

CSA Notice of Approval Amendments to National Instrument 21-101 *Marketplace Operation* and Changes to Companion Policy 21-101CP *Marketplace Operation*

June 18, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to:

- National Instrument 21-101 *Marketplace Operation* (**Instrument**)
- Form 21-101F1 *Information Statement - Exchange or Quotation and Trade Reporting System* (**Form 21-101F1**)
- Form 21-101F2 *Information Statement – Alternative Trading System* (**Form 21-101F2**)
- Form 21-101F3 *Quarterly Report of Marketplace Activities* (**Form 21-101F3**)
- Form 21-101F5 *Information Statement – Information Processor* (**Form 21-101F5**).

In connection with the above, the CSA is also making changes to Companion Policy 21-101CP to National Instrument 21-101 *Marketplace Operation* (**Companion Policy**).

The amendments to the Instrument, Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F5 and the changes to the Companion Policy are together referred to as the **Amendments**. Form 21-101F1, Form 21-101F2, Form 21-101F3, and Form 21-101F5 are collectively referred to as the **Forms**. The Instrument, Forms and Companion Policy are collectively referred to as **NI 21-101**.

The purposes of the Amendments are described in the “Substance and Purpose” section below.

This Notice contains the following annexes:

- **Annex A** – Summary of Changes to NI 21-101 (against version currently-in-effect)
- **Annex B** – List of commenters
- **Annex C** – Summary of comments and CSA responses
- **Annex D** – Amendments to National Instrument 21-101 *Marketplace Operation* (including amendments to the Forms)

- **Annex E** – Changes to Companion Policy 21-101CP to National Instrument 21-101 *Marketplace Operation*

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **September 14, 2020**.

This Notice, including its annexes, is available on the websites of the CSA jurisdictions, including:

www.albertasecurities.com

www.bcsc.bc.ca

www.fcaa.gov.sk.ca

www.fcnc.ca

www.lautorite.qc.ca

www.mbsecurities.ca

nssc.novascotia.ca

www.osc.gov.on.ca

Background

The Instrument establishes the regulatory framework for marketplaces and information processors (**IPs**) that carry on business in the CSA jurisdictions. Together with the Forms, the Instrument requires, among other things, marketplaces and IPs to provide the CSA with comprehensive reporting of all aspects of their operations, both at the time the marketplace and the IP commence operations and anytime the marketplace and IP make changes to that information. The Instrument also requires marketplaces to report, on a quarterly basis, information about the trading activity on the marketplace during the previous quarter.

The Instrument also establishes requirements regarding the information technology systems used by marketplaces and IPs to support their operations, including developing and maintaining adequate internal controls and information technology general controls over critical systems, conducting capacity stress tests on such systems, developing and maintaining reasonable business continuity and disaster recovery plans, and conducting an independent review of these systems (**ISR**).

On April 18, 2019, the CSA published proposed amendments to NI 21-101 for public comment.

Substance and Purpose

The primary purpose of the Amendments is to reduce the regulatory burden associated with the reporting requirements for marketplaces and IPs in NI 21-101. The Amendments will, in our view, streamline these requirements by eliminating duplicative reporting as well as reporting that does not materially contribute to the CSA's oversight of marketplaces and IPs while maintaining a robust reporting framework that supports the objectives of the CSA's oversight, including providing protection to investors and fostering fair and efficient capital markets and investor confidence. The Amendments are also intended to enhance the requirements in relation to the IT

systems maintained by marketplaces and IPs. The Amendments clarify testing and reporting requirements and introduce an appropriate focus on cyber resilience.

Specific purposes of the Proposed Amendments include:

- Streamlining reporting requirements in the Instrument and Forms by eliminating the need to report superfluous information and eliminating duplicative reporting requirements;
- Enhancing the systems-related requirements in Part 12 and Part 14 of the Instrument and related guidance in the Companion Policy by optimizing the reporting of material systems incidents by marketplaces and IPs, establishing requirements to promote the cyber resilience of marketplaces and IPs, and providing for consistency with recent changes to the systems requirements for clearing agencies in National Instrument 24-102 *Clearing Agency Requirements*;
- Making other non-substantive changes, corrections and clarifications to NI 21-101.

Summary of Comments Received by the CSA

In response to the publication of the proposed amendments, we received submissions from five commenters. We have considered the comments received and thank all commenters for their thoughtful input on the proposed amendments. A list of commenters who submitted comment letters together with a summary of their comments and the CSA's responses to those comments is attached to this Notice at Annexes B and C respectively. Copies of the comment letters are available at www.osc.gov.on.ca

Summary of Changes to the Instrument, Forms and Companion Policy

Annex A to the Notice includes a summary of notable changes to the Instrument, Forms and Companion Policy, including changes made to the versions published for comment on April 18, 2019.

Questions

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ANNEX A

SUMMARY OF CHANGES

The following briefly describes the changes and policy rationales for the key Amendments.

Streamlining reporting requirements

The requirement in paragraph 3.2(3)(a) of the Instrument for a marketplace to file non-significant amendments to the information set out in Form 21-101F1 or Form 21-101F2 has been changed to provide that the marketplace must file any such amendments on a quarterly basis rather than monthly. We expect that quarterly filings of non-significant changes to the information in Form 21-101F1 or Form 21-101F2 will alleviate a significant regulatory burden on marketplaces without compromising the effective oversight of marketplaces by the CSA.

Exhibits C, D and E to Form 21-101F1 and Form 21-101F2 have been streamlined to eliminate the requirements to report certain information in respect of a marketplace's organization, affiliates, and operations. We have eliminated the requirement to report historical employment information for partners, directors and officers of a marketplace, eliminated the requirement to file constating documents for affiliated entities of a marketplace, and consolidated the information a marketplace reports regarding its operations. We expect that the streamlining of these exhibits will materially reduce regulatory burden without compromising the CSA's oversight of marketplaces.

