

**NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION AND COMPANION POLICY 21-101 CP AND
TO NATIONAL INSTRUMENT 23-101 TRADING RULES AND COMPANION
POLICY 23-101CP**

I. INTRODUCTION

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

- National Instrument 21-101 *Marketplace Operation* (NI 21-101) and Companion Policy 21-101CP (21-101CP);
- National Instrument 23-101 *Trading Rules* (NI 23-101) and Companion Policy 23-101CP (23-101CP);
- 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); and
- Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

NI 21-101, 21-101CP, NI 23-101, 23-101CP, and Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4 *Cessation of Operations Report for Alternative Trading System* and 21-101F5 are collectively referred to as the Marketplace Rules in this Notice.

Jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently, all jurisdictions except Ontario) are also publishing amendments to that instrument to permit certain exemptive relief applications. As Ontario is not a party to Multilateral Instrument 11-102, these amendments will not be published in Ontario.

II. PURPOSE OF THE AMENDMENTS

The CSA published for comment proposed amendments to the Marketplace Rules (Proposed Amendments) on March 18, 2011.¹ The key objectives of the Proposed Amendments were to:

- update and streamline the regulatory and reporting requirements in the Marketplace Rules and to align, where applicable, the requirements applicable to all marketplaces;

¹ Published at (2011) 34 OSCB (Supp-1).

- propose amendments to establish the circumstances under which orders are exempt from the pre-trade transparency requirements in NI 21-101;
- increase transparency of marketplace operations;
- propose or update other requirements applicable to marketplaces to address certain issues or situations, such as conflicts of interest, outsourcing arrangements, or business continuity plans;
- give guidance in a number of areas, including what would be considered a marketplace or when indications of interest would be considered to be firm orders;
- extend the current exemption from transparency requirements applicable to government debt securities until December 31, 2014;
- extend the obligation in NI 23-101 to not intentionally lock or cross markets to marketplaces in certain circumstances; and
- revise and update the requirements applicable to information processors.

III. PUBLICATION FOR COMMENT

We have received 12 comment letters to the Proposed Amendments. We have considered the comments received and thank all of the commenters for their submissions. A list of those who submitted comments, as well as a summary of the comments and our responses to them are attached at **Appendix A** to this Notice.

IV. DESCRIPTION OF THE PROPOSED AMENDMENTS AND SUBSEQUENT REVISIONS

After considering the comments to the Proposed Amendments, we have made some minor changes. These changes are not material and are explained in the remainder of the Notice. The Notice of Proposed Amendments published on March 18, 2011 includes a full description of the proposed changes to the Marketplace Rules and the rationale for these changes.

a. Amendments to facilitate the implementation of the regulatory framework for dark liquidity on equity marketplaces

Part 7 of NI 21-101 sets out the information transparency requirements for marketplaces dealing in exchange-traded securities. One of these requirements is that a marketplace that displays orders of exchange-traded securities must provide information regarding the orders displayed to an information processor.² An exemption from this requirement is available for orders that are displayed only to a marketplace's employees or to those retained by the marketplace to assist in its operation.³ This exemption currently permits marketplaces that are "dark pools" to operate. It also allows orders to be entered with no pre-trade transparency on transparent marketplaces.

² Subsection 7.1(1) of NI 21-101.

³ Subsection 7.1(2) of NI 21-101.

In the Proposed Amendments, we proposed to revise the exemption from the pre-trade transparency requirements to include a requirement that orders also meet a size threshold in order to be exempt from the transparency requirements in NI 21-101.⁴ The purpose of this proposed amendment was to facilitate the implementation of the regulatory framework for dark liquidity that the Investment Industry Regulatory Organization of Canada (IIROC) and the CSA proposed at the end of an extensive consultation process that involved market participants. That framework was first discussed in Joint CSA/IIROC Position Paper 23-405 *Dark Liquidity in the Canadian Market* (Position Paper), published on November 19, 2010.⁵ On July 29, 2011, the CSA and IIROC published Joint CSA/IIROC Staff Notice 23-311 *Regulatory Approach to Dark Liquidity in the Canadian Market* (Joint CSA/IIROC Staff Notice 23-311) that introduced the regulatory framework for dark liquidity.⁶ Joint CSA/IIROC Staff Notice 23-311 was published in conjunction with proposed amendments to IIROC's Universal Market Integrity Rules (UMIR) respecting requirements governing dark liquidity on Canadian equity marketplaces (Proposed UMIR Amendments).⁷

Throughout the process, we have received comments relating to the proposed requirement that orders meet a size threshold set by a regulation services provider in order to be exempt from transparency requirements. We have published responses to these comments in Joint CSA/IIROC Staff Notice 23-311. In **Appendix A** of this Notice we have included our responses to the specific comments received to the Proposed Amendments.

We acknowledge the concerns that were raised by the commenters regarding the proposal for a size threshold, and note that we do not propose an actual threshold at this time. However, we continue to be of the view that it is important to establish a regulatory framework that would allow the CSA and IIROC to introduce a threshold when appropriate and on a timely basis. As we indicated in Joint CSA/IIROC Staff Notice 23-311, we and IIROC will examine trading in the market over a period of time to evaluate what the minimum size threshold should be. More details regarding the specific review that will be undertaken will be published in a separate notice along with the UMIR amendments, once approved. Any decision regarding an appropriate size threshold will involve prior consultation with industry participants.

We also highlight a concern raised by one commenter that the proposed amendments to the pre-trade transparency requirements in Part 7 of NI 21-101 would restrict a marketplace that facilitates one-to-one negotiations between its marketplace participants. The commenter requested clarification as to whether an order communicated in a one-to-one negotiation would be considered to be displayed by the marketplace. We note that the Proposed Amendments do not change the status of existing marketplaces that are request-for-quotes systems or facilities that allow negotiation between two parties, other than to

⁴ Proposed amendments to subsection 7.1(2) of NI 21-101.

⁵ Available at (2010) 33 OSCB 10764.

⁶ Published at (2011) 34 OSCB 8219.

⁷ IIROC Notice 11-0225 Provisions Respecting Dark Liquidity, available at http://sdocs.iiroc.ca/English/Documents/2011/609a0965-97ac-43a3-9976-7b2f46c96443_en.pdf.

establish a size threshold, as discussed above. However, we think it is important to clarify and provide some transparency regarding how these types of marketplaces are treated, and have been treated since the Marketplace Rules were implemented. From a policy perspective, we do not think that the transparency provisions of NI 21-101 should apply to these marketplaces if the request for quotes or indications of interest (IOIs) that they disseminate are not initially “firm” or “actionable” and, once they are, they are only shown to the two counterparties and to the employees of the marketplace (as allowed by the current exemption from the transparency requirements). As a result, we have amended 21-101CP to state that we may consider granting an exemption from the transparency requirements in NI 21-101 for orders that result from a request for quotes or in a facility that allows negotiation between two parties, provided certain conditions are met.⁸ These conditions are as follows:

- the order details may be shown only to the negotiating parties – this is because, if the orders are shown to multiple parties, they would effectively be displayed by the marketplace and become subject to the transparency requirements of NI 21-101;
- no actionable IOIs are displayed by either party involved in the negotiation or by the marketplace as displaying actionable IOIs to outside market participants would be akin to displaying orders outside of the marketplace, which would subject the marketplace to the transparency requirements of NI 21-101; and
- each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of NI 21-101 – this would ensure that, when a size threshold is proposed, orders entered on these marketplaces would also have to meet the applicable size threshold in order to be able to be entered without pre-trade transparency.

b. Fair access requirements

In proposed amendments to 21-101CP, we stated that a marketplace that sends information regarding IOIs to a selected smart order router (SOR) should consider the extent to which such information should be sent to other SORs in order to meet the marketplace’s fair access obligations.⁹

Comments received indicated that it is not sufficient that a marketplace only consider whether to send IOI information to other SORs, and that the marketplace should send that information to all SORs in order to avoid disadvantaging investors based on the SOR they use. We agree with these comments. We are of the view that, in order to meet the fair access requirements in section 5.1 of NI 21-101, a marketplace needs to ensure that all market participants¹⁰ have equal access to the information it disseminates. As a result, we have revised 21-101CP to set out the expectation that a marketplace that sends IOIs to a selected SOR or, for that matter, to another system that is not an SOR, such as a trading algorithm, should send the information to other SORs or systems.

⁸ Subsection 5.1(4) of 21-101CP.

⁹ Subsection 7.1(4) of proposed amendments to 21-101CP.

¹⁰ It is, and has always been, our view that access to a marketplace’s services should be fair and equal among all market participants in a class that is clearly identifiable.

Finally, we have amended the guidance regarding fair access requirements included in 21-101CP to clarify that the reference to “services” in section 5.1 of NI 21-101 includes co-location, whether this service is offered by the marketplace or by a third party.¹¹

c. Guidance regarding the definition of a marketplace

In proposed amendments to 21-101CP, we indicated that a dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and then reports the match to a marketplace as a cross would be considered to be operating a marketplace. The rationale was that the use of technology to match orders received by a dealer electronically in a non-discretionary, established fashion, is not materially different from the function of the marketplace.

While a few commenters agreed with this clarification, most raised a number of concerns. These included the need to ensure that there are no unintended consequences. Concerns were also expressed that all dealers might meet the definition of a marketplace since most order flow is automated. One commenter thought that treating dealers that use systems to match order flow as marketplaces would stifle innovation.

We remain of the view that a dealer that uses such a system may fall within the definition of a marketplace and, as a result, may need to be regulated as a marketplace. However, we acknowledge the possible unintended consequences of applying the definition of a marketplace so broadly to dealers, particularly in today’s environment where most dealers’ order flow is highly automated. For example, dealers that are ATSS are exempt from best execution responsibilities.¹² At this point, we do not think that we have sufficient information regarding the systems being used by dealers so as to clearly provide guidance as to when we would consider that a dealer using a system to match its own orders is or is not acting as a marketplace.

Staff of the Ontario Securities Commission (OSC) have issued a questionnaire to gather information about dealers’ internalization and broker preferencing practices. The results of that work will assist us in determining what definitions, clarifications or requirements are needed, if any, to ensure that it is clear when dealers are operating marketplaces and when they are engaging in traditional dealer activity in an automated manner. In the meantime, we encourage dealers to meet and discuss with the applicable securities regulatory authority when they operate or plan to operate systems that internalize orders to determine whether the dealer’s system falls within the definition of “marketplace”. We have revised subsection 2.1(8) of 21-101CP accordingly.

d. Requirement for fair and orderly markets

¹¹ Subsection 7.1(3) of 21-101CP.

¹² Specifically, section 4.1 of NI 23-101 states that Part 4 Best Execution of NI 23-101 does not apply to a dealer that carries on business as an ATS in compliance with section 6.1 of NI 21-101.

In the Proposed Amendments, we proposed a requirement that a marketplace not engage in any activity that interferes with fair and orderly markets.¹³

Some commenters expressed concern that the proposed requirement is very broad, especially for ATSS, which cannot set rules governing the conduct of their subscribers. We note that the requirement was not intended to add additional oversight responsibilities for ATSS which, by definition, do not have a regulatory role. In 21-101CP, we have clarified that the requirement for fair and orderly markets in NI 21-101 does not impose a responsibility on a marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or QTRS that has assumed responsibility for monitoring the conduct of its marketplace participants directly, rather than through a regulation services provider.¹⁴ We indicated, however, that marketplaces are expected to monitor activity on their markets for compliance with their own operational policies and procedures and to report any concerns about order entry or trading to IIROC.

