

**National Instrument 21-101  
Marketplace Operation**

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**National Instrument 21-101  
Marketplace Operation**

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions - In this Instrument**

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

"alternative trading system" means a marketplace that

- (a) is not a recognized quotation and trade reporting system or a recognized exchange, and
- (b) does not
  - (i) require an issuer to enter into an agreement to have its securities traded on the marketplace,
  - (ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,
  - (iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and
  - (iv) discipline subscribers other than by exclusion from participation in the marketplace;

"ATS" means an alternative trading system;

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

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

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

"government debt security" means

- (a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,
- (b) a debt security issued or guaranteed by any municipal corporation or municipal body in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (c) ~~a debt security of a crown corporation;~~ a debt security issued or guaranteed by a crown corporation or public body,
- (d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the Education Act (Ontario), or
- (e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l'île de Montréal

that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

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

"information processor" means any person or company that receives and provides information under this Instrument and has

filed Form 21-101F5;

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

"market integrator" [repealed]

"marketplace" means

- (a) an exchange,
  - (b) a quotation and trade reporting system,
  - (c) a person or company not included in paragraph (a) or (b) that
    - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
    - (ii) brings together the orders for securities of multiple buyers and sellers, and
    - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
  - (d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,
- but does not include an inter-dealer bond broker;

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

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

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

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

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

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

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

"recognized exchange" means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange,
- (b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization;
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

- (a) in every jurisdiction other than British Columbia 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; and
- (c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization;

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

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

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

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

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

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

"trading volume" means the number of securities traded;

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

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

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

**1.3 Interpretation - Affiliated Entity, Controlled Entity and Subsidiary Entity**

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

- (i) that other,
  - (ii) that other and one or more persons or companies each of which is a controlled entity of that other, or
  - (iii) two or more persons or companies, each of which is a controlled entity of that other; or
- (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

#### 1.4 Interpretation – Security

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

#### 1.5 Interpretation – NI 23-101

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

## PART 2 APPLICATION

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

## PART 3 EXCHANGE – RECOGNITION

### 3.1 Application for Recognition

- (1) An applicant for recognition as an exchange shall file Form 21-101F1.
- (2) An applicant for recognition as an exchange shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F1, and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

### 3.2 Change in Information After Recognition

- (1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange shall file
  - (a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or
  - (b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (2) If a recognized exchange implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized exchange shall, within 30 days after the end of the calendar quarter in which the change takes place, file
  - (a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or
  - (b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (3) Subsection (2) does not apply to a change to a matter set out in Exhibits F and O of Form 21-101F1.

**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.

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**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) Immediately before implementing a change to 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.

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**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.

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**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.

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**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.

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**PART 4 QUOTATION AND TRADE REPORTING SYSTEM – RECOGNITION**

**4.1 Application for Recognition**

- (1) An applicant for recognition as a quotation and trade reporting system shall file Form 21-101F4.
- (2) An applicant for recognition as a quotation and trade reporting system shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F4 and the applicant shall file an amendment to the information provided in Form 21-101F4 in the manner set out in Form 21-101F4 no later than seven days after the change takes place.

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**4.2 Change in Information After Recognition**

- (1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F4, a recognized quotation and trade reporting system shall file an amendment to the information provided in Form 21-101F4 in the manner set out in Form 21-101F4.
- (2) If a recognized quotation and trade reporting system implements a change involving a matter set out in Form 21-101F4, other than a change referred to in subsection (1), the recognized quotation and trade reporting system shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F4 in the manner set out in Form 21-101F4.

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**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.

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**PART 5 REQUIREMENTS APPLICABLE ONLY TO RECOGNIZED EXCHANGES AND RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEMS**

**5.1 Access Requirements - A recognized exchange and a recognized quotation and trade reporting system shall**

- (a) establish written standards for granting access to trading on it;
- (b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and
- (c) keep records of
  - (i) each grant of access including, for each member in the case of an exchange and for each user in the case of a quotation and trade reporting system, the reasons for granting access to an applicant, and
  - (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

**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.

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**5.2 No Restrictions on Trading on Another Marketplace - A recognized exchange or recognized quotation and trade**



~~reporting system~~ marketplace shall not prohibit, condition, or otherwise limit, directly or indirectly, a ~~member or user~~ marketplace participant from effecting a transaction on any marketplace.