We have also streamlined the information required to be reported quarterly by marketplaces in Form 21-101F3 by eliminating duplicative and burdensome requirements for marketplaces to report systems-related information, including a summary of outages during the previous quarter, as well as requirements to report information on the implementation status of previously filed changes to operations. We have also eliminated all reporting requirements for equity marketplaces trading exchange-listed securities, as the Investment Industry Regulatory Organization of Canada (IIROC) presently collects this information from marketplaces.

We have lengthened the time period associated with the filing by marketplaces of amendments to the information in Exhibit L (Fees) to each of Form 21-101F1 and Form 21-101F2 to at least 15 business days before the marketplace implements a change to its fees. We expect that this change will result in a more reasonable opportunity for the CSA to review marketplace fee filings without imposing any undue burden on marketplaces proposing fee changes.

Financial reporting

New section 4.3 has been added to the Instrument to require recognized exchanges to file interim financial reports within 60 days of the end of the interim period. Currently, in certain CSA jurisdictions, specific financial reporting requirements for exchanges are included in the terms and conditions of the exchanges' recognition orders.

Systems requirements

The concept of ‘cyber resilience’ has been added to subparagraph 12.1(a)(ii) and subparagraph 14.5(1)(a)(ii) of the Instrument as one of the information technology general controls that a marketplace or IP must develop and maintain. While cyber resilience should already be covered by an entity’s controls, the explicit addition of the concept in the Instrument is intended to be reflective of the increasing importance of ensuring that an entity has taken adequate steps to address cyber resilience.

The concept of “security breach” in relation to the notifications that must be provided by a marketplace and IP under paragraph 12.1(c), paragraph 12.1.1(b) and paragraph 14.5(e) has been broadened to “security incident”. The change extends the concept beyond actual breaches, as we are of the view that a material event may include one where a breach has not necessarily occurred. We have changed the Companion Policy to provide guidance on what constitutes a “security incident”, referencing guidance provided by the National Institute of Standards and Technology (U.S. Department of Commerce) (**NIST**)¹.

We have added requirements in the Instrument under section 12.1 and section 12.1.1 that marketplaces keep records of any systems failures, malfunctions, delays or security incidents and identify whether they are material. In response to concerns raised by commenters and to avoid placing undue burden on marketplaces, we have not proceeded with additional related reporting requirements that were included in the proposed amendments to NI 21-101 published for comment. However, guidance included in the Companion Policy provides that the CSA may request additional information from marketplaces regarding systems failures, malfunctions, delays or security incidents.

We have also clarified the requirement at section 12.1.2 that marketplaces must annually engage a qualified party to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace’s compliance with paragraphs 12.1(a) and 12.1.1(a) of the Instrument. Section 12.1.2 replaces guidance previously set out in the Companion Policy on vulnerability assessments and is consistent with similar requirements being proposed for recognized clearing agencies in National Instrument 24-102 *Clearing Agency Requirements*.

Other changes

Lastly, several non-substantive changes, corrections and clarifications have been made. By their nature, none of the non-substantive changes will have any impact on the application of NI 21-101 to marketplaces and IPs.

¹ The NIST definition of “security incident” is available at <https://csrc.nist.gov/Glossary>.

The following table presents the changes to NI 21-101 as a result of the Amendments.

Provision	Subject	Description of Change
National Instrument 21-101		
Sub. 3.2(2)	Fee changes	Changes to Exhibit L must be filed 15 business days before implementing the change
Para. 3.2(3)(a)	Housekeeping changes	Housekeeping changes to Form 21-101F1 and Form 21-101F2 filed quarterly rather than monthly
Sub. 3.2(6)	Annual consolidated F1/F2	Unchanged information may be incorporated by reference into annual filing
S. 4.3	Financial reporting	Exchanges to file interim financial reports within 60 days of the end of each interim period
Para. 12.1(a)	IT controls	IT general controls must include controls relating to cyber resilience
Para. 12.1(b)	Capacity stress tests	Clarified requirement that stress testing must determine the processing capability of IT systems
Para. 12.1(c)	Notification of systems incidents	Marketplaces must provide prompt notification of material security incidents (for critical and auxiliary systems)
Para. 12.1(d)	Record-keeping for systems incidents	Marketplaces must keep records of any systems failure, malfunction, delay or security incident and identify whether it is material
S. 12.1.2	Vulnerability assessments	Marketplaces must engage a qualified party to perform a vulnerability assessment at least annually
Sub. 12.2(1)	Independent Systems Review (ISR)	Marketplace must engage a qualified external auditor to conduct an independent systems review
Para. 12.2(2)(b)	Reporting of ISR	Delivery of report to the CSA within 60 days of report completion (rather than calendar year end)
Ss. 14.5 and 14.5.1	System requirements for Information Processors (IPs)	Changes to systems requirements for IPs to conform to changes to requirements for marketplaces
Form 21-101F1, Form 21-101F2 and Form 21-101F5		
Exhibits (general)	Date of implementation of change	Date of implementation to reflect the actual or expected date of implementation
Exhibit B	Ownership of marketplace	<ul style="list-style-type: none"> ▪ Threshold for disclosure raised from 5% to 10% ▪ Carve out for marketplaces that are reporting issuers
Exhibit C	Organization of marketplace and IP	Streamlining of information to be provided to reduce burden and eliminate duplication
Exhibit D	Affiliates of marketplace	Streamlining of information to be provided to reduce burden and eliminate duplication
Exhibit E	Operations of marketplace	Streamlining of information to be provided to reduce burden and eliminate duplication
Form 21-101F3		

