orderly markets necessitates ensuring that its operations support compliance with regulatory requirements including applicable rules of a regulation services provider. This does not mean that a marketplace must system-enforce all regulatory

requirements. However, it should not operate in a manner that to the best of its knowledge would cause marketplace participants to breach regulatory requirements when trading on the marketplace.

7.7 Confidential Treatment of Trading Information

- (0.1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used solely for capital markets research and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. However, if the marketplace decides to disclose this information, it must ensure that certain terms and conditions are met to ensure that the marketplace participant's information is not misused.
- (0.2) In order for a marketplace to disclose a marketplace participant's order or trade information, subparagraphs 5.10(1.1)(a)-(b) of the Instrument require a marketplace to reasonably believe that the information will be used by the recipient solely for the purposes of capital markets research and to reasonably believe that if information identifying, directly or indirectly, a marketplace participant, or a client of the marketplace participant is released, the information is necessary for the research and that the purpose of the research is not intended to identify the marketplace participant or client or to identify a trading strategy, transactions, or market positions of the marketplace participant or client. The Canadian securities regulatory authorities expect that a marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, the Canadian securities regulatory authorities also expect the marketplace to make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or a client of the marketplace participant or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.
- (0.3) In considering releasing order or trade information, the Canadian securities regulatory authorities expect a marketplace to exercise caution regarding information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.
- (0.4) Subparagraph 5.10(1.1)(c) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that the person or company agrees to use the order and trade information only for capital markets research purposes. In the view of the Canadian securities regulatory authorities, commercialization of the information by the recipient, for example by using the information for the purposes of trading, advising others to trade or for reverse engineering a trading strategy, would not constitute use of the information for capital markets research purposes.
- (0.5) Subparagraph 5.10(1.1)(c)(i) of the Instrument provides that the agreement must also prohibit the recipient from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data.
- (0.6) To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that recipients will not publish or disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times and that the data is kept for no longer than a reasonable period of time following the completion of the research and publication process.
- (0.7) The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and have the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the agreement or of the confidentiality of the information provided. In the view of the Canadian

securities regulatory authorities, reasonable steps in the event of an actual or apparent breach of the agreement or of the confidentiality of the information may include the marketplace seeking an injunction preventing any unauthorized use or disclosure of the information by a recipient.

- (0.8) Subparagraph 5.10(1.1)(c)(ii) of the Instrument provides for a limited carve-out from the restraints on the use and disclosure of the information by a recipient for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the research prior to the publication of the results of the research. In particular, clause 5.10(1.1)(c)(ii)(C) requires a marketplace to enter into a written agreement with a person or company receiving order or trade information from the marketplace that provides that the person or company may disclose information used in connection with research submitted to a publication so long as the person or company obtains a written agreement from the publisher and anyone involved in the verification of the research that provides for certain restrictions on the use and disclosure of the information by the publisher or the other person or company. A marketplace may consider requiring a person or company that proposes to disclose order or trade information pursuant to subparagraph 5.10(1.1)(c)(ii) to acknowledge that it has obtained the agreement required by clause 5.10(1.1)(c)(ii)(C) at the time that it notifies the marketplace prior to disclosing the information for verification purposes, as required by clause 5.10(1.1)(c)(ii)(B).
- (1) Subsection 5.10 (2) of the Instrument provides that a marketplace ~~shall~~must not carry on business as a marketplace unless it has implemented reasonable safeguards and procedures to protect a marketplace participant's trading information. These include
- (a) limiting access to the trading information of marketplace participants, such as the identity of marketplace participants and their orders, to those employees of, or persons or companies retained by, the marketplace to operate the system or to be responsible for its compliance with securities legislation; and
 - (b) having in place procedures to ensure that employees of the marketplace 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 marketplace, whether or not they have direct responsibility for the operation of the marketplace.
- (3) Nothing in section 5.10 of the Instrument prohibits a marketplace from complying with National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. This statement is necessary because an investment dealer that operates a marketplace may be an intermediary for the purposes of National Instrument 54-101, and may be required to disclose information under that Instrument.

7.8 Management of Conflicts of Interest

- (1) Marketplaces are required under section 5.11 of the Instrument to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides. These may include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.
- (2) The marketplace's policies should also take into account conflicts for owners that are marketplace participants. These may include inducements to send order flow to the marketplace to obtain a larger ownership position or to use the marketplace to trade against their clients' order flow. These policies should be disclosed as provided in paragraph 10.1(e) of the Instrument.

- 7.9 Outsourcing** – Section 5.12 of the Instrument sets out the requirements that marketplaces that outsource any of their key services or systems to a service provider, which may include affiliates or associates of the marketplace, must meet. Generally, marketplaces are required to establish policies and procedures to evaluate and approve these outsourcing agreements. Such policies and procedures would include assessing the suitability of potential service providers and the ability of the marketplace to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facilities. The requirements under section 5.12 of the Instrument apply regardless of whether the outsourcing arrangements are with third- party service providers, or with affiliates of the marketplaces.

7.10 Access Arrangements with a Service Provider – If a third party service provider provides a means of access to a marketplace, section 5.13 of the Instrument requires the marketplace to ensure the third party service provider complies with the written standards for access the marketplace has established pursuant to paragraph 5.1(2)(a) of the

Instrument when providing access services. A marketplace must establish written standards for granting access to each of its services under paragraph 5.1(2)(a) and the Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that these written standards are complied with when access to its platform is provided by a third party.

PART 8 RISK DISCLOSURE TO MARKETPLACE PARTICIPANTS

8.1 Risk disclosure to marketplace participants – Subsections 5.9(2) and 6.11(2) of the Instrument require a marketplace to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature of the marketplace participant or requesting that the marketplace participant initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the marketplace participant has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that an acknowledgement is obtained from the marketplace participant in a timely manner.

8.2 ~~[repealed]~~

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

9.1 Information Transparency Requirements for Exchange-Traded Securities

(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. The Canadian securities regulatory authorities consider that a marketplace that sends information about orders of exchange-traded securities, including indications of interest that meet the definition of an order, to a smart order router is “displaying” that information. The marketplace would be subject to the transparency requirements of subsection 7.1(1) of the Instrument. The transparency requirements of subsection 7.1(1) of the Instrument do not apply to a marketplace that displays orders of exchange-traded securities to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace, as long as these orders meet a minimum size threshold set by the regulation services provider. In other words, the only orders that are exempt from the transparency requirements are those meeting the minimum size threshold. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities that it executes to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an information vendor that meets the standards set by that regulation services provider.

(2) In complying with sections 7.1 and 7.2 of the Instrument, ~~a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.~~

(2.1) Subsections 7.1(3) and 7.2(2) prohibit a marketplace from making available order and trade information to any person or company before it makes the information available to the information processor or, if there is no information processor, to an information vendor. The Canadian securities regulatory authorities acknowledge that there may be differences between the time at which a marketplace participant that takes in market data directly from a marketplace receives the order and trade information and the time at which a marketplace participant that takes in market data from the information processor receives the information. However, in complying with subsections 7.1(3) and 7.2(2) of the Instrument, the Canadian securities regulatory authorities expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.

(3) ~~[Repealed]~~repealed

(4) ~~[Repealed]~~repealed

- (5) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

9.2 ~~[Repealed]~~repealed

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

- (1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2018. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.
- (2) The requirements of the information processor for government debt securities are as follows:
- (a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to ~~unlisted~~government debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and
 - (b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.
- (3) The requirements of the information processor for corporate debt securities are as follows:
- (a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than \$2 million, the trade details provided to the information processor are to be reported as "\$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than \$200,000, the trade details provided to the information processor are to be reported as "\$200,000+".
 - (b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.
 - (c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.
- (4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.
- (5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.
- (6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

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

- (7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.
- (8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.
- (9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.
- 10.2 Availability of Information** — In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.
- 10.3 Consolidated Feed** — Section 8.3 of the Instrument requires the information processor to produce a consolidated feed in real-time showing the information provided to the information processor.

PART 11 MARKET INTEGRATION

11.1 ~~[Repealed]~~

11.2 ~~[Repealed]~~

11.3 ~~[Repealed]~~

11.4 ~~[Repealed]~~

11.5 **Market Integration** — Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.

PART 12 TRANSPARENCY OF MARKETPLACE OPERATIONS

12.1 Transparency of Marketplace Operations

- (1) Section 10.1 of the Instrument requires that marketplaces make publicly available certain information pertaining to their operations and services. While section 10.1 sets out the minimum disclosure requirements, marketplaces may wish to make publicly available other information, as appropriate. Where this information is included in a marketplace's rules, regulations, policies and procedures or practices that are publicly available, the marketplace need not duplicate this disclosure.
- (2) Paragraph 10.1(a) requires marketplaces to disclose publicly all fees, including listing, trading, co-location, data and routing fees charged by the marketplace, an affiliate or by a third party to which services have been directly or indirectly outsourced or which directly or indirectly provides those services. This means that a marketplace is expected to publish and make readily available the schedule(s) of fees charged to any and all users of these services, including the basis for charging each fee (e.g., a per share basis for trading fees, a per subscriber basis for data fees, etc.) and would also include any fee rebate or discount and the basis for earning the rebate or discount. With respect to trading fees, it is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed in this context.