### 5.3 Public Interest Rules

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

~~(2) A recognized exchange or a recognized quotation and trade reporting system shall not~~

~~(a) permit unreasonable discrimination among clients, issuers and members or among clients, issuers and users; or~~

~~(b) impose any burden on competition that is not reasonably necessary and appropriate. [repealed]~~

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

- (a) require compliance with securities legislation; and
- (b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

**5.5 Filing of Rules** - A recognized exchange or a recognized quotation and trade reporting system shall file all rules, policies and other similar instruments, and all amendments thereto.

**5.6 Filing of Annual Audited Financial Statements** - ~~A recognized exchange or a recognized quotation and trade reporting system shall file annual audited financial statements within 90 days after the end of its latest financial year. [repealed]~~

**5.7 Fair and Orderly Markets** - A marketplace must not engage in any activity that interferes 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) 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:~~

~~"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~~

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- (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 participant's' 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.

**PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSS**

**6.1 Registration - An ATS shall not carry on business as an ATS unless**

- (a) it is registered as a dealer;

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

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

**6.3 Securities Permitted to be Traded on an ATS** - An ATS shall not execute trades in securities other than

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

**6.4 Reporting Requirements**

- (1) ~~An ATS shall file an initial operation report on Form 21-101F2 at least 30 days before the ATS begins to carry on business as an ATS.~~
- (2) ~~At least 45 days before implementing a significant change to a matter set out in Form 21-101F2, an ATS shall file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.~~
- (3) ~~If an ATS implements a change involving a matter set out in Form 21-101F2, other than a change referred to in subsection (2), the ATS shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.~~
- (4) ~~An ATS shall file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the ATS has carried on business. [repealed]~~

**6.5 Ceasing to Carry on Business as an ATS**

- (1) ~~An ATS that intends to cease carrying on business as an ATS shall file a report on Form 21-101F4 at least 30 days before ceasing to carry on that business.~~
- (2) ~~An ATS that involuntarily ceases to carry on business as an ATS shall file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business. [repealed]~~

**6.6 Notification of Intent to Carry on Exchange Activities** - An ATS shall notify the securities regulatory authority in writing at least six months before it first

- (a) ~~requires an issuer to enter into an agreement before the issuer's securities can trade on the ATS;~~
- (b) ~~provides, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;~~
- (c) ~~sets requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the ATS; or~~
- (d) ~~establishes procedures for disciplining subscribers other than by exclusion from trading. [repealed]~~

**6.7 Notification of Threshold**

- (1) ~~An ATS shall notify the securities regulatory authority in writing if,~~
  - (a) ~~during at least three of the preceding four calendar quarters, the average daily dollar value of the trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the average daily dollar value of the trading volume for the calendar quarter in that type of security on all marketplaces in Canada;~~
  - (b) ~~during at least three of the preceding four calendar quarters, the total trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the total trading volume for~~

the calendar quarter in that type of security on all marketplaces in Canada; or

(c) during at least three of the preceding four calendar quarters, the number of trades on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the number of trades for the calendar quarter in that type of security on all marketplaces in Canada.

(2) An ATS shall provide the notice referred to in subsection (1) within 90 days after the threshold referred to in subsection (1) is met or exceeded.

(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.

#### 6.8 Confidential Treatment of Trading Information

(1) An ATS shall not release a subscriber's trading information to a person or company, other than the subscriber, unless

(a) the subscriber has consented in writing to the release of the information;

(b) the release of the information is required by this Instrument or under applicable law; or

(c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.

(2) An ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information, including

(a) limiting access to the trading information of subscribers to

(i) employees of the ATS, or

(ii) persons or companies retained by the ATS to operate the system or to be responsible for compliance by the ATS with Canadian securities legislation; and

(b) implementing standards controlling trading by employees of the ATS for their own accounts.

(3) An ATS shall not carry on business as an ATS unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed. ~~[repealed]~~

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

#### 6.10 Risk Disclosure for Trades in Foreign Exchange-Traded Securities

(1) When opening an account for a subscriber, an ATS that is trading foreign exchange-traded securities shall provide that subscriber with disclosure in substantially the following words:

The securities traded by or through the ATS 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 ATS by a subscriber, the ATS shall obtain an acknowledgement from the subscriber that the subscriber has received the disclosure required

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~~in subsection (1).~~~~[repealed]~~

**6.11 Risk Disclosure to Non-Registered Subscribers**

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

Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers.