Part A	General marketplace information	Removal of requirements to report on previously filed amendments to F1 and F2
Part A	Systems-related reporting	Removal of requirements to report systems outages and changes
Part B (Section 1)	Equity marketplaces trading exchange-listed securities	All reporting requirements have been removed to alleviate regulatory burden, as IROC currently collects much of this information
Part B (Section 2)	Fixed Income marketplaces	Reporting requirements for concentration of trading by marketplace participant (Chart 9) removed
Companion Policy 21-101CP		
S. 6.2	Financial reporting	Guidance on the form of financial reporting for marketplaces, including guidance on interim periods and accounting principles
Sub. 7.8(1)	Conflicts of interest	Clarification of guidance that the conflict of interest policies and procedures marketplaces are required to maintain should address actual, potential or perceived conflicts in respect of any involvement of partners, directors, officers, or employees of a marketplace's owners in the marketplace's operations
Sub. 14.1(1)	IT controls	Revised guidance on sources of guidance as to what may constitute adequate IT controls
Sub. 14.1(2.1)	Materiality of systems incidents	Additional guidance on what constitutes a material systems incident
Sub. 14.1(2.2)	Security incidents	Additional guidance on what constitutes a material security incident and the public disclosure of a security incident
Sub. 14.1(2.3)	Prompt notification of material systems incidents	Additional guidance on the requirement to promptly report material systems incidents
Sub. 14.1(2.4)	Record-keeping for systems incidents	Guidance on the CSA's expectations for record-keeping in relation to systems incidents
Sub. 14.1(3)	Independent Systems Reviews	Additional guidance regarding qualified external auditors and expectations regarding the form and substance of the ISR
Sub. 14.1(3.1)	Vulnerability assessments	Guidance regarding qualified parties performing the required assessments and testing

ANNEX B

List of Commenters on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and related Companion Policy 21-101CP

(as published for comment on April 18, 2019)

Commenters:

CNSX Markets Inc. (Canadian Securities Exchange)
Nasdaq CXC Limited (Nasdaq Canada)
Neo Exchange Inc.
TMX Group Limited
TriAct Canada Marketplace LP (MATCHNow)

ANNEX C

Summary of Comments on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and related Companion Policy 21-101CP and CSA Responses

Topic/Reference	Summary of Comments	CSA Response
General Comments		
Exemption framework for foreign ATs	<p>One commenter recommended introducing an exemption framework for foreign ATs that trade foreign listed securities and/or foreign traded securities. The commenter indicated that the requirements for foreign fixed income ATs considered to be carrying on business in Canada are burdensome and duplicative and that the CSA should place greater reliance on the foreign marketplace's home jurisdiction for regulatory oversight.</p>	<p>We acknowledge the comment and note that CSA Staff is separately considering an exemption framework for foreign-based ATs trading fixed-income securities.</p>
Streamlining Reporting Requirements		
Annual consolidated Form 21-101F1 and Form 21-101F2	<p>Several commenters indicated that the requirement to file an annual consolidated Form F1 or F2 is burdensome and does not provide any information that is not already provided during the periodic filings. The commenters suggested that this requirement should be removed from the Instrument.</p> <p>In the event that the requirement at subsection 3.2(5) of the Instrument is removed, one commenter indicated that it would no longer be necessary to include proposed new subsection 3.2(6) in the Instrument.</p>	<p>We have retained the requirement for marketplaces to file an annual consolidated F1 or F2. In our view, the requirement to prepare and file an annual consolidation assists both marketplaces and CSA staff in keeping the information in the forms accurate and up-to-date. The inclusion of subsection 3.2(6) in the Instrument will allow marketplaces to streamline their annual consolidation and avoid the burden associated with</p>

Topic/Reference	Summary of Comments	CSA Response
		duplicating information already filed with the CSA.
Housekeeping changes to Form 21-101F1 and Form 21-101F2	Commenters generally supported the proposed revision of subsection 3.2(3) of the Instrument to provide for the quarterly filing of housekeeping changes to the F1 and F2. However, one commenter indicated that changing the reporting timeframe for non-significant changes to quarterly may result in unintended duplication with the contents of the F3, as both reports will cover the same filing period.	We have removed the requirements in the F3 for marketplaces to provide information on the implementation status of changes previously filed. We think this will address the risk of unintended duplication raised by the commenter.
Form 21-101F1 and Form 21-101F2 - Exhibits	<p>Commenters generally supported the proposed revisions to the information in the Exhibits to the F1 and F2. However, commenters identified numerous other data points in the Exhibits that, in their view, represented burdensome or duplicative information requirements that should be streamlined or eliminated.</p> <p>Specific examples identified by the commenters include:</p> <ul style="list-style-type: none"> ▪ The current 5% threshold in Exhibit B for identifying significant shareholders of a marketplace is too low and, for a marketplace that is a reporting issuer, may be impractical in any event. The CSA should consider raising the disclosure threshold to 10%, which is already an established securities law threshold. ▪ Exhibits C and D may be streamlined to eliminate duplicative information about directors' occupations and principal business activities. ▪ Exhibit E may be streamlined to eliminate overlapping and duplicative information about a marketplace's operations. ▪ The CSA should reconsider the need to require the updating of Exhibits J and L where the rules and fees of 	<p>We have streamlined the data points in the Exhibits to the F1 and F2 to address many of the comments raised. In particular, the threshold for reporting significant shareholders in Exhibit B has been raised from 5% to 10% and marketplaces that are also reporting issuers have been carved out of this requirement. Exhibits C, D, and E have also been streamlined as suggested in the comments received.</p> <p>We have also removed the requirement in the F1 and F2 to file a clean version of the revised form.</p>