- (3) Paragraph 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of the priority of execution for all order types and the types of crosses that may be executed on the marketplace. A marketplace should also disclose whether it sends information regarding indications of interest or order information to a smart order router.
- (4) Paragraph 10.1(e) requires a marketplace to disclose its conflict of interest policies and procedures. For conflicts arising from the ownership of a marketplace by marketplace participants, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients at least quarterly. This is consistent with the marketplace participant's existing obligations to disclose conflicts of interest under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*. A marketplace should disclose if a marketplace or affiliated entity of a marketplace intends to trade for its own account on the marketplace against or in competition with client orders.
- (5) Paragraph 10.1(f) requires marketplaces to disclose a description of any arrangements where the marketplace refers its participants to the services of a third-party provider where the marketplace receives some benefit (fee rebate, payment, etc.) if the marketplace participant uses the services of the third- party service provider, and has a potential conflict of interest.
- (6) Paragraph 10.1(g) requires marketplaces that offer routing services to disclose a description of how routing decisions are made. The subsection applies whether routing is done by a marketplace-owned smart order router, by an affiliate of a marketplace, or by a third- party to which routing was outsourced.
- (7) Paragraph 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Instrument requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party vendors.

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

- 13.1 **Recordkeeping Requirements for Marketplaces** – Part 11 of the Instrument requires a marketplace to maintain certain records. Generally, under provisions of securities legislation, the securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.
- 13.2 **Synchronization of Clocks** – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the trading of the relevant securities on marketplaces, and by, as appropriate, inter-dealer bond brokers or dealers. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system are also required to coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 14 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

- 14.1 **Systems Requirements** – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument whether operating in-house or outsourced.
 - (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines*' from the Canadian Institute of Chartered Accountants (CICA) and '*COBIT: @ 5 Management Guidelines*' from the IT Governance Institute, © 2012 ISACA, *IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management*.

- (2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.
- (2.1) Paragraph 12.1(c) of the Instrument refers to a material security breach. A material security breach or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of the Instrument or any system that shares network resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the regulator. The onus would be on the marketplace to document the reasons for any security breach it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security breach. The criteria for public disclosure of a security breach should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected.
- (3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a) of the Instrument to ensure that the marketplace is in compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The focus of the assessment of any systems that share network resources with trading-related systems required under subsection 12.2(1)(b) would be to address potential threats from a security breach that could negatively impact a trading-related system. A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment, such as external auditors or third party information system consultants. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.
- (3.1) The Canadian securities regulatory authorities also note the critical importance of an appropriate system of cyber-security controls over the systems described in section 12.1 of the Instrument. We further note that, as a matter of best practices, marketplaces may also conduct a vulnerability assessment of these controls in addition to the independent systems review required by subsection 12.2(1) of the Instrument. To the extent that a marketplace carries out, or engages an independent party to carry out on its behalf, a vulnerability assessment and prepares a report of that assessment as part of the development and maintenance of the controls required by section 12.1 of the Instrument, we expect a marketplace to provide that report to the regulator or, in Québec, the securities regulatory authority in addition to the report required to be provided by subsection 12.2(2) of the Instrument.
- (4) Paragraph 12.1(c) of the Instrument requires the marketplace to notify the regulator or, in Québec, the securities regulatory authority of any material systems failure. The Canadian securities regulatory authorities consider a failure, malfunction or delay to be “material” if the marketplace would in the normal course of operations escalate the matter to or inform its senior management ultimately accountable for technology. The Canadian securities regulatory authorities also expect that, as part of this notification, the marketplace will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.
- (5) Under section 15.1 of the Instrument, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Instrument provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest and the length of the exemption, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, changes to systems or staff of the marketplace and whether the marketplace has experienced material systems failures, malfunction or delays.

14.2 ~~Availability of~~ Marketplace Technology Specifications and Testing Facilities

- (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.

The Canadian securities regulatory authorities consider a material change to a marketplace's technology requirements to include a change that would require a person or company interfacing with or accessing the marketplace to incur a significant amount of systems-related development work or costs in order to accommodate the change or to fully interact with the marketplace as a result of the change. Such material changes could include changes to technology requirements that would significantly impact a marketplace participant's trading activities, such as the introduction of an order type, or significant changes to a regulatory feed that a regulation services provider takes in from the marketplace.

- (2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.
- (2.1) Paragraph 12.3(3)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (2.2) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(3.1) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

14.2.1 Uniform Test Symbols

- (1) Section 12.3.1 of the Instrument requires a marketplace to use uniform test symbols for the purpose of performing testing in its production environment. In the view of the Canadian securities regulatory authorities, the use of uniform test symbols is in furtherance to a marketplace's obligations at section 5.7 of the Instrument to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.
- (2) The use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace's production environment; it is not intended to enable stress testing by marketplace participants. The Canadian securities regulatory authorities are of the view that a marketplace may suspend access to a test symbol where its use in a particular circumstance reasonably represents undue risk to the operation or performance of the marketplace's production environment. The Canadian securities regulatory authorities also note that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces.

14.3 Business Continuity Planning

- (1) Section 12.4 of the Instrument requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. The Canadian securities regulatory authorities expect that, in order for a marketplace to have a(n) fulfilling the requirement to develop and maintain reasonable business continuity plan, including disaster recovery plan, it test it on a periodic basis, and at least annually and it should participate in industry wide tests plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.
- (2) Paragraph 12.4(1)(b) of the Instrument also requires a marketplace to test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.

- (3) Section 12.4 of the Instrument also establishes requirements for marketplaces meeting a minimum threshold of total dollar value of trading volume, recognized exchanges or quotation and trade reporting systems that directly monitor the conduct of their members, and regulation services providers that have entered into a written agreement with a marketplace to conduct market surveillance to establish, implement, and maintain policies and procedures reasonably designed to ensure that critical systems can resume operation within certain time limits following the declaration of a disaster. In fulfilling the requirement to establish, implement and maintain the policies and procedures prescribed by section 12.4, the Canadian securities regulatory authorities expect that these policies and procedures will form part of the entity's business continuity and disaster recovery plans and that the entities subject to the requirements at subsections 12.4(2) to (4) of the Instrument will be guided by their own business continuity plans in terms of what constitutes a disaster for purposes of the requirements.

14.4 Industry-Wide Business Continuity Tests – Section 12.4.1 of the Instrument requires a marketplace, recognized clearing agency, information processor, and participant dealer to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority. The Canadian securities regulatory authorities expect that marketplaces will make their production environments available for purposes of all industry-wide business continuity tests.

PART 15 CLEARING AND SETTLEMENT

15.1 Clearing and Settlement – Subsection 13.1(1) of the Instrument requires ~~that~~ all trades executed through a marketplace ~~shall~~ be reported and settled through a clearing agency.

Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, either the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.

15.2 Access to Clearing Agency of Choice – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.

The Canadian securities regulatory authorities are of the view that where a clearing agency performs only clearing services (and not settlement or depository services) for equity or other cash-product marketplaces in Canada, it would need to have access to the existing securities settlement and depository infrastructure on non-discriminatory and reasonable commercial terms.

Subsection 13.2(2) of the Instrument provides that subsection 13.2(1) does not apply to trades in standardized derivatives or exchange-traded securities that are options.

PART 16 INFORMATION PROCESSOR

16.1 Information Processor

- (1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).
- (2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.
- (3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on

terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.

16.2 Selection of an Information Processor

- (1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority. 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;
 - (c) personnel qualifications;
 - (d) whether the information processor has sufficient financial resources for the proper performance of its functions;
 - (e) the existence of another entity performing the proposed function for the same type of security;
 - (f) the systems report referred to in paragraph 14.5(c) of the Instrument.
- (2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.
- (3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

16.3 Change to Information – Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. The Canadian securities regulatory authorities would consider significant changes to include:

- (a) changes to the governance of the information processor, including the structure of its board of directors and changes in the board committees and their mandates;
- (b) changes in control over the information processor;
- (c) changes affecting the independence of the information processor, including independence from the marketplaces, inter-dealer bond brokers and dealers that provide their data to meet the requirements of the Instrument;
- (d) changes to the services or functions performed by the information processor;
- (e) changes to the data products offered by the information processor;
- (f) changes to the fees and fee structure related to the services provided by the information processor;
- (g) changes to the revenue sharing model for revenues from fees related to services provided by the information processor;
- (h) changes to the systems and technology used by the information processor, including those affecting its capacity;
- (i) new arrangements or changes to arrangements to outsource the operation of any aspect of the services of the information processor;

- (j) changes to the means of access to the services of the information processor; and
- (k) where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with the Instrument, changes in the criteria and process for selection and communication of these securities.

These would not include housekeeping or administrative changes to the information included in Form 21-101F5, such as changes in the routine processes, practice or administration of the information processor, changes due to standardization of terminology, or minor system or technology changes that do not significantly impact the system of the information processor or its capacity. Such changes would be filed in accordance with the requirements outlined in subsection 14.2(2) of the Instrument.

16.3.1 Filing of Financial Statements – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited.

16.4 System Requirements – The guidance in section 14.1 of this Companion Policy applies to the systems requirements for an information processor.