We have also revised NI 21-101 to clarify that the requirement to maintain fair and orderly markets is not absolute; a marketplace must take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.¹⁵ In 21-101CP, we have indicated that, as part of these reasonable steps, the marketplace should ensure that its operations support compliance with regulatory requirements, including UMIR. This does not mean that the marketplace must system-enforce all regulatory requirements, but rather that it should not operate in a manner that, to the best of its knowledge, would cause the marketplace participants to breach regulatory requirements when trading on that marketplace.¹⁶ For example, a marketplace should not accept orders from a marketplace participant if it knows that entry of such orders would violate regulatory requirements.

e. Management and disclosure of conflicts of interest

In the Proposed Amendments, we introduced a requirement that a marketplace establish, 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.¹⁷ In 21-101CP, we indicated that this may include conflicts, actual or perceived, related to the commercial interest of a marketplace, the interests of its owners or operators, and the responsibilities and sound functioning of the marketplace.¹⁸ Proposed paragraph 10.1(e) of NI 21-101 would require that a marketplace disclose its conflict of interest policies and procedures.

One commenter noted that referral arrangements also create a potential conflict of interest and disclosure should be required. We agree and note that proposed paragraph 10.1(f) of

¹³ In section 5.7 of proposed amendments to NI 21-101.

¹⁴ Subsection 7.6(2) of 21-101CP.

¹⁵ See section 5.7 of NI 21-101.

¹⁶ Subsection 7.6(3) of 21-101CP.

¹⁷ Section 5.11 of proposed amendments to NI 21-101.

¹⁸ Section 7.8 of proposed amendments to 21-101CP.

NI 21-101 would require a marketplace to disclose referral arrangements between the marketplace and service providers. We have now revised subsection 7.8(1) of 21-101CP to clarify that a marketplace's policies and procedures related to conflicts of interest should also cover conflicts arising from referral arrangements.

Given that dealers that are owners of a marketplace may have a conflict of interest with respect to their clients, we have also amended 21-101CP to clarify our expectation that a marketplace ensure that its marketplace participants disclose their ownership to their clients at least quarterly.¹⁹ The disclosure could be done by including a requirement for this disclosure in any agreements between the marketplace and marketplace participants. Furthermore, since conflicts of interest could also arise when a marketplace or an affiliated entity of the marketplace trades on its own account on a marketplace, for example when it trades against or in competition with client orders, we are of the view that such potential conflicts of interest should also be disclosed. We have amended subsection 12.1(4) of 21-101CP to indicate this. We note that these disclosure requirements are consistent with existing disclosure obligations of marketplace participants that are registered under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*.

f. Outsourcing

In the Proposed Amendments, we proposed requirements for marketplaces that outsource any of their key services or systems to a service provider, which may be an affiliate or associate of the marketplace.²⁰ One of these requirements was that marketplaces establish policies and procedures to evaluate and approve outsourcing agreements. We also proposed amendments to 21-101CP to provide guidance regarding the content of these policies and procedures.²¹

For greater clarity, we have further revised 21-101CP to indicate that it is our expectation that a marketplace's policies and procedures also include an assessment of whether the marketplace will be able to continue to comply with securities legislation in the event of the bankruptcy or insolvency of a service provider to which the marketplace has outsourced key services.

g. Transparency of marketplace operations

In the Proposed Amendments, we introduced a requirement that a marketplace publicly disclose on its website certain information. This information includes the listing, trading, data and routing fees charged by a marketplace, an affiliate, or by a third-party entity to which the marketplace outsourced its services.²²

¹⁹ Subsection 7.8(2) of 21-101CP.

²⁰ Section 5.12 of NI 21-101.

²¹ Section 7.9 of 21-101CP.

²² Section 10.1 of proposed amendments to NI 21-101.

We received a number of comments on this section of the Proposed Amendments. A few commenters requested clarification of the fees that should be disclosed. One commenter suggested that fees charged by a marketplace affiliate or by a third party that provides marketplace services should also be disclosed. We agree with this comment and have amended NI 21-101 to require that all fees be disclosed, including those charged by affiliates or third parties that provide marketplace services.²³

One commenter requested clarification regarding the treatment of co-location fees. We are of the view that, because co-location is a core service of a marketplace that is subject to the fair access provisions of NI 21-101, co-location fees must also be disclosed. We have amended paragraph 10.1(a) of NI 21-101 to state this requirement.

We have also made consequential amendments to Exhibit L - *Fees* of Form 21-101F1 and 21-101F2.

h. Initial filing requirements for marketplaces

NI 21-101 sets out the initial filing requirements applicable to marketplaces. They are as follows:

- An applicant for recognition as an exchange or QTRS must file Form 21-101F1;²⁴ and
- An ATS must file an initial operation report using Form 21-101F2 before commencing its operations.²⁵

In the Proposed Amendments, we proposed revisions to Forms 21-101F1 and 21-101F2 that would update these forms and ensure they are more reflective of the current market structure and of the trading activities of marketplaces. We did this by increasing consistency between the information filing requirements in the forms, by enhancing the forms with additional information, including information about the operations of the marketplace, outsourcing activities or governance, and by removing obsolete and unduly onerous requirements.

Based on feedback from commenters, we have made a few non-material changes to the forms. These include clarifying, in Form 21-101F1, that if an exchange files the information required by the form pursuant to section 5.5 of NI 21-101 *Filing of Rules*, it does not need to file the information again as an amendment to the form.

i. Ongoing filing and reporting requirements for marketplaces

NI 21-101 sets out ongoing filing requirements for all marketplaces. These requirements include prior notification of significant changes to marketplace operations, as described

²³ Paragraph 10.1(a) of NI 21-101.

²⁴ Subsections 3.1(1) and 4.1(1) of NI 21-101 for Exchanges and QTRSs, respectively.

²⁵ Section 6.4 of NI 21-101.

in Form 21-101F1 or 21-101F2, as applicable. 21-101CP provides guidance on what constitutes a significant change.

In the Proposed Amendments, we proposed a number of changes to the existing filing requirements applicable to marketplaces and to their timing.²⁶ Specifically, we proposed to:

- require that changes that are not considered significant changes be filed by a marketplace immediately before their implementation;
- shorten the filing period for fee changes from 45 days to seven business days before their implementation; and
- introduce principles-based guidance on what would be considered a significant change in 21-101CP.²⁷

We also proposed that all marketplaces, ATSS and exchanges file Form 21-101F3, which is currently filed only by ATSS. We proposed a number of revisions to Form 21-101F3 that would tailor the reporting requirements to the different types of marketplaces currently operating, to include information that is more reflective of a marketplace's activities, and to remove the requirement to report certain detailed information, such as the requirement to list all the securities traded on a marketplace.

Many commenters supported the changes we proposed. However, some concerns were expressed that the proposed requirement that non-significant changes be filed prior to their implementation would be burdensome and, in some circumstances, not possible. We agree with these comments and have amended NI 21-101 to require that a change that is not significant be reported by the earlier of the close of business on the tenth day after the end of the month in which the change was made and the date on which such change is made public by the marketplace, if applicable.²⁸ We believe that this would allow the CSA to obtain more timely notification of all relevant changes to a marketplace, while giving the marketplace more flexibility.

We have also amended paragraph 6.1(4)(k) of 21-101CP to clarify that only changes in affiliates that provide services to or on behalf of the marketplace are considered significant. We did this in response to concerns raised that the Proposed Amendments would have required prior notification of changes in all affiliates, which could be unduly onerous for an international marketplace with many affiliates that do not provide services for the marketplace.

A few commenters requested clarification regarding the technology changes that would be considered significant. We have amended paragraph 6.1(4)(h) of 21-101CP to clarify that these would include changes to the systems and technology used by a 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

²⁶ Section 3.2 of proposed amendments to NI 21-101.

²⁷ Subsection 6.1(4) of proposed amendments to 21-101CP.

²⁸ Subsection 3.2(3) of NI 21-101.

those affecting capacity.²⁹ For clarity, these would be significant changes to the information related to marketplace systems and technology documented in the relevant exhibits of Forms 21-101F1 or 21-101F2, as applicable. Currently, information regarding marketplaces' systems and technology is included in Exhibit G – *Systems and Contingency Planning*, and may also be included in other exhibits, such as Exhibit E – *Operations of the Marketplace*. It is our intention to review, and possibly broaden, the scope of the requirements in Forms 21-101F1 and 21-101F2 to disclose information regarding marketplaces' systems and technology.

j. Audit trail requirements

In the Proposed Amendments, we proposed a requirement that marketplaces and dealers indicate whether orders they receive are directed-action orders (DAO).³⁰ We also proposed a requirement that marketplaces keep records that indicate whether a marketplace or a marketplace participant marked an order as a DAO.³¹ DAO orders are currently required to be marked as such by the Order Protection Rule³², which became effective on February 1, 2011.

One commenter indicated that a marketplace would not know which orders arriving from another marketplace's SOR, a commercial SOR or other execution order platform were marked DAO by a marketplace or by a marketplace participant. We have revised clause 11.2(c)(xviii) of NI 21-101³³ to clarify that the requirement is that a marketplace keep records of orders that it receives as DAO and of orders that the marketplace itself marks as DAO.

In anticipation of the publication for comment of proposed National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), which proposed provisions regarding electronic trading, including a proposed requirement to identify clients that have direct electronic access, we proposed a requirement in the Proposed Amendments that records be kept and an audit trail maintained of clients with direct electronic access to a marketplace.³⁴

Some concerns regarding this proposed requirement were received. Specifically, commenters noted that NI 23-103 only requires participants to advise marketplaces about which of the participants' trader IDs represent clients with direct electronic access, but not the identity of the ultimate client. As a result, they noted that the marketplace would not have records of the ultimate clients with direct electronic access. We acknowledge these comments, and confirm that the client identifier may be the marketplace trader ID

²⁹ Paragraph 6.1(4)(h) of 21-101CP.

³⁰ Clause 11.2(1)(c)(xviii) of proposed amendments to NI 21-101 and clause 11.2(1)(u) of proposed amendments to NI 23-101 for the requirements applicable to marketplaces and dealers, respectively.

³¹ Clause 11.2(1)(c)(xix) of proposed amendments to NI 21-101.

³² See Part 6 of NI 23-101.

³³ The provision was contained in clause 11.2(c)(xix) of the Proposed Amendments. For clarity, it has been combined with the preceding clause in the Amendments.

³⁴ Paragraph 11.2(c)(iv) and 11.2(d)(x) of NI 21-101, respectively.

assigned to a client accessing the marketplace using direct electronic access and that a particular client may have multiple trader IDs.

k. Marketplace systems and business continuity planning

NI 21-101 includes a number of requirements applicable to a marketplace's systems, including a requirement that a marketplace promptly notify the regulators or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.³⁵ In response to requests for clarification, we have amended subsection 14.1(4) of 21-101CP to clarify that a system failure would be considered material if, in the normal course of operation, the marketplace would escalate the matter to senior management ultimately accountable for technology. We have also clarified our expectation that a marketplace will update the regulators on the status of the failure, the resumption of the services and the results of its internal review of the failure.