Topic/Reference	Summary of Comments	CSA Response
	<p>an exchange are publicly available on the exchange's website.</p> <p>One commenter also recommended that for amended F1s and F2s, only the blacklined versions of the forms should be filed, as simultaneous filing of clean versions of the forms causes burden and continuity issues.</p>	
Form 21-101F3 – Part A	<p>Several commenters indicated that the information in Items 4-7 of Part A of the F3 duplicates information marketplaces already file with the CSA or does not materially contribute to the CSA's oversight of marketplaces. Commenters indicated that Items 4-7 of Part A should be eliminated from the F3.</p>	<p>We have removed Items 4-7 of Part A of the F3.</p>
Form 21-101F3 – Part B	<p>Several commenters also indicated that much of the information required by the charts in Section 1 of Part B of the F3 is already provided to IIROC or, in certain instances, is no longer relevant and is consequently burdensome to produce.</p> <p>One commenter noted specifically that the information in Chart 6 in respect of routing of marketplace orders is no longer relevant as marketplaces no longer route orders for purposes of order protection requirements. Commenters generally suggested that the information in the F3 relating to the activities of marketplaces trading exchange-listed securities should be eliminated from the form.</p>	<p>We have removed the reporting requirements in Section 1 of Part B relating to equity marketplaces trading exchange-listed securities.</p>
Fee changes	<p>Several commenters indicated that the proposed change to subsection 3.2(2) of the Instrument, increasing the filing timeline for fee changes from seven business days to 15 business days before implementation, would result in unnecessary delays, and associated burden, for</p>	<p>We have left the timing for the filing of changes to Exhibit L as proposed (15 business days). In our view, changes to fees and fee models represent an area of increasing complexity in marketplace operations</p>

Topic/Reference	Summary of Comments	CSA Response
	<p>marketplaces needing to make fee changes on tight timing for competitive reasons.</p> <p>Commenters indicated that for non-controversial fee changes that replicated existing models or resulted in simple fee decreases, marketplaces should have a mechanism for an accelerated implementation timeline.</p> <p>One commenter recommended a review framework for proposed fee changes whereby, within 15 business days of filing, there would be a decision to approve the change for immediate implementation, put the fee change out for public comment, or require the marketplace to resubmit a revised fee change proposal for a further 15-business day review.</p>	<p>that warrants a reasonable period of time for the CSA to consider new and complex proposals. We do not think that the extra time allowed for considering fee changes unfairly disadvantages marketplaces in making changes quickly in a competitive environment.</p>
Financial reporting	<p>Several commenters indicated that the proposed requirement for recognized exchanges to file interim financial reports within 45 days of the end of the interim period is too short a time period and presents difficulties in efficiently scheduling board meetings to review financial reporting. The commenters indicated that for recognized exchanges that are not reporting issuers, the filing deadline should be extended to 60 days.</p> <p>One commenter also indicated that for recognized exchanges that are not reporting issuers, the time period for filing annual audited financial statements at subsection 4.2(1) should be extended from 90 days to 120 days.</p> <p>Finally, one commenter indicated that the disclosure of accounting principles and statement of compliance with IFRS will result in considerable work for recognized exchanges that are not reporting issuers and may not be</p>	<p>We have changed new section 4.3 of the Instrument to require recognized exchanges to file interim financial reports within 60 days after the end of each interim period.</p> <p>However, we do not think it is appropriate to extend the timeline to file annual audited financial statements to 120 days for recognized exchanges that are not reporting issuers. In our view, it is important that recognized exchanges submit annual financial statements on a timely basis in order for Staff to review the exchanges' financial condition. Consequently, we have not changed the timeframe for annual</p>

Topic/Reference	Summary of Comments	CSA Response
	consistent with similar requirements in the terms and conditions of the exchange recognition orders.	financial reporting for recognized exchanges.
CEO certification	One commenter indicated that the form of certification required at subsection 3.2(4) of the Instrument duplicates the form of certification already required by the F1 and F2 and should be eliminated.	We acknowledge the comment but have not made any changes to the form of certification at subsection 3.2(4) and in the Forms. We note that the subsection 3.2(4) requires certification regarding the completeness of the form and that the marketplace is operating as designed. We think that the additional components of this certification are important to retain as part of an annual certification requirement.
Systems-related Requirements		
Cyber resilience	While commenters generally supported the inclusion of the concept of cyber resilience in the systems requirements for marketplaces in Part 12 of the Instrument, one commenter noted that the term “cyber resilience” is not clearly defined in the Instrument and does not otherwise have an accepted or commonly understood definition. The commenter suggested that a clear and measurable definition of cyber resilience be included in the Instrument.	We note that the additional guidance in subsection 14.1(1) of the Companion Policy refers to sources of guidance for marketplaces as to what constitutes adequate IT controls, including controls in relation to cyber resilience. We felt that it was more appropriate to rely on industry guidance for the design of an optimal control environment rather than attempt to precisely define the concept of cyber resilience.
Security incidents – record-keeping and reporting	Commenters expressed concerns with the proposed revisions to Part 12 of the Instrument that would require marketplaces to keep records of and report to regulators in	We have addressed the concerns with the over-reporting of systems-related

Topic/Reference	Summary of Comments	CSA Response
	<p>respect of “security incidents” as opposed to “security breaches”.</p> <p>Commenters indicated that the proposed guidance on what may constitute a security incident, together with the guidance on the materiality of such incidents for reporting purposes, would result in a significant over-reporting of security incidents to the CSA, which would be burdensome and out of proportion to the value of the reporting.</p> <p>Commenters indicated that the proposed requirement at Item A6 of the F3 would create a reporting obligation for all security incidents regardless of materiality or impact on the marketplace or participants and operationalizing such reporting would be very costly.</p> <p>Commenters also indicated that the materiality standard for reporting security incidents should be based on an assessment of the impact of the incident on participants and on a marketplace’s key business processes rather than on a framework of reporting up to senior marketplace personnel.</p> <p>One commenter indicated that the CSA should consider relying on the requirement for independent systems reviews (ISRs) at section 12.2 of the Instrument for assurance that non-material security incidents are being managed appropriately by marketplaces.</p>	<p>information raised in the comments in two respects:</p> <ol style="list-style-type: none"> 1. We have removed the requirement in Item A6 of the F3 requiring marketplaces to make quarterly reporting of outages or other system events, material or otherwise. 2. We have revised the record-keeping requirement at para. 12.1(d) of the Instrument to remove the requirement that marketplaces document their materiality assessments in relation to system events. <p>We also note that the guidance in subsection 14.1(2.1) of the Companion Policy on materiality indicates that marketplaces may consider the impact of the systems event on participants in determining whether or not the incident is material for purposes of paragraph 12.1(c) of the Instrument.</p>
Vulnerability assessments (VAs)	<p>Several commenters indicated that VAs, as proposed at section 12.1.2 of the Instrument, are expensive and not necessarily undertaken absent risks or changes to technology. Several commenters suggested that the CSA consider making vulnerability assessments a bi-annual requirement or triggered by other circumstances, including at the request of the CSA. One commenter also requested</p>	<p>We acknowledge the comments but have not made changes to the requirement at section 12.1.2 of the Instrument. In our view, the requirement for annual vulnerability assessments is consistent with the need for marketplaces to design a</p>