ANNEX E**Blackline Showing Changes to
National Instrument 23-101 Trading Rules****NATIONAL INSTRUMENT 23-101
TRADING RULES****Table of Contents**

PART	TITLE
PART 1	DEFINITION AND INTERPRETATION
1.1	Definition
1.2	Interpretation – NI 21-101
PART 2	APPLICATION OF THIS INSTRUMENT
2.1	Application of this Instrument
PART 3	MANIPULATION AND FRAUD
3.1	Manipulation and Fraud
PART 4	BEST EXECUTION
4.1	Application of this Part
4.2	Best Execution
4.3	Order and Trade Information
PART 5	REGULATORY HALTS
5.1	Regulatory Halts
PART 6	ORDER PROTECTION
6.1	Marketplace Requirements for Order Protection
6.2	List of Trade-throughs
6.3	Systems or Equipment Failure, Malfunction or Material Delay
6.4	Marketplace Participant Requirements for Order Protection
6.5	Locked or Crossed Orders
6.6	Trading Hours
6.7	Anti-Avoidance
6.8	Application of this Part
PART 7	MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM
7.1	Requirements for a Recognized Exchange
7.2	Agreement between a Recognized Exchange and a Regulation Services Provider
<u>7.2.1</u>	<u>Obligations of a Recognized Exchange to a Regulation Services Provider</u>
7.3	Requirements for a Recognized Quotation and Trade Reporting System
7.4	Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider
<u>7.4.1</u>	<u>Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider</u>
7.5	Co-ordination of Monitoring and Enforcement
PART 8	MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS
8.1	Pre-condition to Trading on an ATS
8.2	Requirements Set by a Regulation Services Provider for an ATS
8.3	Agreement between an ATS and a Regulation Services Provider
8.4	Agreement between an ATS and its Subscriber
8.5	[Repealed]
PART 9	MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTER-DEALER BOND BROKER
9.1	Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker
9.2	Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider
9.3	Exemption for an Inter-Dealer Bond Broker

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- PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE
- 10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace
 - 10.2 Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider
 - 10.3 [Repealed]
- PART 11 AUDIT TRAIL REQUIREMENTS
- 11.1 Application of this Part
 - 11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers
 - 11.3 Transmission in Electronic Form
- PART 12 EXEMPTION
- 12.1 Exemption
- PART 13 EFFECTIVE DATE
- a. Effective Date

**NATIONAL INSTRUMENT 23-101
TRADING RULES**

PART 1 DEFINITION AND INTERPRETATION

1.1 Definition – In this Instrument

“automated functionality” means the ability to

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

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

“calculated-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

- (a) is not known at the time of order entry; and
- (b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

“closing-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, that is

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

“directed-action order” means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

- (a) when entered on or routed to a marketplace is to be immediately
 - (i) executed against a protected order with any remainder to be booked or cancelled; or
 - (ii) placed in an order book;
- (b) is marked as a directed-action order; and
- (c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

“NI 21-101” means National Instrument 21-101 *Marketplace Operation*;

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

“protected bid” means a bid for an exchange-traded security, other than an option,

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

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

- (a) that is displayed on a marketplace that provides automated functionality; and
- (b) about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

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

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

- (a) in the case of a purchase, higher than any protected offer, or
- (b) in the case of a sale, lower than any protected bid.

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

PART 2 APPLICATION OF THIS INSTRUMENT

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

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

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

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

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

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

PART 4 BEST EXECUTION

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

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

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

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – If a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 21-101 makes a decision to prohibit trading in a particular security for a regulatory purpose, ~~no~~ person or company ~~shall~~must not execute a trade for the purchase or sale of that security during the period in which the prohibition is in place.

PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection – (1) A marketplace ~~shall~~must establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and
 - (b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.
- (2) A marketplace ~~shall~~must regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and ~~shall~~must promptly remedy any deficiencies in those policies and procedures.
- (3) At least 45 days before implementation, a marketplace ~~shall~~must file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures established under subsection (1).

6.2 List of Trade-throughs – For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are

- (a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
- (b) the execution of a directed-action order;
- (c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
- (d) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;
- (e) a trade-through that results when executing
 - (i) a non-standard order;
 - (ii) a calculated-price order; or
 - (iii) a closing-price order;
- (f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay – (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace ~~shall~~must immediately notify

- (a) all other marketplaces;
- (b) all regulation services providers;

- (c) its marketplace participants; and
 - (d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.
- (2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace ~~shall~~must immediately notify
- (a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;
 - (b) all regulation services providers;
 - (c) its marketplace participants; and
 - (d) any information processor disseminating information under Part 7 of NI 21-101.
- (3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay
- (a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and
 - (b) all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection – (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs other than the trade-throughs listed below:
 - (i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
 - (ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
 - (iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;
 - (iv) a trade-through that results when executing
 - (A) a non-standard order;
 - (B) a calculated-price order; or
 - (C) a closing-price order;
 - (v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and
 - (b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.
- (2) A marketplace participant that enters a directed-action order ~~shall~~must regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and ~~shall~~must promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant or a marketplace that routes or reprices orders ~~shall~~must not intentionally

- (a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
- (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

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

6.7 Anti-Avoidance – ~~No~~A person or company ~~shall~~must not send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

6.8 Application of this Part – In Québec, this Part, except for paragraph 6.3(1)(c), does not apply to standardized derivatives.

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

7.1 Requirements for a Recognized Exchange

(1) A recognized exchange ~~shall~~must set requirements governing the conduct of its members, including requirements that the members will conduct trading activities in compliance with this Instrument.

(2) A recognized exchange ~~shall~~must monitor the conduct of its members and enforce the requirements set under subsection (1), either

- (a) directly, or
- (b) indirectly through a regulation services provider.

(3) If a recognized exchange has entered into a written agreement under section 7.2, the recognized exchange must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized exchange and the conduct of the exchange's members, and that enable the regulation services provider to effectively monitor trading on the exchange and across marketplaces.

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

- ~~(a) that the regulation services provider will (a) monitor the conduct of the members of a~~the recognized exchange;
- ~~(b) monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3), and~~
- ~~(c) that the regulation services provider will (c) enforce the requirements set under subsection 7.1(1);~~

~~(e) that the~~**7.2.1 Obligations of a Recognized Exchange to a Regulation Services Provider** – A recognized exchange ~~will~~that has entered into a written agreement with a regulation services provider must

(a) transmit to the regulation services provider the information required by~~under~~ Part 11 of NI 21-101 and any ~~other~~ information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:

- (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.1(1), and
- (ii) the conduct of the recognized exchange, ~~as applicable; and (d) that~~including the compliance of the recognized exchange will with the requirements set under subsection 7.1(3); and

(b) comply with all orders or directions made by the regulation services provider.

7.3 Requirements for a Recognized Quotation and Trade Reporting System

(1) A recognized quotation and trade reporting system ~~shall~~must set requirements governing the conduct of its users, including requirements that the users will conduct trading activities in compliance with this Instrument.

(2) A recognized quotation and trade reporting system ~~shall~~must monitor the conduct of its users and enforce the requirements set under subsection (1) either

(a) directly; or

(b) indirectly through a regulation services provider.

~~(3) If a recognized quotation and trade reporting system has entered into a written agreement under section 7.4, the recognized quotation and trade reporting system must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized quotation and trade reporting system and the conduct of the quotation and trade reporting system's users, and that enable the regulation services provider to effectively monitor trading on the recognized quotation and trade reporting system and across marketplaces.~~

7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider

– A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider ~~shall~~must enter into a written agreement with the regulation services provider ~~that~~which provides that the regulation services provider will

~~(a) that the regulation services provider will (a) monitor the conduct of the users of a the recognized quotation and trade reporting system;~~

~~(b) monitor the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3), and~~

~~(b) that the regulation services provider will (c) enforce the requirements set under subsection 7.3(1);~~

~~(c) that the **7.4.1 Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider**– A recognized quotation and trade reporting system will ~~that has entered into a written agreement with a regulation services provider must~~~~

~~(a) transmit to the regulation services provider the information required by under Part 11 of NI 21-101 and any other information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:~~

(i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.3(1), and

(ii) the conduct of the recognized quotation and trade reporting system, ~~as applicable~~including the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3); and

~~(d) that the recognized quotation and trade reporting system will b) comply with all orders or directions made by the regulation services provider.~~

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

PART 8 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS

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

8.2 Requirements Set by a Regulation Services Provider for an ATS

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

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

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

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

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

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

8.5 [Repealed]

PART 9 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTER-DEALER BOND BROKER

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

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

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

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

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

9.3 Exemption for an Inter-Dealer Bond Broker

(1) Sections 9.1 and 9.2 do not apply to an inter-dealer bond broker, if the inter-dealer bond broker complies with the requirements of IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended.

(2) **[Repealed]**

PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE**10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace**

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

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

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

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

10.3 [Repealed]**PART 11 AUDIT TRAIL REQUIREMENTS****11.1 Application of this Part**

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

(2) A dealer or inter-dealer bond broker is exempt from the requirements in section 11.2 if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.