(2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS shall obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

~~6.12 No Restrictions on Trading on Another Marketplace - An ATS shall not prohibit, condition, or otherwise limit, directly or indirectly, a subscriber from effecting a transaction on any marketplace.~~~~[repealed]~~

**6.13 Access Requirements - An ATS shall**

~~(a) establish written standards for granting access to trading on it;~~

~~(b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and~~

~~(c) keep records of~~

~~(i) each grant of access, including, for each subscriber, 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.~~~~[repealed]~~

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**PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES**

**7.1 Pre-Trade Information Transparency - Exchange-Traded Securities**

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

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

**7.2 Post-Trade Information Transparency - Exchange-Traded Securities** - A marketplace shall provide accurate and timely information regarding trades for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

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

(1) A marketplace that displays orders of foreign' exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed ~~on-by~~ the marketplace to an information vendor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.

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

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

7.2.

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

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

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

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

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

- (1) A marketplace that displays orders of corporate debt securities to a person or company shall provide accurate and timely information regarding orders for designated corporate debt securities displayed-on-displayed by the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.
- (3) A marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed on the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (4) An inter-dealer bond broker shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.
- (5) A dealer executing trades of corporate debt securities outside of a marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.

- 8.3 Consolidated Feed - Unlisted Debt Securities** - An information processor shall produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 8.1 and 8.2.

- 8.4 Compliance with Requirements of an Information Processor** - A marketplace, interdealer bond broker or dealer that is subject to this Part shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

**8.5 Filing Requirements for the Information Processor**

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- (1) The information processor shall 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.

(2) ~~The information processor shall 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 as required by the Instrument, including where the list of designated securities can be found.~~ ~~[repealed]~~

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8.6 Exemption for Government Debt Securities - Section 8.1 does not apply until January 1, ~~2012~~2015.

**PART 9 [repealed]**

**PART 10 TRADING FEES FOR MARKETPLACES**

~~10.1 Disclosure of Trading Fees by Marketplaces - A marketplace shall make its schedule of trading fees publicly available.~~

**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:~~

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~~(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 ~~em~~ services have been outsourced;~~

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~~(b) how orders are entered, interact and execute;~~

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~~(c) all order types;~~

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~~(d) access requirements;~~

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~~(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;~~

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~~(f) any referral arrangements between the marketplace and service providers;~~

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~~(g) where routing is offered, how routing decisions are made; and~~

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~~(h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest.~~

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10.2 [repealed]

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10.3 ~~Discriminatory Terms - With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.~~ ~~[repealed]~~

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**PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES**

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

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11.2 **Other Records**

(1) As part of the records required to be maintained under section 11.1, a marketplace shall include the following information in electronic form:

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(a) a record of all marketplace participants who have been granted access to trading in the marketplace;

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(b) daily trading summaries for the marketplace including

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(i) a list of securities traded,

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(ii) transaction volumes

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- (A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and
- (B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,

~~(c) a record of each order which shall 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) the type, issuer, class, series and symbol of the security,~~
- ~~(v) the number of securities to which the order applies,~~
- ~~(vi) the strike date and strike price, if applicable,~~
- ~~(vii) whether the order is a buy or sell order,~~
- ~~(viii) whether the order is a short sale order, if applicable,~~
- ~~(ix) 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,~~
- ~~(x) the date and time the order is first originated or received by the marketplace,~~
- ~~(xi) whether the account is a retail, wholesale, employee, proprietary or any other type of account,~~
- ~~(xii) [repealed]~~
- ~~(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) [repealed]~~
- ~~(xvii) the currency of the order; and~~
- ~~(xviii) [repealed]~~

(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,
- (xviii) whether the order is a directed-action order, and
- (xix) whether the marketplace or a marketplace participant has marked the order as a directed-action order, and

- (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including
- (i) the identifier assigned to the marketplace where the order was executed,
  - (ii) whether the order was fully or partially executed,
  - (iii) the number of securities bought or sold,
  - (iv) the date and time of the execution of the order,
  - (v) the price at which the order was executed,
  - (vi) the identifier assigned to the marketplace participant on each side of the trade,
  - (vii) whether the transaction was a cross,
  - (viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,
  - (ix) the marketplace ~~transaction-trading~~ fee for each trade, and
  - (x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.