Topic/Reference	Summary of Comments	CSA Response
	<p>clarity as to what constitutes a qualified party for purposes of the assessment.</p>	<p>control environment that appropriately accounts for cyber resilience. As with the requirement for annual ISRs, the CSA would be prepared to consider exemptions from this requirement in appropriate circumstances.</p>
<p>Independent Systems Review</p>	<p>One commenter indicated that the requirement for a marketplace to engage a qualified external auditor to undertake the ISR prevents highly qualified and appropriately independent Internal Audit departments from undertaking the ISR. The commenter noted that applying for exemptions from the requirement to engage a qualified external auditor is also costly.</p> <p>Once commenter also questioned the necessity of the guidance at subsection 14.1(3) of the Companion Policy that the marketplace must discuss its choice of auditor with the CSA if the auditor engaged is required by the Instrument to be qualified. The commenter suggested that if the purpose of the guidance is for the CSA to pre-approve the marketplace’s engagement, this requirement should be in the Instrument itself.</p> <p>One commenter also indicated that the new requirement at subsection 12.2(1) that the ISR be conducted in accordance with “best industry practices” is subjective, notwithstanding the proposed guidance in the Companion Policy, and is not necessary, as the ISR must also be conducted in accordance with established audit standards.</p> <p>Several commenters also indicated that the ISR requirement should be changed to a bi-annual requirement, given its associated expense. Commenters</p>	<p>We acknowledge the comments but have not made any changes to the requirements regarding ISRs as proposed.</p> <p>In our view, the ISR is a critical tool for managing the risks associated with marketplaces’ systems in a deeply interconnected market structure. While we recognize the professional objectivity required of internal auditors, we are of the view that requiring ISRs to be conducted by a qualified external auditor both enhances and promotes confidence in the process. Consequently, we believe it remains essential for marketplaces to engage a qualified external auditor to conduct an ISR on an annual basis.</p> <p>We note, however, that the CSA may consider exemptions from the annual ISR requirement where appropriate. In reviewing the appropriateness of such exemptions, we would consider the circumstances applicable to the</p>

Topic/Reference	Summary of Comments	CSA Response
	<p>suggested that the ISR could be triggered more frequently if a marketplace experiences material systems issues.</p> <p>Lastly, one commenter suggested that the CSA consider building some flexibility into to the date for delivery of the ISR report to the CSA. The deadline of no later than 60 days following the end of the calendar year means that certain reports from sub-service organizations are not received in time to incorporate into the report.</p>	<p>marketplaces, which would include the existence of an appropriately qualified an independent Internal Audit department and the functions it performs.</p> <p>Also, we note that paragraph 12.2(2)(b) has been revised to provide for delivery of the ISR report 60 days following completion of the report.</p>
Implementation of material systems changes	<p>One commenter felt that the OSC must take a more flexible approach in its interpretation of OSC Staff Notice 21-706, which provides guidance regarding the timing for a marketplace implementing a material change to its systems. The commenter suggested that 90 days following notification of regulatory approval of a material systems change would be appropriate for “mandatory” changes that all participants must implement but that 30 days would be an appropriate implementation period for functionality that is optional.</p>	<p>OSC Staff intends to revoke OSC Staff Notice 21-706 when the amendments to NI 21-101 take effect. Going forward, the Exchange and ATS Protocols will prohibit marketplaces carrying on business in Ontario from implementing material systems changes earlier than a “reasonable period of time” following notification that the change has been approved.</p>

ANNEX D

Amendments to National Instrument 21-101 Marketplace Operation

1. *National Instrument 21-101 Marketplace Operation is amended by this Instrument.*

2. *Section 3.2 is amended*

(a) *in subsection (2) by replacing “seven” with “15”,*

(b) *in paragraph (3)(a) by replacing “month” with “calendar quarter”, and*

(c) *by adding the following subsection:*

(6) For the purposes of subsection (5), if information in a marketplace’s Form 21-101F1 or Form 21-101F2, as applicable, has not changed since the marketplace filed its most recent Form 21-101F1 or Form 21-101F2 under subsection (5), the marketplace may incorporate that information by reference into its updated and consolidated Form 21-101F1 or Form 21-101F2..

3. *Subsection 4.2(1) is amended by deleting “the requirements outlined in”.*

4. *Part 4 is amended by adding the following section:*

4.3 Filing of Interim Financial Reports

A recognized exchange and a recognized quotation and trade reporting system must file interim financial reports for each interim period, within 60 days after the end of the interim period, prepared in accordance with paragraphs 4.1(1)(a) and (b)..

5. *Subparagraph 12.1(a)(i) is replaced with the following:*

(i) adequate internal controls over those systems, and.