The system requirements in NI 21-101 also include a requirement that marketplaces develop and maintain reasonable business continuity and disaster recovery plans and test their business continuity and disaster recovery plans on a reasonably frequent basis and, in any event, at least annually.³⁶ We have made a further revision to 21-101CP to indicate our expectation that marketplaces participate, as part of their business continuity plan testing, in industry-wide tests.³⁷ In the current environment, where market participants are highly inter-connected, it is imperative that a marketplace business continuity plan also be tested in conjunction with those of other market participants to assess the marketplace's ability to communicate and complete transactions in case of significant disruptive events.

l. Locked and crossed markets

In proposed section 6.5 of NI 23-101, we extended the requirement that a marketplace participant not intentionally lock or cross markets to marketplaces that route or reprice orders. In proposed section 6.4 of 23-101CP, we gave additional guidance regarding situations that would be considered to be an unintentional lock or cross. We have further revised section 6.4 of 23-101CP to clarify that triggering an on-stop order would not be considered to intentionally lock or cross a market because it does not involve "repricing" of an order, but rather it makes a previously-entered order eligible to trade.

m. Other changes to the Marketplace Rules

In addition to the changes discussed above, we have made a number of other non-material changes to the Marketplace Rules. They are described below.

³⁵ Paragraph 12.1(c) of NI 21-101.

³⁶ In section 12.4 of NI 21-101.

³⁷ Section 14.3 of 21-101CP.

i. *Section 1.1 of NI 21-101 Definitions*

We amended a number of defined terms to take into account that they are now defined in the *Securities Act* (Ontario).

ii. *Exhibit E of Forms 21-101F1 and 21-101F2*

In item 7, we have clarified that the description of the manner of operation of a marketplace and its associated functions would include a description of how the orders interact, including the full priority of execution for all order types.

iii. *Exhibit K of Forms 21-101F1 and 21-101F2*

This Exhibit requires marketplaces to provide a list of marketplace participants, including a description of the types of trading activities primarily engaged in by the marketplace participants, including the traders. In response to a comment received that noted that a marketplace does not collect such detailed information, we revised the Exhibit to require that a marketplace report only the types of trading activities in which its marketplace participants engage.

iv. *Form 21-101F3*

We have made minor changes to the Proposed Amendments to clarify that marketplaces are required to provide, on a quarterly basis, a brief description of amendments to Forms 21-101F1 or 21-101F2 that were implemented during a particular quarter and of those that were not implemented. This will enable us to track and, if necessary, follow up on changes previously filed by a marketplace but not implemented. We have also made minor changes to the reporting requirements in the Form based on feedback we received from the marketplaces.

V. IMPLEMENTATION OF THE AMENDMENTS

As noted above, the Amendments would introduce revised Forms 21-101F1, 21-101F2, 21-101F3 and 21-101F5. We are not requiring marketplaces and information processors to refile a complete and updated copy of their existing forms by the date of the implementation of the Amendments. We expect, however, that these forms will be filed by December 31, 2012. In the meantime, marketplaces and information processors will be expected to file any amendments to the information in their forms using the revised exhibits to these forms up to and until December 31, 2012. Marketplaces will be expected to file the information required by the new Form 21-101F3 beginning with the quarter ending December 31, 2012.

The Amendments require the marketplaces to file their forms in electronic form.³⁸ The marketplaces are currently complying with this requirement by providing soft copies of their applicable forms. OSC staff are currently developing a filing system that would

³⁸ Section 3.5 of NI 21-101.

allow the marketplaces to submit their forms online. When that process is complete, we will notify the marketplaces and work with them to implement the new filing system. We will also consider what, if any, amendments are needed to 21-101CP to document the new filing process.

VI. AUTHORITY FOR THE AMENDMENTS

In those jurisdictions in which the Amendments to the Marketplace Rules are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the amendments.

VII. QUESTIONS

Questions may be referred to any of the following:

Timothy Baikie
Ontario Securities Commission
(416) 593-8136

Ruxandra Smith
Ontario Securities Commission
(416) 593-2317

Tracey Stern
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(403) 355-3889

Mark Wang
British Columbia Securities Commission
(604) 899-6658

Ella-Jane Loomis
New Brunswick Securities Commission
(506) 643-7857

APPENDIX A
SUMMARY OF COMMENTS ON PROPOSED AMENDMENTS TO NI 21-101
AND 23-101

Commenters:

CanDeal.ca
Investment Industry Association of Canada
Liquidnet Canada Inc.
CNSX Markets Inc.
TMX Group Inc.
TriAct Canada Marketplace LP
TD Securities
Chi-X Canada ATS Limited
TD Asset Management Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Alpha ATS LP