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

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

- (a) the order identifier;
- (b) the dealer or inter-dealer bond broker identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order, if applicable;
- (e) the number of securities to which the order applies;
- (f) the strike date and strike price, if applicable;
- (g) whether the order is a buy or sell order;
- (h) whether the order is a short sale order, if applicable;
- (i) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade;
- (j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;

- (k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;
 - (l) the client account number or client identifier;
 - (m) the date and time that the order expires;
 - (n) whether the order is an intentional cross;
 - (o) whether the order is a jitney and if so, the underlying broker identifier;
 - (p) any client instructions or consents respecting the handling or trading of the order, if applicable;
 - (q) the currency of the order;
 - (r) an insider marker;
 - (s) any other markers required by a regulation services provider;
 - (u) each unique client identifier assigned to a client accessing the marketplace using direct electronic access; and
 - (v) whether the order is a directed-action order.
- (2) **Recording Requirements for Transmission of an Order** – Immediately following the transmission of an order for securities to a dealer, inter-dealer bond broker or a marketplace, a dealer or inter-dealer bond broker transmitting the order ~~shall~~must add to the record of the order maintained in accordance with this section specific information relating to that order including,
- (a) the dealer or inter-dealer bond broker identifier assigned to the dealer or inter-dealer bond broker transmitting the order and the identifier assigned to the dealer, inter-dealer bond broker or marketplace to which the order is transmitted; and
 - (b) the date and time the order is transmitted.
- (3) **Recording Requirements for Variation, Correction or Cancellation of an Order** – Immediately following the variation, correction or cancellation of an order for securities, a dealer or inter-dealer bond broker ~~shall~~must add to the record of the order maintained in accordance with this section specific information relating to that order including,
- (a) the date and time the variation, correction or cancellation was originated or received;
 - (b) whether the order was varied, corrected or cancelled on the instructions of the client, the dealer or the inter-dealer bond broker;
 - (c) in the case of variation or correction, any of the information required by subsection (1) which has been changed; and
 - (d) the date and time the variation, correction or cancellation of the order is entered.
- (4) **Recording Requirements for Execution of an Order** – Immediately following the execution of an order for securities, the dealer or inter-dealer bond broker ~~shall~~must add to the record maintained in accordance with this section specific information relating to that order including,
- (a) the identifier of the marketplace where the order was executed or the identifier of the dealer or inter-dealer bond broker executing the order if the order was not executed on a marketplace;
 - (b) the date and time of the execution of the order;
 - (c) whether the order was fully or partially executed;
 - (d) the number of securities bought or sold;
 - (e) whether the transaction was a cross;
 - (f) whether the dealer has executed the order as principal;
 - (g) the commission charged and all other transaction fees; and

(h) the price at which the order was executed, including mark-up or mark-down.

(5) **[Repealed]**

(6) **[Repealed]**

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

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

(a) to a regulation services provider the information required by the regulation services provider, within ten business days, in electronic form; and

(b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

PART 12 EXEMPTION

12.1 Exemption

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

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

PART 13 EFFECTIVE DATE

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

**COMPANION POLICY 23-101CP
TRADING RULES**

Table of Contents

PART	TITLE
PART 1	INTRODUCTION
1.1	Introduction
1.2	Just and Equitable Principles of Trade
PART 1.1	DEFINITIONS
1.1.1	Definition of best execution
1.1.2	Definition of automated functionality
1.1.3	Definition of protected order
1.1.4	Definition of calculated-price order
1.1.5	Definition of directed-action order
1.1.6	Definition of non-standard order
PART 2	APPLICATION OF THE INSTRUMENT
2.1	Application of the Instrument
PART 3	MANIPULATION AND FRAUD
3.1	Manipulation and Fraud
PART 4	BEST EXECUTION
4.1	Best Execution
PART 5	REGULATORY HALTS
5.1	Regulatory Halts
PART 6	ORDER PROTECTION
6.1	Marketplace Requirements for Order Protection
6.2	Marketplace Participant Requirements for Order Protection
6.3	List of Trade-throughs
6.4	Locked and Crossed Markets
6.5	Anti-Avoidance Provision
PART 7	MONITORING AND ENFORCEMENT
7.1	Monitoring and Enforcement Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System
7.2	Monitoring and Enforcement Requirements for an ATS
7.3	Monitoring and Enforcement Requirements for an Inter-Dealer Bond Broker
7.4	Monitoring and Enforcement Requirements for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace
7.5	Agreement between a Marketplace and a Regulation Services Provider
7.6	Coordination of Monitoring and Enforcement
PART 8	AUDIT TRAIL REQUIREMENTS
8.1	Audit Trail Requirements
8.2	Transmission of Information to a Regulation Services Provider
8.3	Electronic Form

COMPANION POLICY 23-101CP
TRADING RULES

PART 1 INTRODUCTION

1.1 Introduction – The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to National Instrument 23-101 *Trading Rules* (the "Instrument"), including

- (a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and
- (b) the interpretation of various terms and provisions in the Instrument.

1.2 Just and Equitable Principles of Trade – While the Instrument deals with specific trading practices, as a general matter, the Canadian securities regulatory authorities expect marketplace participants to transact business openly and fairly, and in accordance with just and equitable principles of trade.

PART 1.1 DEFINITIONS

1.1.1 Definition of best execution – (1) In the Instrument, best execution is defined as the "most advantageous execution terms reasonably available under the circumstances". In seeking best execution, a dealer or adviser may consider a number of elements, including:

- a. price;
- b. speed of execution;
- c. certainty of execution; and
- d. the overall cost of the transaction.

These four broad elements encompass more specific considerations, such as order size, reliability of quotes, liquidity, market impact (i.e. the price movement that occurs when executing an order) and opportunity cost (i.e. the missed opportunity to obtain a better price when an order is not completed at the most advantageous time). The overall cost of the transaction is meant to include, where appropriate, all costs associated with accessing an order and/or executing a trade that are passed on to a client, including fees arising from trading on a particular marketplace, jitney fees (i.e. any fees charged by one dealer to another for providing trading access) and settlement costs. The commission fees charged by a dealer would also be a cost of the transaction.

(2) The elements to be considered in determining "the most advantageous execution terms reasonably available" (i.e. best execution) and the weight given to each will vary depending on the instructions and needs of the client, the particular security, the prevailing market conditions and whether the dealer or adviser is responsible for best execution under the circumstances. Please see a detailed discussion below in Part 4.

1.1.2 Definition of automated functionality – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to:

- (1) act on an incoming order;
- (2) respond to the sender of an order; and
- (3) update the order by disseminating information to an information processor or information vendor.

Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

1.1.3 Definition of protected order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "**displayed on a marketplace**"

refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are “reserve” or hidden volumes are not considered to be “displayed on a marketplace”. The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as “orders” that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be “protected orders” under the definition in the Instrument and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a “special terms order” on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.

1.1.4 Definition of calculated-price order – The definition of “**calculated-price order**” refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

- (a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;
- (b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;
- (c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;
- (d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and
- (e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.5 Definition of directed-action order – (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked “DAO” by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

- (a) execute the order and cancel the remainder using an immediate-or-cancel marker,
- (b) execute the order and book the remainder,
- (c) book the order as a passive order awaiting execution, and
- (d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC’s Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender’s instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace’s own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

1.1.6 Definition of non-standard order – The definition of “**non-standard order**” refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

PART 2 APPLICATION OF THE INSTRUMENT

2.1 Application of the Instrument – Section 2.1 of the Instrument provides an exemption from subsection 3.1(1) and Parts 4 and 5 of the Instrument if a person or company complies with similar requirements established by a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) of the Instrument directly, a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) of the Instrument directly or a regulation services provider. The requirements are filed by the recognized exchange, recognized quotation and trade reporting system or regulation services provider and approved by a securities regulatory authority. If a person or company is not in compliance with the requirements of the recognized exchange, recognized quotation and trade reporting system or the regulation services provider, then the exemption does not apply and that person or company is subject to subsection 3.1(1) and Parts 4 and 5 of the Instrument. The exemption from subsection 3.1(1) does not apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan and the relevant provisions of securities legislation apply.

PART 3 MANIPULATION AND FRAUD**3.1 Manipulation and Fraud**

(1) Subsection 3.1(1) of the Instrument prohibits the practices of manipulation and deceptive trading, as these may create misleading price and trade activity, which are detrimental to investors and the integrity of the market.

(2) Subsection 3.1(2) of the Instrument provides that despite subsection 3.1(1) of the Instrument, the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan. The jurisdictions listed have provisions in their legislation that deal with manipulation and fraud.

(3) For the purposes of subsection 3.1(1) of the Instrument, and without limiting the generality of those provisions, the Canadian securities regulatory authorities, depending on the circumstances, would normally consider the following to result in, contribute to or create a misleading appearance of trading activity in, or an artificial price for, a security:

- (a) Executing transactions in a security if the transactions do not involve a change in beneficial or economic ownership. This includes activities such as wash-trading.
- (b) Effecting transactions that have the effect of artificially raising, lowering or maintaining the price of the security. For example, making purchases of or offers to purchase securities at successively higher prices or making sales of or offers to sell a security at successively lower prices or entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined price or quotation,
 - (ii) effect a high or low closing price or closing quotation, or
 - (iii) maintain the trading price, ask price or bid price within a predetermined range.
- (c) Entering orders that could reasonably be expected to create an artificial appearance of investor participation in the market. For example, entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, at substantially the same price for the sale or purchase, respectively, of that security has been or will be entered by or for the same or different persons.
- (d) Executing prearranged transactions that have the effect of creating a misleading appearance of active public trading or that have the effect of improperly excluding other marketplace participants from the transaction.
- (e) Effecting transactions if the purpose of the transactions is to defer payment for the securities traded.
- (f) Entering orders to purchase or sell securities without the ability and the intention to
 - (i) make the payment necessary to properly settle the transaction, in the case of a purchase; or
 - (ii) deliver the securities necessary to properly settle the transaction, in the case of a sale.

This includes activities known as free-riding, kiting or debit kiting, in which a person or company avoids having to make payment or deliver securities to settle a trade.