6. *Subparagraph 12.1(a)(ii) is amended by adding “cyber resilience,” after “information security,”.*

7. *Subparagraph 12.1(b)(ii) is amended by:*

(a) *adding “processing capability” after “determine the”,*

(b) *deleting “ability”,*

(c) *adding “perform” after “those systems to”,*

- (d) *deleting* “process transactions”, *and*
- (e) *deleting* “and” *after* “efficient manner,”.

8. *Paragraph 12.1(c) is amended by:*

- (a) *deleting* “material”,
- (b) *replacing* “breach” *wherever it occurs with* “incident”,
- (c) *adding* “that is material” *before* “and provide timely”, *and*
- (d) *adding* “, and” *at the end of the paragraph.*

9. *Section 12.1 is amended by adding the following paragraph:*

- (d) keep a record of any systems failure, malfunction, delay or security incident and identify whether or not it is material..

10. *Section 12.1.1 is replaced with the following:*

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 adequate 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,
- (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any security incident that is material and provide timely updates on the status of the incident, the resumption of service, where applicable, and the results of the marketplace’s internal review of the security incident, and
- (c) keep a record of any security incident and identify whether or not it is material..

11. *Part 12 is amended by adding the following section:*

12.1.2 Vulnerability Assessments - On a reasonably frequent basis and, in any event, at least annually, a marketplace must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace's compliance with paragraphs 12.1(a) and 12.1.1(a)..

12. Subsection 12.2(1) is replaced with the following:

- (1) On a reasonably frequent basis and, in any event, at least annually, a marketplace must engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices that assesses the marketplace's compliance with
 - (a) paragraph 12.1(a),
 - (b) section 12.1.1, and
 - (c) section 12.4..

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

- (b) the regulator or, in Québec, the securities regulatory authority, by the earlier of
 - (i) the 30th day after providing the report to its board of directors or the audit committee, and
 - (ii) the 60th day after the report's completion..

14. In the following provisions "and" is replaced with "or":

- (a) *Paragraph 12.3(1)(a), and*
- (b) *Paragraph 12.3(2)(a).*

15. Paragraph 12.3(3.1)(a) is amended by replacing "(2)(a)" with "(2)(b)".

16. Subsection 12.4(3) is amended by replacing "marketplace" with "recognized exchange or quotation and trade reporting system".

17. Paragraph 14.5(a) is amended

- (a) *in subparagraph (i) by replacing "an adequate system of internal controls" with "adequate internal controls", and*
- (b) *in subparagraph (ii) by adding "cyber resilience," after "information security,".*

18. Subparagraph 14.5(b)(ii) is amended by:

- (a) **adding** “processing capability” **after** “determine the”,
- (b) **deleting** “ability”,
- (c) **adding** “perform” **after** “those systems to”, **and**
- (d) **deleting** “process information”.

19. Paragraph 14.5(c) is replaced with the following:

- (c) on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices that assesses the information processor’s compliance with paragraph (a) and section 14.6.,

20. Subparagraph 14.5(d)(ii) is replaced 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 and the 60th day after the report’s completion.,

21. Paragraph 14.5(e) is replaced with the following:

- (e) promptly notify the following of any systems failure, malfunction, delay or security incident that is material and provide timely updates on the status of the failure, malfunction, delay or security incident, the resumption of service, and the results of the information processor’s internal review of the failure, malfunction, delay or security incident:
 - (i) the regulator or, in Québec, the securities regulatory authority;
 - (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, and.

22. Section 14.5 is amended by adding the following paragraph:

- (f) keep a record of any systems failure, malfunction, delay or security incident and identify whether or not it is material..

23. Part 14 is amended by adding the following section:

14.5.1 Vulnerability Assessments

On a reasonably frequent basis and, in any event, at least annually, an information processor must engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the information processor's compliance with paragraph 14.5(a)..

- 24. *Form 21-101F1 is amended by replacing the portion of the Form after the heading "EXHIBITS" and before the heading "Exhibit A – Corporate Governance" with the following:***

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 must be included instead of the 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 subsection 3.2(1), (2) or (3) of National Instrument 21-101 *Marketplace Operation*, provide a description of the change and the actual or expected date of the implementation of the change, and file a complete and updated Exhibit. The filer must provide 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 *Marketplace Operation*, 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..

- 25. *Exhibit B of Form 21-101F1 is replaced with the following:***

Exhibit B – Ownership

In the case of an exchange or quotation and trade reporting system that is a corporation, other than an exchange or quotation and trade reporting system that is a reporting issuer, provide a list of the beneficial holders of 10 percent or more of any class of securities of the exchange or quotation and trade reporting system. For each listed security holder, provide the following:

1. Name.
2. Principal business or occupation and title, if any.

3. Ownership interest, including the total number of securities held, the percentage of the exchange or quotation and trade reporting system's issued and outstanding securities held, and the class or type of security held.
4. Whether the security holder 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 a partnership, sole proprietorship or other type of organization, provide a list of the registered or beneficial holders of the partnership interests or other ownership interests in the exchange or quotation and trade reporting system. For each person or company listed, provide the following:

1. Name.
2. Principal business or occupation and title, if any.
3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.
4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

26. *Section 1 of Exhibit C of Form 21-101F1 is amended by*

- (a) *repealing Item 4, and***
- (b) *repealing Item 5.***

27. *Exhibit D of Form 21-101F1 is amended by*

- (a) *repealing Item 2 of section 2,***
- (b) *repealing Item 5 of section 2, and***
- (c) *repealing Item 6 of section 2.***

28. *Exhibit E of Form 21-101F1 is amended by*

- (a) *deleting “, including a description of any co-location arrangements” in Item 2 after “services”,***
- (b) *repealing Item 7, and***
- (c) *repealing Item 8.***

29. *Exhibit G of Form 21-101F1 is amended by*

- (a) *replacing “high level” with “high-level” in Item 1 under “General”,***
- (b) *replacing “the Instrument” with “National Instrument 21-101 Marketplace Operation” in Item 2 under “General” and in Item 3 under “Systems”, and***
- (c) *replacing “are” with “is” in Item 2 under “IT Risk Assessment”.***

30. *Form 21-101F2 is amended by replacing the portion of the Form after the heading “EXHIBITS” and before the heading “Exhibit A – Corporate Governance” with the following:*

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 must be included instead of the 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), (2) or (3) of National Instrument 21-101 *Marketplace Operation*, provide a description of the change and the actual or expected date of the implementation of the change, and file a complete and updated Exhibit. The ATS must provide a blacklined version showing changes from the previous filing..