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
3.2 — Change in Information	<i>General</i>	
(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 at least 45 days before implementing the change.	One commenter agreed with the commentary that a new type of security or a new category of participant is a significant change requiring 45 days advance notice, but thought the language was too broad and could require an amendment to be filed each time a new security is listed or a new participant is added. The commenter suggested changing 21-101CP 6.1(4)(e) and (h) to read “changes to <i>types of securities</i> (marketplace participants) or new types of securities (marketplace participants)...”.	<i>We agree and have made the suggested change.</i>
(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.	One commenter indicated that 21-101CP should include a discussion on the appropriate use of discretion in determining whether a change is significant.	<i>21-101CP lists items the regulators will generally consider “significant.” Since the Companion Policy provides guidance only, we do not think additional discussion on the appropriate use of discretion by a marketplace is necessary.</i>
(3) Immediately before implementing a change to 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.	A number of commenters thought that the requirement to file non-significant changes in advance of implementation is burdensome and may not be possible in some circumstances. One commenter suggested a requirement that non-significant changes be filed within 10 days from the end of the month in which the change is made.	<i>We agree and have made the proposed change. Subsection 3.2(3) of NI 21-101 was revised to require that marketplaces file amendments related to changes that are not significant by the close of business on the 10th day after the end of the month in which the change was made. If a marketplace chooses to publicly announce a non-significant change or is required to make details public under section 10.1 of NI 21-101, notice must be given no later than the time of the public announcement.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>One commenter was of the view that significant changes are material changes to market structure, types of participants, market surveillance and enforcement. All other changes should be reported quarterly, with a marketplace sanctioned or forced to withdraw a change if it mischaracterizes it.</p>	<p><i>The items listed as “significant changes” are ones the regulators consider necessary to understand the marketplace’s business and may include changes other than those listed by the commenter. For example, new or changes in fees, access requirements or corporate governance are relevant and necessary to understand the marketplace’s business. The marketplace will not necessarily be required to publish details of a proposed change for comment.</i></p>
	<p>One commenter supported reducing the notification period for non-significant changes, but indicated that the regulators should be able to impose a delay if on review they determine a change to be significant.</p>	<p><i>As indicated in subsection 6.1(7) of 21-101CP, the Canadian securities regulatory authorities may review filings for changes other than significant changes to ascertain the appropriateness of categorization of such filings and notify the marketplace of any disagreement. If the change is deemed to be significant, it would follow the applicable filing and review process.</i></p>
	<p>One commenter thought flexibility was needed to determine what is a significant change on a case-by-case basis, by looking at substance, not form. A marketplace extending its trading hours to match another’s would probably not be a significant change, while a proposal to begin trading before any other market is open probably is.</p>	<p><i>We note that if the subject matter of the change is one that is generally considered “significant,” the Canadian securities regulatory authorities consider it to be significant even if the change is made to conform to the practice of another marketplace.</i></p>
	<p>Two commenters indicated that the proposed requirement to report changes in affiliates could be unworkable for international marketplaces with tens or hundreds of affiliates if changes to affiliates are included. The reporting should be limited to the domestic affiliates of a marketplace.</p>	<p><i>We agree that not all affiliates need to be included, and have made a change to require reporting for affiliates (domestic and foreign) that provide services for the marketplace.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>One commenter noted that the wording in 21-101CP should be narrower than the rule to provide guidance, but is broader. The list in subsection 6.1(4) of 21-101CP does not map to Forms 21-101F1 and 21-101F2, and should indicate the applicable exhibit.</p>	<p><i>We do not agree with this comment. NI 21-101 sets out the filing requirements for significant changes, while 21-101CP gives guidance and clarity on what would be considered significant changes by the Canadian securities regulatory authorities. It is not necessary that subsection 6.1(4) of 21-101CP map to the exhibits in Forms 21-101F1 and 21-101F2, nor that these exhibits are identified in 21-101CP. It is the responsibility of a marketplace to identify where the relevant information is contained in the Forms and which particular exhibits should be revised in the event of a significant change.</i></p>
	<p><i>Fees</i></p> <p>Regarding the proposed requirement to shorten the notification period for marketplace fees to at least seven business days before implementing a change to the information provided in Exhibit L – Fees, three commenters supported the shorter notification period. Another commenter thought marketplaces should be able to implement fee decreases immediately, and the regulator should confirm that it is a true fee decrease in the following seven days.</p> <p>Another commenter noted that marketplace fees are complex, and seven business days is not sufficient time to ascertain the impact and make changes to trading strategies. The proposed notification period should only be applicable to clear fee decreases.</p>	<p><i>We do not believe that a seven business day notification period is unduly onerous, and it should be considered by the marketplace in the fee changing process, whether the change relates to an increase or decrease of the fee.</i></p> <p><i>As we indicated in subsection 6.1(8) of 21-101CP, while the Canadian securities regulatory authorities will make best efforts to review amendments, including amendments to Exhibit L – Fees, to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of NI 21-101, the review period may exceed these timeframes in circumstances where the information filed needs to be more extensively reviewed.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>One commenter requested clarification regarding the fees that would be covered. Would they include fees for smart order routers or market data offered by a related party?</p>	<p><i>The fees covered are the fees related to marketplace services, including data, whether charged directly by the marketplace or by a third party on its behalf. Subsection 12.1(2) of 21-101CP provides guidance regarding the fees that would be included.</i></p>
	<p><i>Changes to marketplace technology</i></p>	
	<p>A number of commenters requested clarification of what constitutes a “significant” change. Two commenters suggested that fixes to address problematic issues or bugs are not significant, and nor are hardware upgrades. One commenter recommended that the focus should be on those changes that would require dealers and participants to adjust their own systems. Another commenter thought that changes to accommodate new order types are not significant, and they are disclosed to participants in any event.</p>	<p><i>In paragraph 6.1(4)(h) of 21-101CP, we indicated that changes to the systems and technology used by a marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and market surveillance, if applicable, including those affecting capacity, would be considered significant. For clarity, these would be changes to the systems or technology related information, as documented in the relevant exhibits of 21-101F1 or 21-101F2, as applicable. Paragraph 6.1(5)(b)(v) indicates that minor system or technology changes that would not significantly impact the system or capacity of the marketplace would not be included.</i></p>
	<p>One commenter noted that major system changes introduce risk, and their frequency and complexity is accelerating. Protected marketplaces should be required to batch updates, upgrades, bug fixes and new functionality into regularly scheduled drops. Protected marketplaces should also provide full-scale test environments for performance and functional testing.</p>	<p><i>We agree that this is a good business practice. The securities regulatory authorities plan to review the requirements related to marketplace systems, technology and contingency planning included in the Marketplace Rules. The purpose of the review will be to assess what, if any, amendments are needed to the Marketplace Rules to reflect issues related to marketplaces’ systems.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>4.2 — Filing of Annual Audited Financial Statements</p> <p>(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).</p> <p>(2) An ATS must file annual audited financial statements.</p>	<p>Two commenters supported the proposed changes.</p> <p>One commenter thought that all marketplaces should be required to publish annual financials so market participants can assess their viability.</p> <p>The same commenter indicated that the capital requirements for ATSs should be higher than IIROC minimums. ATSs should have the same financial viability requirements as exchanges have in their recognition orders.</p>	<p><i>We acknowledge these comments.</i></p> <p><i>We do not agree with this suggestion. The intent of the requirement is to enable the securities regulatory authorities to assess financial viability of marketplaces, as part of their oversight responsibility.</i></p> <p><i>We do not agree with this comment. There is much less impact to the market and investors if an ATS ceases operations. If an ATS gains significant market share, the applicable securities regulatory authority can require it to be recognized as an exchange or impose additional terms and conditions on the entity's registration. These may include additional capital requirements. Furthermore, ATSs are subject to the capital requirements established by IIROC. IIROC monitors their viability in a number of ways, including through reviews of the ATSs' monthly and annual financial reports.</i></p>
<p>5.1 — Access Requirements</p> <p>(1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.</p>	<p>Two commenters indicated that the Canadian securities regulatory authorities need to address how the requirement applies to marketplaces that restrict access to certain dealers or the buy side. Will existing marketplaces be grandfathered?</p> <p>Indications of Interest (IOI)</p> <p>Regarding the proposed clarification in subsection 7.1(4) of 21-101CP that marketplaces that send IOI information to a selected smart order router (SOR) should consider the extent to which this</p>	<p><i>We note that we are not proposing a change from the current rule, which allows a marketplace to give access to certain classes of market participants but requires it to be reasonable when determining access.</i></p> <p><i>We agree with the comment that details regarding an IOI should be available to all SORs if made available to a specific SOR. We have amended subsection 7.1(4) of 21-101CP to clarify that this is</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>information should be sent to similarly situated SORs, a number of commenters indicated that IOI information should be provided to all SORs. One commenter noted that a marketplace SOR should be able to take into account dark liquidity on its own book without triggering pre-trade transparency.</p>	<p><i>our expectation.</i></p>
	<p>One commenter inquired whether the information that would be made available to all SORs is intended to be limited to displayed orders or to dark orders, flash or co-location orders as well.</p>	<p><i>As indicated above, it is our expectation that IOI information sent to an SOR is made available to all other SORs. If an IOI is considered to be an order, it would be subject to the pre-trade transparency requirements of NI 21-101. That is, if the order is displayed by the marketplace to external individuals or entities, including an SOR, it would have to be transparent and available to all SORs.</i></p>
<p>5.7 — Fair and Orderly Markets A marketplace must not engage in or promote any activity that interferes with fair and orderly markets.</p>	<p>One commenter noted that this is a potentially very broad requirement, especially for ATSS. The Canadian securities regulatory authorities should clarify the requirement to indicate this is not imposing an oversight role but is intended to prevent the introduction or promotion by the marketplace of anything contrary to the public interest.</p> <p>Another commenter agreed with the principle, but noted that marketplaces do not have the tools to accomplish this. For example, the regulators took the position that a marketplace cannot cancel trades. The marketplaces should be given the means to achieve the objective.</p>	<p><i>We acknowledge the concerns and have amended 21-101CP to indicate that the requirement for fair and orderly markets does not impose a responsibility on a marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or QTRS that has assumed responsibility for monitoring the conduct of its marketplace participants directly, rather than through a regulation services provider. We indicated, however, that marketplaces are expected to monitor activity on their markets for compliance with their own operational policies and procedures and to report any concerns about order entry or trading to IIROC.</i></p> <p><i>We have also revised section 5.7 of NI 21-101 to specify that the requirement is that a marketplace</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
		<p><i>take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets. In subsection 7.6(3) of 21-101CP, we indicated that our expectation is that, as part of these reasonable steps, the marketplace should ensure that its operations support compliance with regulatory requirements, including UMIR. While this does not mean that the marketplace must system-enforce all regulatory requirements, it means that it should not operate in a manner that would cause its marketplace participants to breach regulatory requirements when trading on that marketplace.</i></p>
<p>5.9 — Risk Disclosure for Foreign Exchange-Traded Securities</p> <p>(1) When opening an account for a marketplace participant, a marketplace that is trading foreign exchange-traded securities must provide that marketplace participant with disclosure in substantially the following words:</p> <p>“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.”</p> <p>(2) Before the first order for a foreign</p>	<p>One commenter questioned the relevancy of this requirement given that listed issuers are reporting issuers. If the requirement is meant to cover unlisted securities traded on an exchange, it is not clear how the exchange will comply. Must it get acknowledgement from all participants or from participants accessing the market indirectly?</p>	<p><i>The requirement in NI 21-101 covers foreign issuers that are traded on an “unlisted trading” basis. An exchange or QTRS must get the acknowledgement from its participants, not from the participants’ clients. We have clarified the wording of the provision.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>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).</p>		
<p>5.11 Management of Conflicts of Interest</p> <p>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.</p>	<p>Three commenters agreed with the proposal.</p>	<p><i>We acknowledge these comments.</i></p>
	<p>One commenter indicated that a marketplace’s conflicts policy should balance the commercial interests of all parties, including the marketplace.</p>	<p><i>The provision sets out the requirement to have policies to identify and manage conflicts of interest as a principle. It does not prescribe the contents of each marketplace’s policy. However, section 7.8 of 21-101CP gives guidance regarding the conflicts of interest that a marketplace may face, and these include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or operators, and the responsibilities and sound functioning of the marketplace.</i></p>
	<p>Referral arrangements create a possibility of conflict and should be disclosed.</p>	<p><i>We agree and note that paragraph 10.1(f) of NI 21-101 requires the disclosure of referral arrangements between the marketplace and service providers. We have amended subsection 7.8(1) of 21-101CP to clarify that conflicts of interest may include those arising as a result of a marketplace’s referral arrangements.</i></p> <p><i>We have further amended 21-101CP by adding subsection 7.8(2) to clarify our expectation that, given that dealers who are owners of marketplaces may have a conflict of interest with respect to their</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
		<p><i>clients, a marketplace’s policies should also take into account conflicts related to owners that are marketplace participants. Also, it is our expectation that the marketplace would include in its marketplace participant agreements a requirement that marketplace participants disclose their ownership to their clients in compliance with the dealers’ obligations under National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. We have indicated this in subsection 12.1(4) of 21-101CP.</i></p>
<p>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:</p> <p>(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,</p> <p>(b) identify any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced, and establish and maintain policies and procedures to mitigate and manage such conflicts of interest,</p> <p>(c) enter into a contract with the service provider to which key services and</p>	<p>Commenters agreed with the proposal. One commenter indicated that the rule should be principles-based.</p>	<p><i>The proposed requirement is consistent with principles outlined in the report of the Technical Committee of the International Organization of Securities Commission (IOSCO) on outsourcing. We have also clarified that the marketplace’s policies and procedures should include an assessment of the marketplace’s ability to continue to comply with securities legislation in the event of bankruptcy or insolvency of its service provider.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>systems are outsourced that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures,</p> <p>(d) maintain access to the books and records of the service providers relating to the outsourced activities,</p> <p>(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,</p> <p>(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,</p> <p>(g) take appropriate measures to ensure that the service providers protect the marketplace participants' proprietary, order, trade or any other confidential information, and</p> <p>(h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.</p>		

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>6.7 — Notification of Threshold</p> <p>(1) An ATS must notify the securities regulatory authority in writing if,</p> <p>(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;</p> <p>(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; or</p> <p>(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.</p>	<p>A number of commenters agreed with the proposal.</p>	<p><i>We acknowledge these comments.</i></p>
	<p>One commenter thought there was no policy rationale for forcing an ATS to be recognized as an exchange given the harmonization of the requirements, unless the ATS wants to list securities or perform a regulatory function itself. Another noted that no rationale was given for a change that would impose a burden on ATSs without any clear benefit.</p>	<p><i>We disagree that the provision imposes a burden as it does not require the ATS to become an exchange automatically when certain thresholds are met, but rather, it requires the ATS to notify the securities regulatory authority if it has achieved a certain threshold. As we indicated in subsection 3.4(7) of the Companion Policy, the securities regulatory authority will review the ATS to consider if it should be an exchange or if additional terms and conditions on its registration are needed. As an ATS's market share grows, it has greater market impact and may need greater oversight.</i></p>
	<p>Two commenters thought this requirement was unnecessary as the information is already reported by ATSs to IIROC, which provides the data to the CSA and to the marketplaces.</p>	<p><i>While we agree that ATSs send volume and value information to IIROC and IIROC produces market share reports to facilitate the marketplaces' compliance with this section of NI 21-101, the ATSs are ultimately responsible for monitoring the size and dollar value of their trading volume.</i></p>
	<p>One commenter noted that fixed income marketplaces would not be able to comply as there are no monthly industry statistics for the securities they trade.</p>	<p><i>We note that the requirement to monitor the size of an ATS's trading volume and value of trading volume is an existing requirement in NI 21-101. However, we acknowledge the challenges that fixed income marketplaces have in complying with these requirements and encourage them to discuss with the securities regulatory authority about how to meet these requirements.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
(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.		