- (g) Engaging in any transaction, practice or scheme that unduly interferes with the normal forces of demand for or supply of a security or that artificially restricts or reduces the public float of a security in a way that could reasonably be expected to result in an artificial price for the security.
- (h) Engaging in manipulative trading activity designed to increase the value of a derivative position.
- (i) Entering a series of orders for a security that are not intended to be executed.
- (4) The Canadian securities regulatory authorities do not consider market stabilization activities carried out in connection with a distribution to be activities in breach of subsection 3.1(1) of the Instrument, if the market stabilization activities are carried out in compliance with the rules of the marketplace on which the securities trade or with provisions of securities legislation that permit market stabilization by a person or company in connection with a distribution.
- (5) Section 3.1 of the Instrument applies to transactions both on and off a marketplace. In determining whether a transaction results in, contributes to or creates a misleading appearance of trading activity in, or an artificial price for a security, it may be relevant whether the transaction takes place on or off a marketplace. For example, a transfer of securities to a holding company for *bona fide* purposes that takes place off a marketplace would not normally violate section 3.1 even though it is a transfer with no change in beneficial ownership.
- (6) The Canadian securities regulatory authorities are of the view that section 3.1 of the Instrument does not create a private right of action.
- (7) In the view of the Canadian securities regulatory authorities, section 3.1 includes attempting to create a misleading appearance of trading activity in or an artificial price for, a security or attempting to perpetrate a fraud.

PART 4 BEST EXECUTION

4.1 Best Execution

- (1) The best execution obligation in Part 4 of the Instrument does not apply to an ATS that is registered as a dealer provided that it is carrying on business as a marketplace and is not handling any client orders other than accepting them to allow them to execute on the system. However, the best execution obligation does otherwise apply to an ATS acting as an agent for a client.
- (2) Section 4.2 of the Instrument requires a dealer or adviser to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. The obligation applies to all securities.
- (3) Although what constitutes “best execution” varies depending on the particular circumstances, to meet the “reasonable efforts” test, a dealer or adviser should be able to demonstrate that it has, and has abided by, its policies and procedures that (i) require it to follow the client’s instructions and the objectives set, and (ii) outline a process designed to achieve best execution. The policies and procedures should describe how the dealer or adviser evaluates whether best execution was obtained and should be regularly and rigorously reviewed. The policies outlining the obligations of the dealer or adviser will be dependent on the role it is playing in an execution. For example, in making reasonable efforts to achieve best execution, the dealer should consider the client’s instructions and a number of factors, including the client’s investment objectives and the dealer’s knowledge of markets and trading patterns. An adviser should consider a number of factors, including assessing a particular client’s requirements or portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on a regular basis. In addition, if an adviser is directly accessing a marketplace, the factors to be considered by dealers may also be applicable.
- (4) Where securities listed on a Canadian exchange or quoted on a Canadian quotation and trade reporting system are inter-listed either within Canada or on a foreign exchange or quotation and trade reporting system, in making reasonable efforts to achieve best execution, the dealer should assess whether it is appropriate to consider all marketplaces upon which the security is listed or quoted and where the security is traded, both within and outside of Canada.
- (5) In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all appropriate marketplaces (not just marketplaces where the dealer is a participant). This does not mean that a dealer must have access to real-time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

(6) For foreign exchange-traded securities, if they are traded on a marketplace in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the marketplace as well as the foreign markets upon which the securities trade.

(7) Section 4.2 of the Instrument applies to registered advisers as well as registered dealers that carry out advisory functions but are exempt from registration as advisers.

(8) Section 4.3 of the Instrument requires that a dealer or adviser make reasonable efforts to use facilities providing information regarding orders and trades. These reasonable efforts refer to the use of the information displayed by the information processor or, if there is no information processor, an information vendor.

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – Section 5.1 of the Instrument applies when a regulatory halt has been imposed by a regulation services provider, a recognized exchange, or a recognized quotation and trade reporting system. A regulatory halt, as referred to in section 5.1 of the Instrument, is one that is imposed to maintain a fair and orderly market, including halts related to a timely disclosure policy, or because there has been a violation of regulatory requirements. In the view of the Canadian securities regulatory authorities, an order may trade on a marketplace despite the fact that trading of the security has been suspended because the issuer of the security has ceased to meet minimum listing or quotation requirements, or has failed to pay to the recognized exchange, or the recognized quotation and trade reporting system any fees in respect of the listing or quotation of securities of the issuer. Similarly, an order may trade on a marketplace despite the fact that trading of the security has been delayed or halted because of technical problems affecting only the trading system of the recognized exchange, or recognized quotation and trade reporting system.

PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection

(1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

- (a) steps taken by the marketplace to evaluate its policies and procedures;
- (b) any breaches or deficiencies found; and
- (c) the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection

(1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably

designed to prevent trade-throughs. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

- (a) steps taken by the marketplace participant to evaluate its policies and procedures;
- (b) any breaches or deficiencies found; and
- (c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

6.3 List of Trade-throughs – Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of “permitted” trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

- (a)
 - (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).
 - (ii) Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Instrument respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Instrument respectively.
- (b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace’s policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.
- (c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The “changing markets” exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across marketplaces in certain circumstances. This could occur for example:

- (i) where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and
 - (ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as ~~displayed~~displayed across marketplaces may have changed, thus causing a trade-through.
- (d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.
- (e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets

(1) Section 6.5 of the Instrument provides that a marketplace participant or a marketplace that routes or reprices orders ~~shall~~must not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. This provision is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

The Canadian securities regulatory authorities consider an order that is routed or repriced to be “entered” on a marketplace. The Canadian securities regulatory authorities do not consider the triggering of a previously-entered on-stop order to be an “entry” or “repricing” of that order.

(2) Section 6.5 of the Instrument prohibits a marketplace participant or a marketplace that routes or reprices orders from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. This could also occur where a marketplace system is programmed to reprice orders without checking to see if the new price would lock the market or where the marketplace routes orders to another marketplace that results in a locked market.

There are situations where a locked or crossed market may occur unintentionally. For example:

- (a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,
- (b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,
- (c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;
- (d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.
- (e) the locking or crossing order was entered on a particular marketplace in order to comply with securities legislation requirements such as Rule 904 of Regulation S of the *Securities Act of 1933* that requires securities subject to resale restrictions in the United States to be sold in Canada on a “designated offshore securities market”,
- (f) the locking or crossing order was displayed due to “race conditions” when competing orders are entered on marketplaces at essentially the same time with neither party having knowledge of the other order at the time of entry,
- (g) the locking or crossing order was a result of the differences in processing times and latencies between the systems of the marketplace participant, marketplaces, information processor and information vendors,

- (h) the locking or crossing order was a result of marketplaces having different mechanisms to “restart” trading following a halt in trading for either regulatory or business purposes, and
- (i) the locking or crossing order was a result of the execution of an order during the opening or closing allocation process of one market, while trading is simultaneously occurring on a continuous basis on another market,
- (3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Instrument.

6.5 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.

PART 7 MONITORING AND ENFORCEMENT

7.1 Monitoring and Enforcement of Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System – Under section 7.1 of the Instrument, a recognized exchange will set its own requirements governing the conduct of its members. Under section 7.3 of the Instrument, a recognized quotation and trade reporting system will set its own requirements governing the conduct of its users. The recognized exchange or recognized quotation and trade reporting system can monitor and enforce these requirements either directly or indirectly through a regulation services provider. A regulation services provider is a person or company that provides regulation services and is either a recognized exchange, recognized quotation and trade reporting system or a recognized self-regulatory entity.

If a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with a regulation services provider, it is expected that the requirements adopted by the recognized exchange or recognized quotation and trade reporting system under Part 7 of the Instrument will consist of all of the rules of the regulation services provider that relate to trading. For example, if a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with IIROC, the rules adopted by the recognized exchange or recognized quotation and trade reporting system are all of IIROC’s Universal Market Integrity Rules. Clock synchronization, trade markers and trading halt requirements would be examples of these adopted rules that relate to the regulation services provider’s monitoring of trading on the recognized exchange or recognized quotation and trade reporting system and across marketplaces.

We are of the view that all of the rules of the regulation services provider related to trading must be adopted by a recognized exchange or recognized quotation and trade reporting system that has entered into a written agreement with the regulation services provider given the importance of these rules in the context of effectively monitoring trading on and across marketplaces. We note that the regulation services provider is required to monitor the compliance of, and enforce, the adopted rules as against the members of the recognized exchange or users of the recognized quotation and trade reporting system. The regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules but it is the applicable securities regulatory authority that will enforce these rules against the recognized exchange or recognized quotation and trade reporting system.

Sections 7.2 and 7.4 of the Instrument require the recognized exchange or recognized quotation and trade reporting system that chooses to have the monitoring and enforcement performed by the regulation services provider to enter into an agreement with the regulation services provider in which the regulation services provider agrees to enforce the requirements of the recognized exchange or recognized quotation and trade reporting system- adopted under subsection 7.1(1) and 7.3(1).

Specifically, sections 7.2 and 7.4 require the written agreement between a recognized exchange or recognized quotation and trade reporting system and its regulation services provider to provide that the regulation services provider will monitor and enforce the requirements set under subsection 7.1(1) or 7.3(1) and monitor the requirements adopted under subsection 7.1(3) or 7.3(3).

Paragraph 7.2.1(a)(i) mandates that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces. The reference to monitoring trading “across marketplaces” refers to the instance where particular securities are traded on multiple marketplaces. Where particular securities are only traded on one marketplace, the reference to “across marketplaces” may not apply in all circumstances.