31. *Exhibit B of Form 21-101F2 is replaced with the following:*

Exhibit B – Ownership

In the case of an ATS that is a corporation, other than an ATS that is a reporting issuer, provide a list of the beneficial holders of 10 percent or more of any class of securities of the ATS. For each listed security holder, provide the following:

1. Name.
2. Principal business or occupation and title, if any.
3. Ownership interest, including the total number of securities held, the percentage of the ATS’s issued and outstanding securities held, and the class or type of security held.
4. Whether the security holder has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

In the case of an ATS that is a partnership, sole proprietorship or other type of organization, provide a list of the registered or beneficial holders of the partnership interests or other ownership interests in the ATS. For each person or company listed, provide the following:

1. Name.
 2. Principal business or occupation and title, if any.
 3. Nature of the ownership interest, including a description of the type of partnership interest or other ownership interest.
 4. Whether the person or company has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).
32. ***Section 1 of Exhibit C of Form 21-101F2 is amended by***
- (a) ***repealing Item 4, and***
 - (b) ***repealing Item 5.***
33. ***Exhibit D of Form 21-101F2 is amended by***
- (a) ***repealing Item 2 of section 2, and***
 - (b) ***repealing Item 5 of section 2.***
34. ***Exhibit E of Form 21-101F2 is amended by***
- (a) ***deleting “, including a description of any co-location arrangements” in Item 2,***
 - (b) ***repealing Item 7, and***
 - (c) ***repealing Item 8.***
35. ***Exhibit G of Form 21-101F2 is amended by***
- (a) ***replacing “high level” with “high-level” in Item 1 under “General”,***
 - (b) ***replacing “the Instrument” with “National Instrument 21-101 Marketplace Operation” in Item 2 under “General” and in Item 3 under “Systems”, and***
 - (c) ***replacing “are” with “is” in Item 2 under “IT Risk Assessment”.***
36. ***Part A of Form 21-101F3 is amended by***
- (a) ***repealing Item B in section 3,***

- (b) *repealing Item C in section 3,*
- (c) *repealing section 4,*
- (d) *repealing section 5,*
- (e) *repealing section 6, and*
- (f) *repealing section 7.*

37. Section 1 of Part B of Form 21-101F3 is amended by

- (a) *repealing Item 1 and Chart 1,*
- (b) *repealing Item 2 and Chart 2,*
- (c) *repealing Item 3 and Chart 3,*
- (d) *repealing Item 4 and Chart 4,*
- (e) *repealing Item 5 and Chart 5, and*
- (f) *repealing Item 6 and Chart 6.*

38. Section 2 of Part B of Form 21-101F3 is amended by

- (a) *repealing Item 3, and*
- (b) *repealing Chart 9.*

39. Form 21-101F5 is amended by replacing the portion of the Form after the heading “Exhibits” and before the heading “Exhibit A – Corporate Governance” with the following:

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 must be included instead of the Exhibit.

If the information processor files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the information processor must, in order to comply with sections 14.1 and 14.2 of National Instrument 21-101 *Marketplace Operation*, provide a description of the change and the actual or expected date of the implementation of the change, and file a complete

and updated Exhibit. The information processor must provide a blacklined version showing changes from the previous filing..

- 40. Section 1 of Exhibit C of Form 21-101F5 is amended by**
- (a) replacing “directors,” with “officers,” after “list of the partners,”**
 - (b) repealing Item 4, and**
 - (c) repealing Item 5.**
- 41. Section 1 of Exhibit G of Form 21-101F5 is amended by replacing “National Instruments 21-101 and 23-101” with “National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*”.**
- 42. In the following provisions of Form 21-101F5, “National Instrument 21-101” is replaced with “National Instrument 21-101 *Marketplace Operation*”:**
- (a) Section 2 of Exhibit J,**
 - (b) Section 1 of Exhibit K, and**
 - (c) Exhibit M wherever the expression occurs.**
- 43. (1) The Instrument comes into force on September 14, 2020.**
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 14, 2020, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.**

ANNEX E

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

1. *Companion Policy 21-101CP Marketplace Operation is changed by this Document.*

2. *Subsection 6.1(6) is changed by replacing “seven” with “15” immediately before “business days before the expected implementation date”.*

3. *Section 6.2 is replaced with the following:*

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 IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

Section 4.3 requires recognized exchanges and recognized quotation and trade reporting systems to file interim financial reports within 60 days after the end of each interim period. In the view of the Canadian securities regulatory authorities, the term interim period means a period commencing on the first day of the recognized exchange’s or quotation and trade reporting system’s financial year and ending nine, six or three months before the end of the same financial year.

The Canadian securities regulatory authorities expect that financial statements and reports filed under subsections 4.2 and 4.3 should disclose the accounting principles used to prepare them. For clarity, financial statements and reports should include:

- (a) in the case of annual financial statements, an unreserved statement of compliance with IFRS;
- (b) in the case of an interim financial report, an unreserved statement of compliance with International Accounting Standard 34 *Interim Financial Reporting*.

4. *Section 7.2 is changed by replacing “authority” with “authorities” after “Canadian securities regulatory”.*

5. *Section 7.3 is changed by deleting “, policies” after “violations of rules”.*

6. Section 7.8 is changed by replacing subsection (1) with the following:

- (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, potential or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, including partners, directors, officers, or employees of the marketplace's owners, 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..