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
7.1 Pre-Trade Information Transparency - Exchange-Traded Securities	<i>General</i>	
(1) A marketplace that displays orders of exchange-traded securities to a person or company shall 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.	One commenter supported the clarification that the requirements apply to all orders and IOIs that are displayed, including information disseminated to SORs.	<i>We acknowledge this comment.</i>
(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.	Many commenters were of the view that there should not be a minimum size on dark orders for a number of reasons, described below.	<i>We acknowledge these comments and note that the Proposed Amendments do not propose a minimum size at this time. The Proposed UMIR Amendments referred to in the body of this Notice also do not propose an actual size threshold. Rather, the purpose of the Amendments and the Proposed UMIR Amendments is to facilitate the implementation of the regulatory framework for dark liquidity.</i>
	One commenter noted that any size that would be imposed would likely become obsolete as market structure evolves. However, other commenters noted that, if a minimum size is to be established, it should be 50 board lots.	<i>We agree, and note that subsection 7.1(1) of NI 21-101 does not establish an actual threshold, but rather, it refers to the size threshold set by a regulation services provider, in this case, IIROC. To retain flexibility and allow IIROC to revise any threshold that may be imposed in the future, if required, no size amount was specified in the Proposed UMIR amendments.</i>
	One commenter indicated that there should be industry consultation before setting a minimum size for dark orders.	<i>We agree. As we indicated in the Notice that accompanied the Proposed Amendments, market participants would be consulted in the process of setting a minimum size for dark orders. The Notice of the Proposed UMIR Amendments describes this process, which would include publication of a notice requesting public comment for a period of at least</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
		<i>30 days from the date of issuance of the notice.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>One commenter indicated that minimum size restrictions may require market makers and liquidity providers to take greater risk in the dark markets, reducing risk appetite in lit ones, and reduce opportunities for retail order flow to interact with dark orders.</p>	<p><i>The purpose of the proposed regulatory framework for dark liquidity, which includes requiring that orders meet a minimum size to be entered without pre-trade transparency, is to protect the integrity of the price discovery process while maintaining the use of dark liquidity. That said, we acknowledge that the elements of this framework may lead to changes in the trading behaviour of market participants. While no size threshold was proposed at this time, we plan to monitor market developments.</i></p>
	<p>One commenter believed that there should be no minimum size if a marketplace offers significant price improvement, as this would benefit investors.</p>	<p><i>The rationale for proposing a minimum size for dark orders is to protect the price discovery process and the quality of the visible markets. We are of the view that this should be required regardless of the level of price improvement offered by a marketplace.</i></p>
	<p>One commenter was of the view that dark orders should be restricted if it is clear that they inhibit the functioning of the markets in a material and quantifiable manner. Others, however, supported the concept of a minimum size for marketplaces. One noted that issues related to dark liquidity should be dealt with on a policy basis rather than a “wait-and-see” basis.</p>	<p><i>Our regulatory approach for dark liquidity is proactive and was not intended to address a problem. As we indicated in the notices describing the proposed framework for dark liquidity previously published, we acknowledge that there has been no evidence that dark liquidity has had a negative impact on the Canadian capital market. However, we have established a framework that would allow the CSA and IROC sufficient flexibility to intervene as needed in order to encourage transparency and address risks to the quality of the price discovery process.</i></p>
	<p>One commenter noted that focusing solely on a</p>	<p><i>The proposed regulatory framework for dark</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>minimum size will not improve market structure.</p>	<p><i>liquidity does not focus only on a minimum size for dark orders. As described in Joint CSA/IIROC Notice 23-311 and in the Proposed UMIR Amendments, there are other elements, specifically: that orders must receive price improvement in order to execute against dark orders, unless they exceed a certain size; that price improvement must be meaningful; and that visible orders must have priority over dark orders. We note that CSA and IIROC staff are currently reviewing other issues that impact market structure, such as broker preferencing, internalization of order flow, and marketplaces' fees models, in order to assess what, if any, regulatory response is needed.</i></p>
	<p>One commenter noted that setting a minimum size could lead to information leakage, negatively impacting best execution and overall liquidity.</p>	<p><i>We recognize the potential for information leakage associated with setting of a minimum size. This issue, and how to mitigate the risk of being gamed, will be considered as part of the process in determining a minimum size.</i></p>
	<p>One commenter noted that there is risk of dark liquidity migrating to other jurisdictions if the rules are too restrictive.</p>	<p><i>We acknowledge the potential for reduced dark liquidity in Canada, however, we believe that the framework we proposed for dark liquidity would ensure that the visible market and the price discovery process are not harmed. At the same time, we note that dealers' best execution obligations govern where and how to execute their trades, and dealers would have to justify any decisions on how they directed order flow in the context of best execution requirements.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>One commenter noted that the wording of the exemption in subsection 7.1(2) may not apply to marketplaces that facilitate one-to-one negotiations, and those marketplaces should be exempted from the pre-trade transparency requirements.</p>	<p><i>We have amended 21-101CP to indicate that 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 NI 21-101 to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties in certain circumstances. These would include that order details are shown only to the negotiating parties; that no actionable IOIs are displayed by either party or by the marketplace; and that each order entered on the marketplace meets the size threshold that would be set by a regulation services provider, as provided in subsection 7.1(2) of NI 21-101.</i></p>
	<p>One commenter noted that the residual amount of a partially-filled dark order should be eligible to continue as a dark order even if it is below any minimum size that would be established.</p>	<p><i>We refer the commenters to the Proposed UMIR Amendments, which would allow partially filled dark orders to continue to remain dark.</i></p>
	<p>One commenter noted that Calculated Price Orders as defined in 1.1.4 of 23-101CP and “derived mid-peg orders” should also be exempt under 7.1(2) as the price is not known at the time.</p>	<p><i>We refer the commenters to the Proposed UMIR Amendments that would introduce a definition for Dark Orders. As defined, Dark Orders would exclude certain specialty orders, including Opening Orders.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>8.6 Exemption for Government Debt Securities - Section 8.1 [requiring transparency of orders for government debt securities] does not apply until January 1, 2015.</p>	<p>One commenter supported not requiring pre-trade transparency for unlisted debt.</p>	<p><i>We acknowledge this comment. We note that the CSA has implemented this provision through blanket orders and, in Ontario, through OSC Rule 21-501 – Deferral of Information Transparency Requirements for Government Debt Securities in National Instrument 21-101 – Marketplace Operation, which came in force on December 31, 2011.</i></p>
<p>10.1 Disclosure by Marketplaces - A marketplace must publicly disclose on its website information reasonably necessary to enable a person or company to understand the marketplace’s operations or services it provides, including but not limited to information related to:</p> <p>(a) all fees, including any listing fees, trading fees, data fees, and routing fees charged by the marketplace, an affiliate or by a third party to which services have been outsourced;</p> <p>(b) how orders are entered, interact and execute;</p> <p>(c) all order types;</p> <p>(d) access requirements;</p> <p>(e) the policies and procedures that identify and manage any conflicts</p>	<p>One commenter noted that marketplaces are not currently required to disclose individual fee agreements with dealers and other participants that can result in a substantial variance in the actual fees paid. They should be required to clarify if fees are negotiable and the CSA should determine whether and how these agreements should be disclosed.</p>	<p><i>We are of the view that all the fee schedules charged by a marketplace to any and all users of services should be disclosed, and have clarified this in subsection 12.1(2) of 21-101CP.</i></p>
	<p>One commenter requested clarification regarding the fees that would be covered by this provision. The commenter asked if the fees would include fees for smart order routers or market data offered by a related party.</p> <p>Another commenter requested clarification regarding the treatment of co-location fees. The same commenter believed co-location is not a key or core marketplace service. If the provision does apply, it should cover arrangements where third parties host marketplace servers and user servers.</p>	<p><i>The provision would cover all fees for marketplace services, whether offered directly by the marketplace or through a third party. It does not cover non-marketplace services that unregulated third parties can provide.</i></p> <p><i>We disagree with this comment. Co-location is a core service and subject to the fair access requirements of NI 21-101. A marketplace should have a policy for determining which entities may co-locate and the cost. We have amended NI 21-101 accordingly, and paragraph 10.1(a) indicates that co-location fees are included in the fees that are required to be disclosed.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
(f) of interest arising from the operation of the marketplace or the services it provides;	A number of commenters supported the proposal, and one noted that the information that would be disclosed would help educate a marketplace's clients.	<i>We acknowledge these comments.</i>
(g) any referral arrangements between the marketplace and service providers; where routing is offered, how routing decisions are made; and	One commenter thought there should be a provision allowing marketplaces to designate certain information as confidential to protect intellectual property rights.	<i>We do not believe that NI 21-101 requires disclosure at a level of detail where confidentiality would be a concern.</i>
(h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest.	One commenter noted that much of the information is generally available today. The CSA should clarify the amount of detail that should be disclosed on a marketplace's website as the information (especially for fees) varies widely. Another commenter noted that current public disclosure by ATSs is inconsistent and inadequate. The CSA should include a public comment requirement for both exchanges and ATSs. The commenter noted that all trading requirements of ATSs, whether in policies, subscriber agreements, or otherwise, should be publicly available.	<i>As we indicated in section 10.1 of NI 21-101, a marketplace, ATS or exchange, should publicly disclose on its website information that is reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides. While we included a description of the information that should be disclosed, we believe that a marketplace should have the flexibility to determine what other information it needs to disclose. To this extent, in subsection 12.1(1) of 21-101CP, we indicated that these are the minimum disclosure requirements, and a marketplace may make other information publicly available if it considers this to be appropriate.</i>
	One commenter noted that outsourced marketplace services should be disclosed, whether by an affiliate or third party.	<i>We agree with the comment and have changed paragraph 10.1(a) of NI 21-101 to indicate that fees charged by an affiliate or third party to which services have been outsourced or which provides those services should also be disclosed.</i>
	One commenter noted that all marketplaces should annually publish corporate governance practices, including disclosure of whether directors are	<i>We do not agree with this comment. While exchanges, which have a public interest mandate and carry out certain regulatory functions, are held</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	independent.	<i>to higher governance and disclosure standards than ATSS, disclosure of corporate governance practices, including whether directors are independent, has not been mandated. We acknowledge that an exchange may follow the governance and disclosure practices for public issuers, if applicable, but these are not applicable to all marketplaces. That said, a marketplace may publish its governance practices if it wishes.</i>
	One commenter supported the disclosure of a general description of how marketplace routing decisions are made, but not the technical specifications. The commenter noted that the disclosure should apply to third party routers used by a marketplace.	<i>We agree with the comment and note that paragraph 10.1(g) of NI 21-101 requires disclosure of how routing decisions are made. This would include third-party routers used by a marketplace. We did not require that the technical specifications be disclosed.</i>
<p>11.2 — Other Records</p> <p>(1) As part of the records required to be maintained under section 11.1, a marketplace shall include the following information in electronic form: . . .</p> <p>(c) a record of each order which must include . . .</p> <p>(xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account . . .</p> <p>(xix) whether the marketplace or a marketplace participant has marked the order as a directed-</p>	One commenter noted that proposed clause 11.2(c)(xii) of NI 21-101, which is currently in clause 11.2(c)(xi) of NI 21-101, would require orders to be marked with information (retail, wholesale, employee) that is not currently provided to a marketplace by its participants. The order should identify whether the account is a client, inventory or non-client account.	<i>As the commenter noted, this is not a change from current requirements. The order information to be kept by marketplaces is consistent with the information that must be recorded by dealers in accordance with the requirements of NI 23-101. The account number will normally indicate whether the account is for inventory, or a retail or institutional customer.</i>
	Two commenters agreed with the requirement to mark directed-action orders (DAO), but did not believe it would provide useful information as marketplaces mark all orders from certain users as DAO based on the users' preference. One commenter suggested changing the marker to reflect the concept of initiator or decision maker rather than where the marking occurs.	<i>NI 23-101 currently requires DAOs to be marked (see paragraph 11.2(1)(u) of NI 23-101). The requirement in NI 21-101 is to retain the marker in the record of the order, whether the marker was applied by the originating dealer or by the marketplace.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>action order, and ...</p> <p>(d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including ...</p> <p>(x) each client identifier assigned to a client accessing the marketplace using direct electronic access.</p>	<p>One commenter thought the requirement to maintain records of DAO orders is duplicative, as both dealers and marketplaces would have to retain the records.</p> <p>The requirement that the marketplace keep records of whether the marketplace or a marketplace participant has marked the order as a DAO could be determined on an order record sampling basis if required by the regulator. A receiving marketplace cannot know and cannot keep records regarding which orders arrive from a marketplace's SOR versus a commercial SOR versus another order execution or routing platform.</p> <p>One commenter noted that clause 11.2(1)(d)(x) requires that execution report details of orders must include each unique client identifier assigned to a client accessing the marketplace using direct electronic access (DEA). National Instrument 23-103 <i>Electronic Trading and Direct Electronic Access to Marketplaces</i> (NI 23-103) requires participants to advise marketplaces about which of the participant's trader IDs represent DEA clients, but the identity of the DEA client itself does not need to be provided to the marketplaces but rather to IIROC, where the marketplace uses IIROC as a</p>	<p><i>Both the marketplace participants and the marketplace must retain the record to show compliance with their respective obligations.</i></p> <p><i>Revised clause 11.2(c)(xviii) clarifies that the requirement is that the marketplace keep records of orders it received as DAO and those it sent out as DAO.</i></p> <p><i>We confirm that the client identifier can be the marketplace trader ID that is specifically associated with a client accessing the marketplace using direct electronic access. We note that the trading of a direct electronic access client may be associated with more than one client identifier.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	<p>regulation services provider.</p> <p>The same commenter indicated that the requirement to mark each applicable order as DEA would require systems changes across all marketplaces, vendors and dealer systems to introduce a new tag. The commenter did not believe that NI 23-103 required this level of technological change.</p>	<p><i>We note that the requirement would not result in the introduction of a new tag on orders. It allows the existing practices of some marketplaces to maintain records of client identifiers accessing the marketplace using DEA to continue.</i></p>
<p>11.3 — Record Preservation Requirements</p> <p>(1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep</p> <p>(a) all records required to be made under sections 11.1 and 11.2...</p>	<p>One commenter indicated that the requirement should be reconsidered as the cost of storing data is becoming significant. It is rare to get requests from IIROC for data that isn't recent and RCMP requests usually arrive within four years. Litigants typically are only interested in basic information such as order, trade and dealer information. The same commenter indicated that the requirement to retain details for seven years on whether an order is routed to another marketplace for execution, as well as the date, time and name of the marketplace to which the order is routed, is very onerous. The relevant data will be retained by the marketplace that ultimately receives the order. If the intention is to track compliance with order protection requirements, a much shorter period should suffice.</p>	<p><i>We have reviewed the record retention requirements and do not believe a shortening of the period is advisable at this time.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>12.1 System Requirements - 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...</p> <p>(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.</p>	<p>One commenter indicated that “material system failure” should be defined. The commenter suggested that it would be a system-wide stoppage caused by trading engine failure, not a network error in which a subset of dealers or clients lose connectivity.</p>	<p><i>We do not believe that the definition should be as narrow as suggested. We have clarified the definition in 21-101CP and that, as part of the notification of a material system failure, we expect that the marketplace will provide updates on the status of the failure, its rectification, and the results of the marketplace’s own post-mortem.</i></p>
<p>12.2 System Reviews</p> <p>(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 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 12.1 (a) and section 12.4.</p>	<p>Commenters agreed with the proposed amendments. One commenter indicated that the regulators should either not grant exemptions, or should treat exempted marketplaces as non-protected.</p> <p>One commenter indicated that consideration should be given to how the requirements in NI 21-101 interact with the requirements in exchanges’ recognition orders and those under automated review programs.</p>	<p><i>We believe the regulator needs the ability to grant limited exemptions in appropriate circumstances, such as when a marketplace intends to decommission or make significant changes to a trading system in the near term. If a marketplace suffers a system failure, other marketplaces have a “self-help” remedy from the requirements of the Order Protection Rule.</i></p> <p><i>We do not believe that the requirements in NI 21-101 conflict with or are inconsistent with the system requirements applicable to exchanges included in their recognition orders or the automated review programs. The purpose of the proposed amendments is to add guidance regarding the firms or individuals that are qualified to conduct system reviews of marketplaces, and when an exemption from the requirements of subsection 12.2(1) of NI 21-101 may be granted.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>12.4 — Business Continuity Planning</p> <p>(1) A marketplace must develop and maintain reasonable business continuity plans, including disaster recovery plans.</p> <p>(2) A marketplace must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.</p>	<p>Commenters agreed with the proposed amendments. One commenter indicated that consideration should be given to how the proposed requirements interact with the requirements for business continuity plans in the exchanges’ recognition orders and requirements under automated review programs.</p>	<p><i>We note that the proposed requirements related to the maintenance of BCPs are broad, do not conflict with, and are not inconsistent with, the requirements for business continuity plans in the exchanges’ recognition orders and under automated review programs. The BCP related requirements in NI 21-101 ensure these requirements apply to all marketplaces. In light of these factors, we do not believe that further changes are needed to either the requirements in NI 21-101 or in the exchanges’ recognition orders.</i></p>
<p>14.4 Requirements Applicable to an Information Processor</p> <p>(7) An information processor must file its financial budget within 30 days after the start of a financial year.</p>	<p>Two commenters agreed with the proposal. One commenter, however, indicated that the requirement to file a budget is new and unnecessary given the undertakings of an information processor to maintain financial viability.</p>	<p><i>The applicable securities regulatory authority has a responsibility to assess the financial viability of market participants, including information processors, and their ability to comply with regulatory requirements. The budget is an important input in the oversight process. The regulators cannot simply rely on the information processor complying with the undertakings.</i></p>
<p>21-101CP</p>		
<p>2.1 Marketplace</p> <p>(8) A dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and generates trade execution through the routing of both sides of a match to a marketplace as a cross, would be</p>	<p>While two commenters agreed with the proposed clarification of the definition of a marketplace, most expressed concerns. They included:</p> <ul style="list-style-type: none"> the need to ensure that there are no unintended consequences; for example, treating dealers like marketplaces would have the unintended consequence of exempting them from best execution requirements, as ATs are exempt under NI 23-101; 	<p><i>We acknowledge the concerns raised by market participants and are mindful of the potential unintended consequences of this interpretation of the definition of “marketplace”. It was not our intention to exempt dealers from the best execution requirements by considering them marketplaces in certain circumstances.</i></p> <p><i>However, we remain of the view that a dealer using technology to match orders in a non-discretionary</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>considered by the Canadian securities regulatory authorities to be operating a marketplace under paragraph (c) of the definition of “marketplace”.</p>	<ul style="list-style-type: none"> • the fact that dealers should be able to create efficiencies in processing orders, but dealers trying to do indirectly what they cannot do directly should be caught by the definition of a marketplace; • the fact that, with the proposed clarification, virtually all dealers would meet the definition of a marketplace as almost no order flow, retail or institutional, is handled manually; • The fact that the focus should not be on requiring dealers to file as marketplaces, but on discouraging internalization; one commenter suggested that the best way to achieve this is by eliminating payment for order flow; • The fact that the proposed clarification will stifle a dealer’s ability to innovate, develop and enhance routing and trading products and services for clients; • The fact that the use of technology does not change the fundamental role of a dealer from intermediary to marketplace; and • That more substantive cost/benefit analysis needs to be done. 	<p><i>fashion may, in fact, be operating a marketplace. For this reason, we have revised 21-101CP to clarify that we expect dealers who intend to operate such a system to notify the regulator to discuss the operation of the system and the appropriate regulatory regime.</i></p>
<p>6.1 — Forms Filed by a Marketplace</p> <p>(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</p>	<p>One commenter noted that the securities regulatory authorities need to consult with marketplaces and have a clear process before publishing any summary information from confidential filings.</p>	<p><i>We agree that the marketplaces should be consulted before publishing summary information from confidential filings. In Ontario, the information published and the process for publication is currently outlined in OSC Staff Notice 21-703 Transparency of Operations of Stock Exchanges and Alternative Trading System. OSC staff are currently updating the processes for review of information in Forms 21-101F1 and 21-101F2, including the process for publication of this information.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>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 a marketplace.</p>		
<p>7.1 — Access Requirements</p> <p>(4) Marketplaces that send indications of interest to a selected smart order router should consider the extent to which such information should be sent to other smart order routers to meet the fair access requirements of the Instrument.</p>	<p>One commenter indicated that the proposed guidance that stated that a marketplace should “consider” whether to send IOI information to other SORs is not sufficient and does not promote market integrity through fair access. The commenter was of the view that, if a marketplace sends any information to an SOR, it should be available to all SORs so that no investors are subject to discrimination based on the marketplace on which they are trading.</p> <p>Another commenter noted that it should be clarified that marketplaces need to consider fair access rule when considering whether to give an SOR access to an IOI.</p>	<p><i>We agree with the comment and have amended subsection 7.1(4) of 21-101CP to clarify that marketplaces that send indications of interest to a selected smart order router or system should send the information to other smart order routers or systems to meet the fair access requirements in NI 21-101.</i></p> <p><i>The amendment to 21-101CP referred to above addresses this comment.</i></p>
NI 23-101 Trading Rules		
<p>6.5 — Locked or Crossed Orders – A marketplace participant or a marketplace that routes or reprices orders shall not intentionally</p>	<p>Two commenters agreed with extending the prohibition to marketplaces that route or reprice orders.</p>	<p><i>We acknowledge these comments.</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p>(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</p> <p>(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.</p>	<p>One commenter thought the prohibition should apply to all SORs, not just those operated by marketplaces.</p>	<p><i>We note that all marketplace participants, including those using SORs that are not operated by marketplaces, are subject to the prohibition on intentionally locking or crossing markets. As a result, if the SOR does not have the necessary functionality to enable it to avoid crossing or locking a market, the marketplace participant would not be able to comply with this provision without checking whether each order entered or repriced would lock or cross the market.</i></p>
23-101CP		
<p>6.4 – Locked and Crossed Markets</p> <p>(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.</p>	<p>One commenter believed that the guidance in 23-101CP is too broad and would include unintentionally locking or crossing a market. The commenter was of the view that a marketplace or dealer should only be responsible at the time of routing the order and should not be responsible if pegged orders caused the situation because the reference price had changed. The commenter noted that the purpose of imposing a restriction against locked or crossed markets was mainly to prevent those who rely on rebate strategies to ignore other markets in order to post resting orders, but the interpretation in 23-101CP goes beyond this policy purpose.</p>	<p><i>The purpose of this provision is to require marketplaces repricing orders to consider consolidated market information in arriving at a repricing decision, not simply orders and trades on that marketplace. A lock or cross would be considered intentional if the marketplace disregards orders on another marketplace when making a repricing decision. However, triggered on-stop orders would not be considered to intentionally lock or cross markets, because any lock or cross they may cause would be inadvertent and not caused by a marketplace repricing. We have amended 23-101CP to clarify this.</i></p>
Forms 21-101 F1 and 2		
<p>Exhibit B — Ownership</p>	<p>One commenter indicated that all marketplaces should be required to disclose the identity of those with material ownership positions. The commenter</p>	<p><i>As the commenter notes, paragraph 10.1(e) of NI 21-101 requires a marketplace to disclose the policies and procedures to identify and manage any</i></p>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
	noted that this might be covered by the requirement to disclose material conflicts of interest.	<i>conflicts of interest arising from the operation of the marketplace or the services it provides. In subsection 12.1(4), we clarified our expectation that for conflicts arising from ownership of a marketplace by marketplace participant, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients, at least quarterly.</i>
Exhibit C — Organization	One commenter noted that the requirement to list the length of time a position has been held is unnecessary since the start date is given.	<i>We agree and have made the proposed change.</i>
	One commenter noted that the examples given for the type of business in which each partner, officer, governor and member of the board and standing committees is primarily engaged (sales, trading, market making, etc.) assumes dealer-related activities and should be broadened.	<i>We agree and have made the proposed change.</i>
Exhibit D — Affiliates	One commenter agreed that marketplaces should only have to report for affiliates that provide key services or systems.	<i>We acknowledge the comment and have made the proposed change.</i>
Exhibit E — Operation of the Marketplace	One commenter noted that the information to be filed would duplicate the filing requirements for an exchange’s rule changes. The commenter thought consideration should be given to harmonizing with the process for rule reviews and requiring rules to be on the marketplace’s website.	<i>If a matter is filed as a rule change, a revised Form need not be filed as well. For greater clarity, we revised the filing instructions under the heading EXHIBITS to clarify that if a filer has otherwise filed the information required pursuant to section 5.5 of NI 21-101, the filer need not file the information again as an amendment to an Exhibit.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<i>Exhibit G — Systems and Contingency Planning</i>	One commenter believed that some of the information to be filed under this Exhibit is duplicative of independent system reviews and automated review programs.	<i>The information required in the Form will not be required to be refiled under the automated review program.</i>
	One commenter requested clarification that the requirement is to disclose processes and procedures regarding current and future capacity estimates. As the actual estimates can change in real time, it would be unreasonable to require reporting of changes to estimates.	<i>We have changed the filing requirement for non-significant changes, and the related information would generally have to be filed by the 10th business day after the end of the month in which the change was made.</i>
<i>Exhibit I — Securities</i>	One commenter inquired about the differences between the information to be filed in this Exhibit and that required on Form 21-101 F3.	<i>Exhibit I is a list of the types of securities listed on or eligible to trade on the marketplace. Form 21-101 F3 asks for information about trading and would not necessarily capture all eligible securities.</i>
<i>Exhibit J — Access to Services</i>	One commenter noted that some of the information requested (e.g. criteria for participation) is already in an exchange’s rulebook.	<i>As indicated in the response to the comment on Exhibit E, where information is already included in an exchange’s rulebook, it would not have to be refiled as an amendment to an Exhibit.</i>
<i>Exhibit K — Marketplace Participants</i>	Section 3 of Exhibit K [which requires filing of a description of the trading activities primarily engaged in by a marketplace participant] asks for information that an exchange does not collect. This information should be obtained from IROC, and consideration should be given to requiring ATSS to disclose this information for subscribers that are not IROC members.	<i>We agree that the marketplace may not necessarily know the activities of each individual trader, but it is our expectation that marketplaces should be aware of the trading activities engaged by firms that are marketplace participants. We have amended item K3 accordingly.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<i>Exhibit L — Fees</i>	One commenter agreed that fees charged by third parties performing exchange services should be included.	<i>We acknowledge this comment.</i>
Form 21-101 F3		
A — General Marketplace Information	Items A(6) and (7) require filing of information that was previously filed. It would be costly to comply and would provide no benefit.	<i>We have asked for this information to be able to track and, if necessary, follow up on changes previously filed but not implemented. We only require a brief description of the information previously filed and do not believe that this is an onerous requirement.</i>
B — Marketplace Activity Information	A number of commenters indicated that obtaining the data on a consolidated basis from IIROC rather than from each marketplace would be more efficient and would ensure consistency and flexibility, with custom reporting from STEP.	<i>We believe that it is appropriately a marketplace’s responsibility to maintain information and be able to produce these reports. Marketplaces can contract with IIROC to provide the information on their behalf, should IIROC agree to provide this service.</i>
	Different marketplaces may interpret the requirements differently, meaning the data won’t be comparable.	<i>Our reviews of the forms filed by the marketplaces would help detect inconsistencies and different interpretations of the filing requirements by the marketplaces. We will work with the marketplaces and give necessary guidance to ensure the reporting requirements are understood and the materials filed are comparable across marketplaces.</i>
	This information is highly sensitive and must be kept confidential by the CSA.	<i>As indicated in subsection 16.2(3) of 21-101CP, all information on any of the forms is confidential.</i>
	Items B1(7) and B4(6) ask for information that the marketplace does not necessarily have. Vendors, as well as participants, contract for co-location, and the market does not know the vendor’s client base.	<i>We are of the view that co-location is a core marketplace service, and it is our expectation that a marketplace knows the entities that have been offered co-location, whether this was done by the marketplace or by a vendor.</i>