Paragraph 7.2.1(a)(ii) requires that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the compliance of the recognized exchange with the requirements adopted under

subsection 7.1(3). As well, subsection 7.2.1(b) requires a recognized exchange to comply with all orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange's members on the recognized exchange and with the regulation services provider's oversight of the compliance of the recognized exchange with the requirements adopted under 7.1(3).

7.2 Monitoring and Enforcement Requirements for an ATS – Section 8.2 of the Instrument requires the regulation services provider to set requirements that govern an ATS and its subscribers. Before executing a trade for a subscriber, the ATS must enter into an agreement with a regulation services provider and an agreement with each subscriber. These agreements form the basis upon which a regulation services provider will monitor the trading activities of the ATS and its subscribers and enforce its requirements. The requirements set by a regulation services provider must include requirements that the ATS and its subscribers will conduct trading activities in compliance with the Instrument. The ATS and its subscribers are considered to be in compliance with the Instrument and are exempt from the application of most of its provisions if the ATS and the subscriber are in compliance with the requirements set by a regulation services provider.

7.3 Monitoring and Enforcement Requirements for an Inter-Dealer Bond Broker – Section 9.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of an inter-dealer bond broker. Under section 9.2 of the Instrument, the inter-dealer bond broker must enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the inter-dealer bond broker and enforce the requirements set by the regulation services provider. However, section 9.3 of the Instrument provides inter-dealer bond brokers with an exemption from sections 9.1 and 9.2 of the Instrument if the inter-dealer bond broker complies with the requirements of IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended, as if that policy was drafted to apply to the inter-dealer bond broker.

7.4 Monitoring and Enforcement Requirements for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace – Section 10.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace. Under section 10.2 of the Instrument, the dealer must also enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the dealer and enforce the requirements set by the regulation services provider.

7.5 Agreement between a Marketplace and a Regulation Services Provider

The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.

7.6 Coordination of Monitoring and Enforcement

(1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.

PART 8 AUDIT TRAIL REQUIREMENTS

8.1 Audit Trail Requirements – Section 11.2 of the Instrument imposes obligations on dealers and inter-dealer bond brokers to record in electronic form and to report certain items of information with respect to orders and trades. Information to be recorded includes any markers required by a regulation services provider (such as a significant shareholder marker). The purpose of the obligations set out in Part 11 is to enable the entity performing the monitoring and surveillance functions to construct an audit trail of order, quotation and transaction data which will enhance its surveillance and examination capabilities.

8.2 Transmission of Information to a Regulation Services Provider – Section 11.3 of the Instrument requires that a dealer and an inter-dealer bond broker provide to the regulation services provider information required by the regulation services provider, within ten business days, in electronic form. This requirement is triggered only when the regulation services provider sets requirements to transmit information.

8.3 Electronic Form – Subsection 11.3 of the Instrument requires any information required to be transmitted to the regulation services provider and securities regulatory authority in electronic form. Dealers and inter-dealer bond brokers are required to provide information in a form that is accessible to the securities regulatory authorities and the regulation services provider (for example, in SELECTR format).

ANNEX F

List of Commenters

Canadian Security Traders Association, Inc.
Chi-X Canada ATS Limited
CNSX Markets Inc.
Connor, Clark & Lunn Investment Management Ltd.
Investment Industry Association of Canada (IIAC)
Liquidnet Canada Inc.
Scotia Capital Inc.
TMX Group Limited

ANNEX G

Comment Summary and CSA Responses

Topic	Summary of Comments	CSA Response
<p data-bbox="136 352 285 491">Marketplace systems and business continuity planning:</p> <p data-bbox="136 520 276 600">(i) Business Continuity Testing</p>	<p data-bbox="375 352 992 411">Commenters supported the general direction of the CSA’s proposal on business continuity testing.</p> <p data-bbox="375 436 1008 627">One commenter requested more clarity on what qualifies as a disaster and how the CSA interprets when a service, such as trading, is deemed to not be operative. Another commenter strongly encouraged the CSA to mandate a marketplace’s production environment for participation in this industry wide test since using a test environment significantly undermines the effectiveness of a BCP test.</p> <p data-bbox="375 655 1008 873">Three commenters questioned whether the obligation to participate in industry-wide testing should apply to all protected marketplaces, as defined in the “CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 <i>Trading Rules</i>”. One commenter suggests that mandatory participation as applied to marketplace participants should be limited to marketplace participants that are investment dealers.</p> <p data-bbox="375 900 976 1094">One commenter suggested that resumption times for marketplaces should be shortened to one hour from the currently stated two hours. Two commenters suggest the two hour mandated recovery time for marketplaces be moved to a best efforts standard. Two commenters suggested a lower threshold for the system resumption requirements in section 12.4.</p> <p data-bbox="375 1121 1016 1255">One commenter pointed out that the proposed changes to section 12.4 of the Instrument would effectively require a marketplace to deploy a dedicated disaster recovery site, which would be a material undertaking for an exchange, and for its vendors and dealer customers.</p>	<p data-bbox="1045 352 1479 627">In regards to defining “disaster”, the CSA does not believe that the Instrument should prescribe what constitutes a disaster and that marketplaces should be guided by their own BCP plans in determining what qualifies as a disaster for purposes of the requirements at section 12.4. We have amended the Companion Policy (CP) to reflect this guidance.</p> <p data-bbox="1045 655 1471 900">Our view is that all marketplaces, whether protected or not, have the potential to contribute risk to the capital markets and should therefore participate in industry-wide testing. We also expect that marketplaces will make their production environments available for industry-wide testing and have amended the CP to reflect this expectation.</p> <p data-bbox="1045 928 1471 1230">We have narrowed the obligation to participate in industry-wide BCP tests under 12.4.1 from marketplace participants to participant dealers. The definition of “participant dealer” has been incorporated from National Instrument 23-103 <i>Electronic Trading and Direct Electronic Access to Marketplaces</i> (NI 23-103) for purposes of limiting participation in the industry-wide BCP test to dealers only.</p> <p data-bbox="1045 1257 1479 1808">With respect to the system resumption requirements in section 12.4, we acknowledge that owing to the many, and at times unforeseen, variables that may affect a marketplace’s key systems, there may be instances where it is not possible for a marketplace to ensure that such systems resume operations within the specified times following the declaration of a disaster. We have therefore revised section 12.4 to require a marketplace that meets the threshold to establish, implement and maintain policies and procedures reasonably designed to ensure system recovery within the prescribed timeframes. As regards the threshold for the system resumption requirements in s.12.4, it is our view that 10% is the appropriate threshold at this time.</p> <p data-bbox="1045 1835 1471 1885">Our view is that two hours strikes the appropriate balance between having key</p>

Topic	Summary of Comments	CSA Response
		<p>systems resume operations in a timely manner following a declaration of a disaster with allowing marketplaces sufficient time to diagnose and rectify systems issues in the event of disruption. We have therefore left the resumption periods in section 12.4 unchanged.</p> <p>Finally, it is not the intention of the amendments to require marketplaces to maintain a dedicated disaster recovery site.</p>
<p>Marketplace systems and business continuity planning:</p> <p>(ii) Uniform Test Symbols in Production Environments</p>	<p>One commenter expressed concerns that a marketplace’s production environment may be negatively impacted by marketplace participants using test symbols to try out trading strategies. One supporter of this provision notes that all symbols in a production environment demand system resources and that a marketplace should be able to exercise its power under Part 4 of National Instrument 23-103 to suspend access to a test symbol in a production environment if it is negatively impacting the production environment.</p> <p>Two commenters suggest the formation of an industry working committee to assist in identifying issues related to implementation of this provision and to ensure that any changes to marketplace operations are implemented effectively across all marketplaces.</p> <p>A commenter suggested a requirement for marketplaces to disclose their policies relating to this type of testing. Another commenter suggested mandating the duration of testing.</p> <p>One commenter would like clarity as to whether the rule amendments would preclude a marketplace to use, and make available to participants, non-uniform test symbols for the purposes of performing testing in the production environment where appropriate.</p>	<p>We have amended the CP to indicate that the use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace’s production environment and is not intended to enable stress testing by marketplace participants. To the extent that the use of test symbols may negatively impact the performance of a marketplace’s production environment, our view is the marketplace may suspend access to a test symbol where its use reasonably represents undue risk. We have also reflected in the CP the CSA’s view that misuse of test symbols by marketplace participants may amount to a breach of the fair and orderly markets provisions of NI 23-103.</p> <p>As indicated in the Notice accompanying the proposed amendments, our expectation is that the details of how best to implement the test symbols requirement will be discussed with an industry working group. Clearing firms and information processors could be included in the consultation so that coordination, if necessary, is achieved. However, it is beyond the scope of the proposed amendments to mandate the use of test symbols by clearing agencies and information processors at this time.</p> <p>We have amended section 10.1 of the Instrument to provide for the disclosure, on a marketplace’s website, of any policies and procedures relating to a marketplace’s use of uniform test symbols for purposes of testing in its production environment.</p> <p>We are also of the view that the proposed amendments regarding test symbols would not preclude a marketplace from using its non-uniform test symbols to carry out testing in the production environment where appropriate.</p>