7. Section 14.1 is changed by replacing subsection (1) with the following:

- (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain adequate internal controls 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, cyber resilience, and security. Recognized guides as to what constitutes adequate information technology controls may include guidance, principles or frameworks published by the Chartered Professional Accountants of Canada (CPA Canada), American Institute of Certified Public Accountants (AICPA), Information Systems Audit and Control Association (ISACA), International Organization for Standardization (ISO) or the National Institute of Standards and Technology (U.S. Department of Commerce) (NIST)..

8. Section 14.1 is changed by replacing subsection (2) with the following:

- (2) Capacity management requires that a marketplace monitor, review, and test (including stress test) the actual capacity and performance of its systems on an ongoing basis. Accordingly, paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, processing capability 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 every 12 months. 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..

9. Section 14.1 is changed by replacing subsection (2.1) with the following:

- (2.1) Paragraph 12.1(c) of the Instrument requires a marketplace to promptly notify the regulator or, in Québec, the securities regulatory authority of any systems failure, malfunction, delay or security incident that is material. A failure, malfunction,

delay or security incident is considered “material” if the marketplace would, in the normal course of operations, escalate the matter to or inform senior management ultimately accountable for technology. Such events would not generally include those that have or would have little or no impact on the marketplace’s operations or on participants. Non-material events may become material if they recur or have a cumulative effect..

10. Section 14.1 is changed by adding the following subsections:

- (2.2) For purposes of paragraph 12.1(c) of the Instrument, a security incident is considered to be any event that actually or potentially jeopardizes the confidentiality, integrity or availability of any of the systems that support the functions listed in section 12.1 or any system that shares network resources with one or more of these systems or the information the system processes, stores or transmits, or that constitutes a violation or imminent threat of violation of security policies, security procedures or acceptable use policies. Any security incident that requires non-routine measures or resources by the marketplace would be considered material and thus reportable to the regulator or, in Québec, the securities regulatory authority. The onus would be on the marketplace to document the reasons for any security incident it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security incident. The criteria for public disclosure of a security incident 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..
- (2.3) With respect to the prompt notification requirement in paragraph 12.1(c), the Canadian securities regulatory authorities expect that a marketplace will provide notification of a systems failure, malfunction, delay or security incident that is material, orally or in writing, upon escalating the matter to its senior management. It is expected that, as part of the required notification, the marketplace will provide updates on the status of the failure, malfunction, delay or incident and the resumption of service. The marketplace should also have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all incidents. In this regard, the marketplace should undertake a “post-incident” review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the marketplace’s participants. The results of such internal reviews are required to be communicated to the regulator or, in Québec, the securities regulatory authority as soon as practicable. We note that CSA Staff Notice 21-326 *Guidance for Reporting Material Systems Incidents* provides marketplaces with additional guidance and a comprehensive set of guidelines for reporting material systems incidents under paragraph 12.1(c)..
- (2.4) Paragraph 12.1(d) of the Instrument requires a marketplace to keep a record of any systems failure, malfunction, delay or security incident and identify whether

or not it is material. We note that a marketplace may be asked to provide the regulator or, in Québec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a systems failure, malfunction, delay, security incident or any other system or process-related data..

- (2.5) A marketplace should also refer to the guidance in (2.2), (2.3) and (2.4) regarding security incidents that arise in connection with a marketplace’s auxiliary systems under section 12.1.1 of the Instrument. A marketplace may be asked to provide the regulator or, in Québec, the securities regulatory authority, with additional information, such as but not limited to reports, logs or other documents related to a security incident..

11. 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 one or more qualified external auditors to conduct an annual independent systems review to assess the marketplace’s compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The review must be conducted and reported on at least once in each 12-month period by a qualified external auditor in accordance with established audit standards and best industry practices. We consider that best industry practices include the “Trust Services Criteria” developed by the American Institute of CPAs and CPA Canada. The focus of the assessment of any systems that share network resources with trading-related systems required under paragraph 12.2(1)(b) would be to address potential threats from a security incident that could negatively impact a trading-related system. For purposes of subsection 12.2(1), we consider a qualified external auditor to be a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified external auditor to conduct the independent systems review, a marketplace is expected to discuss its choice of external auditor and the scope of the systems review mandate with the regulator or, in Québec, the securities regulatory authority. We further expect that the report prepared by the external auditor include, to the extent applicable, an audit opinion that (i) the description included in the report fairly presents the systems and controls that were designed and implemented throughout the reporting period, (ii) the controls stated in the description were suitably designed, and (iii) the controls operated effectively throughout the reporting period..

12. Section 14.1 is changed by replacing subsection (3.1) with the following:

- (3.1) Section 12.1.2 of the Instrument requires a marketplace to engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls. We would expect a marketplace to implement appropriate improvements where necessary. For the purposes of section 12.1.2, we consider a

qualified party to be 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 systems or controls in a complex information technology environment. We consider that qualified parties may include external auditors or third-party information system consultants, as well as employees of the marketplace or an affiliated entity of the marketplace but may not be persons responsible for the development or operation of the systems or capabilities being tested. The regulator or, in Québec, the securities regulatory authority may, in accordance with securities legislation, require the marketplace to provide a copy of any such assessment..

13. Section 14.1 is changed by deleting subsection (4).

14. Section 14.1 is changed by replacing subsection (5) with the following:

- (5) Under section 15.1 of the Instrument, the regulator or, in Québec, the securities regulatory authority may consider granting a marketplace an exemption from the requirements to engage one or more qualified external auditors 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, in Québec, the 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..

15. Section 14.3 is changed by replacing subsection (1) with the following:

- (1) Business continuity management is a key component of a marketplace's operational risk-management framework. 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..

16. These changes become effective on September 14, 2020.