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
<p><i>D — Derivatives Marketplaces in Quebec</i></p>	<p>One commenter noted that the filing requirements should apply to any marketplace trading equity options, otherwise the Bourse de Montreal is at a disadvantage. The same commenter noted that referring to “derivative markets in Quebec” is confusing.</p>	<p><i>The definition of “security” in Quebec for the purposes of this rule includes standardized derivatives as defined in the Derivatives Act (Quebec) and is broader than in the other jurisdictions. Other sections of the form require all marketplaces to provide information about trading in certain derivatives (e.g. options).</i></p>
	<p>One commenter indicated that it would be simpler and clearer to report volume, number of trades and open interest by product rather than under general rubrics such as Interest Rate — Short Term.</p>	<p><i>We agree and have made the suggested changes.</i></p>
	<p>The same commenter made a number of suggestions for revisions to the forms.</p>	<p><i>We acknowledge the comments and have made further revisions to the form. As noted in Form 21-101F3, the required information might not be applicable to some marketplaces at this time.</i></p> <p><i>We have made a change to Chart 17 to require marketplaces to report information regarding the most actively-traded contracts that, in aggregate, constitute at least 75% of the total volume for each product. This information would provide the regulators with an overview of the overall trading activity. We do not agree with the suggestion that only information regarding the three contracts with the closest expiry dates should be provided.</i></p> <p><i>We have also amended Chart 18 and will now require that, for products other than options on Exchange-Traded Funds and equity options, marketplaces should report the trading activity of the marketplace participants for at least 75% of the activity.</i></p>