Topic	Summary of Comments	CSA Response
<p>Marketplace systems and business continuity planning:</p> <p>(iii) Security Breaches</p>	<p>Two commenters support a requirement that a marketplace notify a regulator or securities regulatory authority of any material security breach in a timely manner.</p> <p>One commenter believes the proposed amendments in relation to notification of material security breaches are extremely broad and that reporting of such information will expose confidential and sensitive system information to unnecessary leakage. The commenter submits that assessing the materiality of a security breach based on the potential impact of such a breach would be a more practical standard.</p>	<p>The CSA believes that notification of security breaches is important and useful and that such notification is an important part of our ongoing oversight of marketplaces.</p> <p>The provisions for the reporting of material security breaches are comprehensive. As expressed in the CP, a material security breach would be any unauthorized entry into any of the listed systems and that, as a result, virtually any successful security breach would be considered material. Since this provision is not intended to cover <i>unsuccessful</i> attempts at unauthorized entry, the CSA believes that the number of reportable security breaches should be reasonable.</p> <p>While we acknowledge the concerns raised with respect to risks associated with the reporting of confidential and sensitive information around security breaches, we note that Canadian securities regulatory authorities maintain secure systems and have implemented policies and procedures designed to safeguard confidential and sensitive information. We also note that in Ontario, the Ontario Securities Commission has ordered that the forms required to be filed pursuant to the Instrument be held in confidence pursuant to section 140(2) of the <i>Securities Act</i> (Ontario).</p>
<p>Marketplace systems and business continuity planning:</p> <p>(iv) Expansion of scope of ISRs</p>	<p>One commenter requested further clarity on the definition of “auxiliary systems” and points out that agreements with third party providers would have to be reviewed and amended to provide access for the ISR audit team. The commenter submits that third party providers may not be amenable to exposing components of their own security measures to ISR auditors.</p>	<p>While we acknowledge the comment, the CSA’s view is that the description of “auxiliary systems” and the corresponding requirements in section 12.1.1 of the Instrument are clear.</p> <p>We also note guidance from the Securities and Exchange Commission in Regulation SCI on systems operated on behalf of an SCI entity by a third party:</p> <p>“SEC believes that permitting such systems to be excluded from the requirements of Regulation SCI would significantly reduce the effectiveness of the regulation in promoting the national market system by ensuring the capacity, integrity, resiliency, availability, and security of those systems important to the functioning of the U.S. securities markets.</p> <p>Further, if the definition did not include systems operated on behalf of an SCI entity, the Commission is concerned that some SCI entities might be inclined to</p>

Topic	Summary of Comments	CSA Response
		<p>outsource certain of their systems solely to avoid the requirements of Regulation SCI, which would further undermine the goals of Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.”</p>
<p>Marketplace systems and business continuity planning:</p> <p>(v) Launch of new marketplaces and material changes to marketplace technology requirements</p>	<p>With respect to the requirement to provide marketplace participants and service vendors reasonable opportunity to adapt to the launching of new marketplaces and material changes made to a marketplace’s technology requirements, one commenter suggests this requirement should apply only where the proposed change would require participants of the applicable marketplace or market participants generally to implement material changes to their own technology.</p> <p>One commenter noted that, unlike OSC Staff Notice 21-706, the amendments do not permit any flexibility regarding the time and effort required to introduce a “material system change” other than what constitutes a material change itself. As a result, the commenter suggests that the amendments may limit and restrict marketplaces from implementing beneficial technology changes in a timely manner and may also have a negative impact on marketplace advancement and competitiveness. The commenter also suggests that guidance be provided as to what would constitute a “material system change” and whether there is any intended relationship between the terms “significant change” and “significant impact” under Section 6.1(4) of the CP21-101.</p> <p>In connection with certification by a marketplace’s chief information officer that all IT systems have been tested according to prudent business practices and are operating as designed prior to a marketplace beginning operations or implementing material changes to its technology requirements, one commenter believes that this provision will impose unnecessary costs and unduly delay beneficial market changes from being implemented. The commenter submits that rather than a formal certification, policies and procedures that support appropriate testing and internal sign offs prior to implementation of material systems’ changes could meet the intent of this provision.</p>	<p>We acknowledge the comment regarding the possible impact of the amendments on the timing for implementation by marketplaces of material system changes.</p> <p>Although, in the CSA’s view, it is essential that marketplace participants and access vendors have sufficient time to undertake the necessary work to accommodate the launch of new marketplaces or material systems changes made by existing marketplaces following the regulatory review process, we have decided to not adopt the proposed amendment to subsection 12.3(3) at this time.</p> <p>We acknowledge the comment about the possibility of delay associated with the certification by a marketplace’s CIO but, in our view, the importance of ensuring that proposed systems changes have been properly tested warrants the requirement.</p>
<p>Marketplace systems and business continuity planning:</p> <p>(vi) Other System Related Amendments</p>	<p>One commenter expressed concerns with the proposed amendments to Exhibit G of Forms 21-101F1 and 21-101F2 as, in the view of the commenter, the new requirements are broad and onerous and would introduce systemic risk, as well as create an unacceptable and unnecessary security risk for confidential marketplace information.</p>	<p>We acknowledge the comment regarding the changes to Exhibit G of Forms 21-101F1 and 21-101F2. However, the CSA’s view is that the additional information requested in Exhibit G is essential for the Canadian securities regulatory authorities to have an informed understanding of the marketplace’s systems and its approach to contingency planning that is in keeping</p>

Topic	Summary of Comments	CSA Response
		<p>with the interconnectedness of marketplaces and the impact that systems disruptions can have on the market overall.</p> <p>We note that some additional reporting requirements have been included in Exhibit G to Forms 21-101F1 and 21-101F2, including some additional description regarding a marketplace's business continuity and disaster recovery plans, which will provide for a more complete representation of the marketplace's BCP/DRP and is consistent with international regulatory approaches to the oversight of business continuity planning by marketplaces. We have also revised the reporting requirements for a marketplace's network diagram and organization chart for a marketplace's IT group in order to clarify the requirements and avoid duplicative reporting.</p> <p>Lastly, as discussed above in 2(iii), we note that the Canadian securities regulatory authorities maintain secure systems and have implemented policies and procedures designed to safeguard confidential and sensitive information.</p>
<p>Use of marketplace participants' trading information for research</p>	<p>A number of commenters had specific concerns regarding the proposed amendments for the disclosure of the order and trade information of marketplace participants for purposes of capital markets research.</p> <p>Commenters' concerns related to the risks of misuse of the information once disclosed by the marketplace, risks around the safe storage of information by recipients, and risks that marketplace participants may nevertheless be identified through disclosure of their order and trade information.</p> <p>Specific concerns identified by commenters included the risk that recipients might be able to reverse engineer the trading strategies of marketplace participants based on the information received and therefore obtain insight into proprietary trading strategies, even if the information were masked. Commenters also expressed concern that marketplaces are not incented or equipped to effectively monitor recipients' use of the order and trade information once disclosed, leaving the risks associated with disclosure unmitigated. Lastly, commenters expressed concern that the proposed requirements in the Instrument may not apply to ultimate recipients of the information in the event a recipient further discloses the information to a research assistant or a third party for purposes of verification.</p> <p>A number of commenters suggested the creation of a process by which marketplace participants would be notified in the event that a marketplace proposed to disclose their order and trade information, including being given an</p>	<p>We acknowledge the comments received and thank commenters for their thoughtful reaction to the proposed amendments.</p> <p>The CSA's view is that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used for capital markets research and only if certain terms and conditions are met.</p> <p>We note that 5.10(1.1) was modified so as to clarify that a marketplace may release a marketplace participant's order or trade information if it reasonably believes that information will be used solely for the purpose of capital markets research and that that information is required for the purpose of the capital markets research. Moreover, the CSA has made clear that the research is not intended for the purpose identifying a</p>

Topic	Summary of Comments	CSA Response
	<p>opportunity to comment on the proposed disclosure.</p>	<p>particular marketplace participant or identifying transactions, trading strategies or market positions of a particular marketplace participant.</p> <p>In addition, we have refined the provisions for disclosure of order or trade information used in connection with research submitted to a publication.</p>
<p>Co-location and other access arrangements with a service provider</p>	<p>Three commenters questioned whether a marketplace can ensure that a third-party operator would provide a form of access that complies with the marketplace's criteria for fair access. Another commenter suggests that proper due diligence should be the expectation placed on a marketplace for ensuring that a third party provider follows its fair access policies.</p> <p>One commenter submitted that the proposed requirement in Section 5.13 and 10.1(i) of NI21-101 is very broad and the drafting should be clarified. The commenter expressed concerns that these sections could be interpreted to apply to access services provided in the normal course by a third party access vendor, and absent any commercial agreement or arrangement between the marketplace and "third party service provider" under which the access services are being performed or facilitated for or on behalf of the marketplace.</p>	<p>In our view, hosting services can be provided by the marketplace or by a third party provider. In the case of the latter, it is the CSA's view that it is appropriate for the marketplace to require, as part of its agreement with the third party provider, that the third party provider provide access in a way that complies with the fair access requirements of the Instrument.</p> <p>We confirm that the proposed amendment is intended to apply to key marketplace access services, including co-location services, rather than access services provided in the normal course absent any agreement with the marketplace, such as services provided by a third party access vendor.</p>
<p>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</p> <p>(a) Guidance Regarding Significant Changes to Form 21-101F1 and Form 21-101F2</p>	<p>One commenter expressed concern that the extended approval process puts Canadian marketplaces at a competitive disadvantage relative to competing marketplaces in the US and other jurisdictions. The commenter suggests that public comment on a proposed marketplace rule change would be appropriate when the rule change would have a significant impact on market participants that are not participants of the specific marketplace. However, if a change would only have a significant impact on those participants who are subscribers of the specific marketplace, the commenter believes that a 20-day notice period to the regulator would be appropriate, but it would not seem appropriate to require publication of the proposed change for public comment.</p> <p>One commenter believes that permitting marketplaces discretion when determining whether or not certain changes are significant will help operations be more fluid and remedy some unnecessary delays. Two commenters suggest that this section be revised to include a materiality threshold to ensure resources are allocated effectively and efficiently, and to ensure the process treats all marketplaces fairly when managing marketplace changes and their associated filings.</p> <p>One commenter requests confirmation that the Rule Protocol will be amended in tandem with the Proposed Amendments or that another solution will be made so that fee changes are not considered a "significant change subject to public comment".</p>	<p>In the CSA's view, regardless of whether a change should be published for comment or not, all significant changes require the benefit of at least 45 days prior notice to allow for a full consideration of the change by staff. The CSA notes that the 45 days prior notice for significant changes is also in accordance with rules in other jurisdictions, including the U.S.</p> <p>In Staff's view, the new guidance around significant impact in the CP is expected to assist marketplaces in having the flexibility to determine what changes are considered significant relative to the impact the change is expected to have on the marketplace. In our view, by assessing the significance of the change relative to its expected impact on the marketplace, there is an appropriate amount of discretion to allow for the appropriate treatment of proposed changes.</p> <p>Lastly, we acknowledge the need to amend, in Ontario, the protocols for the review and approval of rule changes and significant changes for marketplaces to ensure continuity with the guidance in the CP.</p>