#### 11.2.1 Transmission in Electronic Form – A marketplace shall transmit

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

#### 11.3 Record Preservation Requirements

- (1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep
  - (a) all records required to be made under sections 11.1 and 11.2;

- (b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1 ~~or 6.13~~;
- (c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1 and 12.4, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;
- (d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;
- (e) the acknowledgement obtained under subsection ~~6.10(2)5.9(2)~~ or 6.11(2);
- (f) a copy of any agreement referred to in section 8.4 of NI 23-101; and
- (g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3).

(2) During the period in which a marketplace is in existence, the marketplace shall keep

- (a) all organizational documents, minute books and stock certificate books;
- ~~(b) in the case of a recognized exchange, copies of all forms filed under Part 3;~~
- ~~(c) in the case of a recognized quotation and trade reporting system, copies of all forms filed under Part 4; and~~
- ~~(d) in the case of an ATS, copies of all forms filed under sections 6.4 and 6.5 and notices given under sections 6.6 and 6.7;~~
- ~~(b) copies of all forms filed under Part 3; and~~
- ~~(c) in the case of an ATS, copies of all notices given under section 6.7.~~

11.4 ~~Means of Record Preservation—A marketplace may keep all records, documents and forms referred to in this Part by means of mechanical, electronic or other devices, if~~

- ~~(a) the method of recordkeeping is not prohibited under other applicable law;~~
- ~~(b) the marketplace takes reasonable precautions, appropriate to the means used, to govern against the risk of falsification of the information recorded; and~~
- ~~(c) the marketplace provides a means for making the information available in an accurate and intelligible form, capable of being printed, within a reasonable time to any person or company lawfully entitled to examine the records. [repealed]~~

#### 11.5 Synchronization of Clocks

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

### PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

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

- (a) ~~develop and maintain~~
  - (i) ~~reasonable business continuity and disaster recovery plans;~~
  - (ii) ~~an adequate system of internal control over those systems; and~~
  - (iii) ~~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;~~
- (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;
- (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~~
  - (iii) ~~test its business continuity and disaster recovery plans; and~~
- (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,
  - (i) make reasonable current and future capacity estimates;
  - (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and
- (c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.

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## 12.2 System Reviews

- (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall 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)~~paragraph 12.1 (a) and section 12.4.
- (2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to
  - (a) its board of directors, or audit committee, promptly upon the report's completion, and
  - (b) to the regulator or, in Québec, the securities regulatory authority, within 30 days or providing the report to its board of directors or the audit committee.

## 12.3 Availability of Technology Requirements and Testing Facilities

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

- (b) if operations have begun, for at least two months before implementing a material change to its technology requirements.
- (3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).
- (4) Subsections 12.3(1)(b) and (2)(b) do not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if
  - (a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and
  - (b) the marketplace publishes the changed technology requirements as soon as practicable.

#### **12.4 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.

### **PART 13 CLEARING AND SETTLEMENT MARKETPLACE CLEARING AND SETTLEMENT**

#### **6.213.1 Clearing and Settlement**

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

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### **PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR**

#### **14.1 Filing Requirements for an Information Processor**

- (1) A person or company that intends to carry on business as an information processor shall file Form 21-101F5 at least 90 days before the information processor begins to carry on business as an information processor.
- (2) ~~During the 90-day period referred to in subsection (1), a person or company that files Form 21-101F5 shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F5 and the person or company shall file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5 no later than seven days after a change takes place.~~repealed

#### **14.2 Change in Information**

- (1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor shall file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

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

#### 14.3 Ceasing to Carry on Business as an Information Processor

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

#### 14.4 Requirements Applicable to an Information Processor

- (1) An information processor shall enter into an agreement with each marketplace, ~~interdealer~~ ~~inter-dealer~~ bond broker and dealer that is required to provide information to the information processor that the marketplace, inter-dealer bond broker or dealer will
- (a) provide information to the information processor in accordance with Part 7 or 8, as applicable; and
- (b) comply with any other reasonable requirements set by the information processor.
- (2) An information processor shall provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.
- (3) An information processor shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.
- (4) An information processor shall establish in a timely manner an electronic connection to a marketplace, inter-dealer bond broker or dealer that is required to provide information to the information processor.
- (5) An information processor shall provide prompt and accurate order and trade information and shall not unreasonably restrict fair access to such information.
- (6) An information processor must file annual audited financial statements within 90 days after the end of its financial year that
- (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,
- (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and
- (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor's report.
- (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.