**AMENDMENTS TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

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

2. Part 1 is amended by

(a) adding the following definitions in section 1.1:

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

“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*;

(b) replacing the definition of “alternative trading system” in section 1.1 with the following:

“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);;

(c) **adding “or municipal body” after “municipal corporation” in paragraph (b) of the definition of “government debt security” in section 1.1;**

(d) **replacing paragraph (c) of the definition of “government debt security” in section 1.1 with the following:**

(c) a debt security issued or guaranteed by a crown corporation or public body,;

(e) **replacing the definition of “marketplace” in section 1.1 with the following:**

“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);;

(f) ***replacing paragraph (a) of the definition of “recognized exchange” in section 1.1 with the following:***

(a) in Ontario, a recognized exchange as defined in subsection 1(1) of the *Securities Act* (Ontario);;

(g) ***replacing the definition of “recognized quotation and trade reporting system” in section 1.1 with the following:***

“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;; ***and***

(h) ***adding the following:***

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..

3. ***Part 3 is replaced with the following:***

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 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 21-101 F1 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 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.

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..

4. *Part 4 is replaced with the following:*

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 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..

5. *Part 5 is amended by*

- (a) *replacing the portion before section 5.2 with the following:*

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.;
- (b) *replacing* “recognized exchange or recognized quotation and trade reporting system” *in section 5.2 with* “marketplace”;
- (c) *replacing* “member or user” *in section 5.2 with* “marketplace participant”;
- (d) *repealing subsection 5.3(2);*
- (e) *repealing section 5.6; and*
- (f) *adding the following:*

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;
 - (b) the release of the information is required by this Instrument or under applicable law; or
 - (c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.
- (2) 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 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 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..

7. Part 6 is amended by

- (a) *repealing sections 6.4 to 6.6;*
- (b) *replacing section 6.7 with the following:*

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;
 - (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; 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.;
and
- (c) *repealing sections 6.8, 6.10, 6.12 and 6.13.*

8. Part 7 is amended by

- (a) *replacing “displayed on” with “displayed by” in subsection 7.1(1);*
- (b) *replacing “of the marketplace” with “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” in subsection 7.1(2);*

- (c) *replacing “displayed on” with “displayed by” in subsection 7.3(1);*
 - (d) *replacing “of the marketplace” with “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” in subsection 7.3(2); and*
 - (e) *replacing “A marketplace” with “A marketplace that is subject to this Part” in section 7.6.*
- 9. Part 8 is amended by**
- (a) *replacing “displayed on” with “displayed by” in subsection 8.1(1);*
 - (b) *replacing “displayed on” with “displayed by” in subsection 8.2(1);*
 - (c) *repealing section 8.5; and*
 - (d) *replacing “2012” with “2015” in section 8.6.*
- 10. Part 10 is amended by**
- (a) *replacing the portion before section 10.3 with the following:*

PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS

10.1 Disclosure by Marketplaces

A marketplace must publicly disclose on its website information reasonably necessary to enable a person or company to understand the marketplace’s operations or services it provides, including but not limited to 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 services;
- (b) how orders are entered, interact and execute;
- (c) all order types;
- (d) access requirements;

- (e) the policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides;
- (f) any referral arrangements between the marketplace and service providers;
- (g) where routing is offered, how routing decisions are made; and
- (h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest.; **and**

(b) *repealing section 10.3.*

11. *Part 11 is amended by*

(a) *replacing paragraph 11.2(1)(c) with the following:*

- (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;

(b) replacing subparagraph 11.2(1)(d)(ix) with the following:

- (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.

(c) deleting “or 6.13” in subparagraph 11.3(1)(b);

(d) replacing “section 12.1” with “sections 12.1 and 12.4” in subparagraph 11.3(1)(c);

(e) replacing “6.10(2)” with “5.9(2)” in subparagraph 11.3(1)(e);

(f) replacing subparagraphs 11.3(2)(b) to (d) with the following:

- (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.;

(g) repealing section 11.4; and

- (h) **deleting** “with the clock used by a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities” **in subsection 11.5(2).**

12. Part 12 is amended by

- (a) **replacing the title with** “PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING”;
- (b) **replacing paragraph 12.1(a) with the following:**
 - (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;;
- (c) **replacing paragraph 12.1(b) with the following:**
 - (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;
 - (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and;
- (d) **replacing “paragraph 12.1(a)” with “paragraph 12.1(a) and section 12.4” in subsection 12.2(1);**
- (e) **replacing “Subsections” with “Paragraphs” in subsection 12.3(4); and**
- (f) **adding the following:**

12.4 Business Continuity Planning

- (1) A marketplace must develop and maintain reasonable business continuity plans, including disaster recovery plans.
- (2) A marketplace must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually..

13. Part 13 is amended by

- (a) replacing the title with “PART 13 CLEARING AND SETTLEMENT”;**
- (b) replacing “through an ATS” with “on a marketplace” in subsection 13.1(1); and**
- (c) replacing “reported” with “reported to” in subsection 13.1(1).**

14. Part 14 is amended by

- (a) repealing subsection 14.1(2);**
- (b) adding the following after subsection 14.4(5):**
- (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.
- (7) An information processor must file its financial budget within 30 days after the start of a financial year.
- (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.;
- (c) replacing paragraph 14.5(a) with the following:**
- (a) develop and maintain

- (i) an adequate system of internal controls over its critical 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;;
- (d) *adding “and” at the end of subparagraph 14.5(b)(i);*
 - (e) *deleting “and” at the end of subparagraph 14.5(b)(ii);*
 - (f) *repealing subparagraph 14.5.(b)(iii);*
 - (g) *adding “and section 14.6” after “paragraph (a)” in paragraph 14.5(c); and*
 - (h) *adding the following:*

14.6 Business Continuity Planning

- (1) An information processor must develop and maintain reasonable business continuity plans, including disaster recovery plans.
- (2) An information processor must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.

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; 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;
- (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;
- (c) access requirements; and
- (d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor..