Topic	Summary of Comments	CSA Response
<p>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</p> <p>(c) Annual Certification of Form 21-101F1 and Form 21-101F2 Information</p>	<p>Two commenters do not see the need for a complete and new consolidated form being submitted each year at the same time. One commenter submits that the proposed annual filing and certification under Section 3.2(4) of NI21-101 is duplicative and places an undue regulatory burden on marketplaces without added benefit.</p>	<p>The requirement to file complete and accurate information with respect to Form 21-101F1 and Form 21-101F2 ensures that each marketplace reviews its F1/F2 to ensure descriptions match any significant changes made during the year and that the changes made are still in effect and that the form is complete and up to date.</p>
<p>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</p> <p>(e) Changes to Form 21-101F3</p>	<p>The commenter submits that the proposal to receive information in Form 21-101F3 regarding significant systems and technology changes during the quarter is duplicative of filings made under the Rule Protocol, the 21-101F1 and 21-101F2 filing process and the Automation Review Program for Market Infrastructure Entities in the Canadian Capital Markets.</p>	<p>We acknowledge the concern that the proposal to receive information is duplicative. With respect to the reporting of systems changes in the F3, we anticipate that this reporting would replace similar reporting required by the ARP and SRP and consolidate these requirements in the Instrument.</p>
<p>Provision of data to information processors</p>	<p>One commenter suggested that the proposed amendments to subsections 7.1(3) and 7.2(2) do not meet the CSA's stated objectives to ensure that information made available by marketplaces to the IP is timely, as the 'made available' test of timeliness does not go far enough. The commenter put forward that the only fair and monitorable system would require centralized dissemination of trade data and market data (i.e. the IP releases the data to participants rather than acting like a participant.) Another commenter suggested that the proposal should focus on when marketplace participants receive the data.</p> <p>One commenter suggests that the demarcation point for delivery of the data to the TMX IP is considerably upstream from the point that the same data is made available to other consumers and questions whether the intent this provision is to require the contributing marketplaces to delay provision of the data to other consumers.</p>	<p>We note that the centralization of data distribution through the IP represents a fundamental change to the existing model of data distribution that is beyond the scope of the proposed amendments. The purpose of the proposed changes to section 7.1(3) and 7.2(2) is to codify current expectations around the timely distribution of market data within the current model for data distribution by marketplaces.</p> <p>While acknowledging that there may be differences in the time in which marketplace participants receive order and trade information from the IP relative to those that receive it directly from a marketplace, we have revised the CP to clarify the CSA's expectation that in complying with the requirements of subsections 7.1(3) and 7.2(2) of the Instrument, marketplaces will release order and trade information simultaneously to both the IP and to marketplace participants that take in market data directly from the marketplace.</p> <p>We also note that marketplaces have affirmed with the OSC that they provide real time data to the IP at the same time and at the same rate of speed as provided to marketplace participants that elect to maintain direct connectivity to marketplaces.</p>
<p>Obligations of a recognized exchange to a regulation</p>	<p>The commenter contends that IIROC has not been granted the power to monitor exchange conduct. The commenter does not disagree that the interrelated nature of the operations of an exchange with the operations of its</p>	<p>We note the comments and concerns regarding obligations of a recognized exchange to a RSP and agree that the RSP does not regulate the exchange.</p>

Topic	Summary of Comments	CSA Response
services provider	<p>regulation services provider (RSP) may require coordination; however, this coordination does not require that the RSP monitor the conduct of the exchange. Furthermore, this provision implies an authority to the RSP that is not appropriate, desirable or necessary.</p> <p>With respect to the new provisions proposed for Section 7.1 of CP23-101, the commenter does not agree that “[t]he regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules [i.e. – UMIR].”</p> <p>The commenter submits that the RSP’s authority under Section 7.2.1(b) should be restricted to “orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange’s members on the recognized exchange.”</p> <p>With respect to Section 7.2.1(a) of NI23-10, IROC can mandate the form and manner for delivery of data stipulated by Part 11 of NI21-101, but other data in the possession of the exchanges required by IROC for its regulation services is provided in the form possessed by the exchanges.</p>	<p>However, it is our view that it is appropriate and necessary for the RSP to monitor the compliance and conduct of a recognized exchange with respect to those requirements applicable to the exchange and to report to the applicable securities regulatory authority only. The applicable securities regulatory authority has the authority to enforce these rules against a recognized exchange.</p> <p>The CSA mandates that a recognized exchange must transmit information reasonably required by an RSP. ‘Reasonably required by an RSP’ also applies to the form of the data and the manner of the data transmission. As submitted by the commenter, coordination between recognized exchanges and RSPs is expected. We believe that such coordination should naturally apply to arrangements for the form and manner of data transmission and it is up to the RSP to determine the best way for the data to be provided.</p>
Clearing and settlement	<p>One commenter believes the proposed amendments do not adequately address the complexities of clearing agencies, including those relating to their multifaceted functions, foreign regulatory and commercial differences, and CCP interoperability.</p>	<p>We acknowledge the comment regarding the issues raised by the prospect of multiple clearing agencies. The CSA’s objective in proposing the amendments to Part 13 of the Instrument was to remove any impediments in the Instrument to prospective competition in the provision of clearing and settlement services.</p> <p>We have elected not to revise the definition of clearing agencies in 13.2(1). In the CSA’s view, with the mandatory recognition of clearing agencies, to the extent that a marketplace participant designated a clearing agency for purposes of trade reporting pursuant to subsection 13.2(1) of the Instrument, that clearing agency would be carrying on business as a clearing agency and would need to be appropriately recognized or exempt from recognition.</p> <p>We also acknowledge the commenter’s concerns regarding the challenges associated with the interoperability of central counterparties in a multiple clearing agency environment. Our expectation is that, in the event of competition in the provision of clearing and settlement services such that different clearing agencies could be designated for purposes of subsection 13.2(1) of the Instrument, all issues of interoperability would need to be</p>

Topic	Summary of Comments	CSA Response
		resolved prior to the recognition, or exemption from recognition, of a competitor clearing agency.
Requirements applicable to information processors	<p>Two commenters recommend that the proposed one hour recovery time for the Information Processor be moved to a best efforts standard while another commenter believes that it should be reduced to no more than thirty minutes.</p> <p>One commenter notes that the IP currently runs in a hot-hot environment where two sites (Primary and Secondary) are running in parallel, each operating independently of the other to ensure that if one site is down, the other can remain fully functional with minimal impact to subscribers. Should an unforeseen event occur where both production sites are affected, the IP may not be able to control the total downtime.</p>	<p>In terms of shortening the time period for the resumption of operations of key systems following the declaration of a disaster, our view is that one hour strikes the appropriate balance between having critical systems resume operations in a timely manner and allowing the IP sufficient time to diagnose and rectify systems issues in the event of disruption.</p> <p>We have revised section 14.6 of the Instrument to require an information processor to establish, implement and maintain policies and procedures reasonably designed to ensure system recovery within the prescribed timeframes.</p>

ANNEX H

Local Matters

In Ontario, the amendments to National Instrument 21-101 and National Instrument 23-101 and other required materials were delivered to the Minister of Finance on June 23, 2015. The Minister may approve or reject the amendments or return them for further consideration. If the Minister approves the amendments or does not take any further action by September 7, 2015, the amendments will come into force on **October 1, 2015**.

In Ontario, consequential amendments will be made to the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* (Exchange Protocol) and to the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto* (ATS Protocol) to conform with changes made to subsection 6.1(4) of Companion Policy 21-101CP. Amendments will also be made to the Exchange Protocol and ATS Protocol to incorporate amendments originally proposed to section 12.3 of National Instrument 21-101 regarding the launch of new marketplaces and the implementation by marketplaces of material changes to the systems referred to in section 12.1 of National Instrument 21-101.

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