15. Form 21-101F1 – Information Statement Exchange or Quotation and Trade Reporting system is replaced with the following:

**FORM 21-101F1
INFORMATION STATEMENT
EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM**

Filer: **EXCHANGE** **QUOTATION AND TRADE REPORTING SYSTEM**

Type of Filing: **INITIAL** **AMENDMENT**

1. Full name of exchange or quotation and trade reporting system:
2. Name(s) under which business is conducted, or name of market or facility, if different from item 1:
3. If this filing makes a name change on behalf of the exchange or quotation and trade reporting 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. 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 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, 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 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 relationship.
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 include, but 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 of how orders interact, including, but not limited to, the priority of execution for all order types.
8. Description of order routing procedures.
9. Description of order and trade reporting procedures.
10. 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.

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 which 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.

Exhibit G - Systems and Contingency Planning

For each of the systems that support order entry, order routing, execution, trade reporting, trade comparison, data feed, market surveillance, and trade clearing, describe:

1. Current and future capacity estimates.
2. Procedures for reviewing system capacity.
3. Procedures for reviewing system security.
4. Procedures to conduct stress tests.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.
6. Procedures to test business continuity and disaster recovery plans.

Exhibit H – Custody of Assets

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.
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 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 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.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 engaged in by the marketplace participant (e.g., agency trading, proprietary trading, registered trading, market making).
4. The class of participation or other access.
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 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 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.

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)

16. *Form 21-101F2 – Initial Operation Report Alternative Trading System is replaced with the following:*

**FORM 21-101F2
INITIAL OPERATION REPORT
ALTERNATIVE TRADING SYSTEM**

TYPE OF FILING:

INITIAL OPERATION REPORT **AMENDMENT**

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 [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 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, 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 agreements 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 include, but 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 of how orders interact, including, but not limited to, the priority of execution for all order types.
8. Description of order routing procedures.
9. Description of order and trade reporting procedures.
10. 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.

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, and co-location, provide the following information:

1. Name and address of person or company to which 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.

Exhibit G- Systems and Contingency Planning

For each of the systems that support order entry, order routing, execution, trade reporting, trade comparison, data feed, market surveillance, and trade clearing, describe:

1. Current and future capacity estimates.
2. Procedures for reviewing system capacity.
3. Procedures for reviewing system security.
4. Procedures to conduct stress tests.
5. A description of the filer's business continuity and disaster recovery plans, including any relevant documentation.
6. Procedures to test business continuity and disaster recovery plans.

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, 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.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.
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 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

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 21-101.

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).

17. Form 21-101F3 Quarterly Report of Alternative Trading System Activities is replaced with the following:

**FORM 21-101F3
QUARTERLY REPORT OF MARKETPLACE ACTIVITIES**

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 marketplace 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. 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. 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.

B. Marketplace Activity Information

Section 1 –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 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 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 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 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. 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 fixed income securities 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 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.		

Category of Securities	Value Traded	Number of Trades
10.		
3. Provincial and Municipal [Enter issuer, maturity, coupon] 1. 2. 3. 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.		

Category of Securities	Value Traded	Number of Trades
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.		
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 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		
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. 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.		
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. 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 should 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			
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 be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information should 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 be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information should 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		
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 be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information should 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 be provided on an aggregate basis (one total for options on ETFs and one for options on equities). The information should 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)

(Signature of director, officer or partner)

(Official capacity – please type or print)”

18. *Form 21-101F5 Initial Operation Report for Information Processor is replaced with the following:*

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

TYPE OF FILING:

INITIAL FORM AMENDMENT

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 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 21-101 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):
 1. Date (DD/MM/YYYY) of formation.
 2. Place of formation.
 3. 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 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, including the processes to resolve data integrity issues identified.
 4. The hours of operation of the System.
 5. 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 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 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, 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 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 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 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)”.

19. (1) Subject to subsection (2), this Instrument comes into force on July 1, 2012.
(2) Section 17 of this Instrument comes into force on December 31, 2012.

SCHEDULE

1. *The changes to Companion Policy 21-101CP to National Instrument 21-101 Marketplace Operation are set out in this Schedule.*

2. *Part 1 is amended by*

(a) *replacing section 1.1 with the following:*

1.1 Introduction – Exchanges, quotation and trade reporting systems and ATSS 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. ATSS, 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, 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.;

(b) *replacing section 1.2 with the following:*

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”..

3. *Part 2 is amended by*

- (a) *in subsection 2.1(5) replacing “1.” with “(a)”, “2.” with “(b)” and “3.” with “(c)”;*
- (b) *deleting “trading for the purposes of securities legislation and is” from subsection 2.1(6);*
- (c) *replacing “Inter-dealer bond brokers” with “Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity” in subsection 2.1(7); and*
- (d) *adding the following:*

(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 (c) 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”..

4. *Part 3 is amended by*

- (a) *replacing “Canadian securities legislation” with “Securities legislation” in subsection 3.1(1);*

- (b) *replacing the first instance of “Canadian securities legislation” with “Securities legislation” and the second instance of “Canadian securities legislation” with “securities legislation” in subsection 3.2(1);*
- (c) *replacing “subsection” with “paragraph” in subsection 3.4(3);*
- (d) *replacing “Canadian securities legislation” with “securities legislation” in subsection 3.4(3);*
- (e) *replacing “subsection 6.1(a) of the Instrument” with “paragraph 6.1(a) and all other requirements in the Instrument and in NI 23-101” in subsection 3.4(4);*
- (f) *replacing “Subsection” with “Paragraph” in subsection 3.4(5);*
- (g) *replacing subsection 3.4(7) with the following:*

(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.; *and*

- (h) *repealing subsection 3.4(9).*

5. Part 4 is amended by

- (a) *replacing “In exercising this discretion” in subsection 4.1(2) with “In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system”;*
- (b) *deleting “and” at the end of paragraph 4.1(2)(c);*
- (c) *replacing “.” with “;” at the end of paragraph 4.1(2)(d);*
- (d) *adding the following after paragraph 4.1(d):*

- (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.;
and

(e) **adding the following:**

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..

6. Part 5 is amended by

- (a) **adding** “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.” **at the end of subsection 5.1(1);**
- (b) **replacing subsection 5.1(2) with the following:**

(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.;

(c) *renumbering subsection 5.1(4) as subsection 5.1(5); and*

(d) *adding the following after subsection 5.1(3):*

(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..

7. *Part 6 is replaced with the following:*

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, marketplace participants, investors, or the Canadian capital markets. The Canadian securities regulatory authorities would consider significant changes to include:

- (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 the services provided by the marketplace, including the hours of operation;
- (c) new or changes to the means of access to the market or facility and its services;
- (d) new or changes to order types;
- (e) new or changes to types of securities traded on the marketplace;
- (f) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;
- (g) new or changes to types of marketplace participants;

- (h) 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;
 - (i) changes to the governance of the marketplace, including the structure of its board of directors and changes in the board committees and their mandates;
 - (j) changes in control over marketplaces;
 - (k) changes in affiliates that provide services to or on behalf of the marketplace;
 - (l) new or changes in and outsourcing arrangements for key marketplace services or systems;
 - (m) 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 to information in Form 21-101F1 or Form 21-101F2 that
- (a) would not have an impact on the marketplace's market structure or marketplace participants or on investors, issuers or the 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 legal requirements, and
 - (v) minor system or technology changes that would not significantly impact the system or its capacity.

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

- (6) The Canadian securities regulatory authorities generally consider a change

in a marketplace's fees or fee structure 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 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.

(9) Section 3.3 of the Instrument requires a marketplace to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).

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..

8. *Part 7 is replaced with the following:*

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 system 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 – (1) Subsection 5.10 (2) of the Instrument provides that a marketplace shall 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 the 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..

9. *Part 8 is replaced with the following:*

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..

10. *Part 9 is amended by replacing subsection 9.1(1) with the following:*

(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..

11. Part 10 is amended by replacing “2012” with “2015” in subsection 10.1(1).

12. Part 12 is replaced with the following:

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..

13. Part 13 is amended by replacing “Canadian securities legislation” with “securities legislation” and “Canadian securities regulatory authorities” with “securities regulatory authorities” in section 13.1.

14. Part 14 is amended by

(a) replacing the title with “PART 14 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING”;

(b) deleting “, business continuity” in subsection 14.1(2);

(c) replacing subsection 14.1(3) with the following:

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. 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. ;

(d) *replacing subsection 14.1(4) with the following:*

(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.; ***and***

(e) *adding the following:*

14.3 Business Continuity Planning

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 reasonable

business continuity plan, including a disaster recovery plan, it test it on a periodic basis, and at least annually and it should participate in industry-wide tests..

15. *Part 15 is amended by replacing “all trades executed through an ATS” with “all trades executed through a marketplace” in section 15.1.*

16. *Part 16 is amended by*

(a) *replacing “subsection 14.5(b)” with “paragraph 14.5(c)” in paragraph 16.2(1)(f);*

(b) *replacing section 16.3 with the following:*

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.; ***and***

- (c) ***replacing section 16.4 with the following:***

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

- 17. These changes become effective on July 1, 2012.

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

1. *National Instrument 23-101 Trading Rules is amended by this Instrument.*
2. *Part 6 is amended by:*
 - (a) *replacing “The following are the trade-throughs referred to in paragraph 6.1(1)(a)” with “For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are” in section 6.2;*
 - (b) *replacing “marketplace participant” with “marketplace participant or a marketplace that routes or reprices orders” in section 6.5.*
3. *Part 11 is amended by:*
 - (a) *replacing “this Part” with “the requirements in section 11.2” in subsection 11.1(2);*
 - (b) *replacing “record” with “record in electronic form” in subsection 11.2(1);*
 - (c) *replacing “; and” with “;” in paragraph 11.2(1)(r);*
 - (d) *replacing “.” with “;” in paragraph 11.2(1)(s);*
 - (e) *adding the following after paragraph 11.2(1)(s):*
 - (t) each unique client identifier assigned to a client accessing the marketplace using direct electronic access; and
 - (u) whether the order is a directed-action order.;
 - (f) *replacing “records” with “records in electronic form” in subsection 11.2(7).*
4. This Instrument comes into force on July 1, 2012.

SCHEDULE

1. *The changes to Companion Policy 23-101CP to National Instrument 23-101 Trading Rules are set out in this Schedule.*
2. *Part 4 is amended by replacing “an ATS” with “a marketplace” in subsection 4.1(6).*
3. *Part 5 is amended by*
 - (a) *adding “or a” after “recognized exchange” in section 5.1;*
 - (b) *deleting “or an exchange or quotation and trade reporting system that has been recognized for the purposes of the Instrument and NI 21-101” in section 5.1; and*
 - (c) *replacing “quotation and trading system” with “quotation and trade reporting system” throughout section 5.1.*
4. *Part 6 is amended by replacing section 6.4 with the following*

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 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 a 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.

5. These changes become effective on July 1, 2012.

**Amending Instrument for
Multilateral Instrument 11-102 *Passport System***

- 1. Multilateral Instrument 11-102 Passport System is amended by this Instrument.***
- 2. Appendix D is amended by repealing the row that contains “Marketplace operation” in the Provision column and substituting the following row:***

Marketplace operation	NI 21-101 (only Parts 3, 4, 7, 8, 11 and 13 and sections 5.1(1), 5.1(2), 5.9, 5.10, 6.1, 6.2, 6.3, 6.7, 6.9 and 6.11, as those parts and sections apply to an ATS)
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- 3. The provisions of this Instrument come into force on July 1, 2012.***