#### 14.5 System Requirements - An information processor shall,

- (a) ~~develop and maintain~~
- (i) ~~reasonable business continuity and disaster recovery plans;~~
- (ii) ~~an adequate system of internal controls over its critical systems; and~~
- (iii) ~~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;~~

(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;~~

(b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,

(i) make reasonable current and future capacity estimates for each of its systems; ~~and~~

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; ~~and~~

~~(iii) test its business continuity and disaster recovery plans;~~

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a) ~~and section 14.6;~~

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) the regulator or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e) promptly notify the following of any failure, malfunction or material delay of its systems or equipment

(i) the regulator or, in Québec, the securities regulatory authority; and

(ii) any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor.

#### **14.6 System Requirements**

(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.

**PART 15 EXEMPTION**

**15.1 Exemption**

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

**PART 16 EFFECTIVE DATE**

**16.1 Effective Date - This Instrument comes into force on December 1, 2001.**

**Companion Policy 21-101 CP  
to National Instrument 21-101  
Marketplace Operation**

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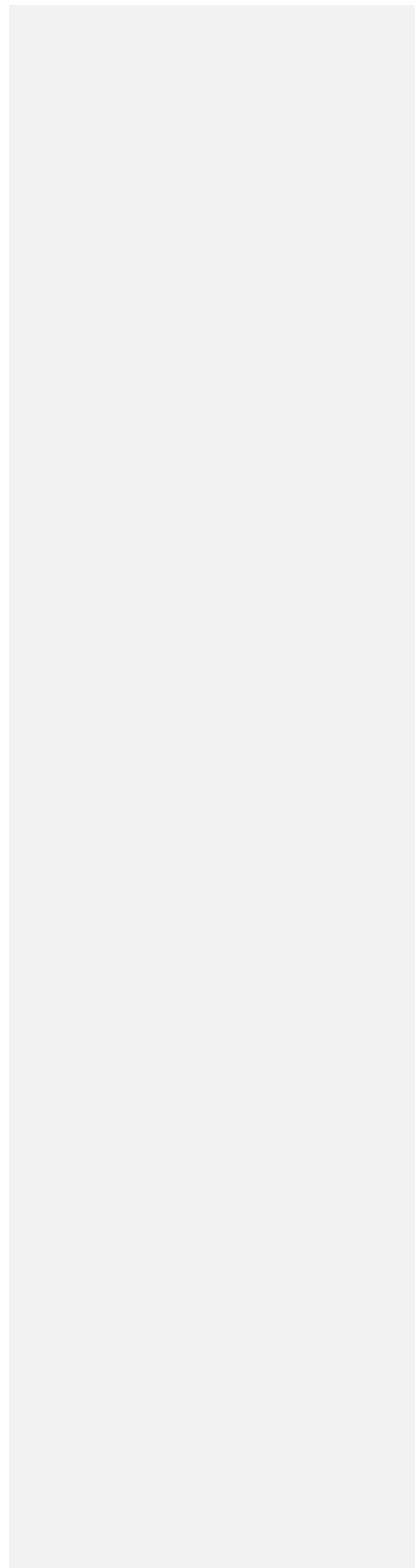
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**Companion Policy 21-101 CP  
to National Instrument 21-101  
Marketplace Operation**

**PART 1 INTRODUCTION**

**1.1 Introduction** – Traditionally, the Canadian securities regulatory authorities have regulated securities markets by regulating dealers, exchanges and, in some jurisdictions, quotation and trade reporting systems. In recent years, particularly in the United States, new types of markets have emerged that take different forms and trade securities in a different manner than on those markets. These entities are referred to as alternative trading systems. While the existing regulatory system will generally apply to the activities of these markets, there are instances where the existing regulatory system needs to be supplemented. Accordingly, the Canadian securities regulatory authorities have adopted National Instrument 21-101 Marketplace Operation (the "Instrument") to create an appropriate regulatory regime to deal with these new types of markets and to supplement the regime applicable to exchanges and quotation and trade reporting systems.

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

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

**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 21-101 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.

**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 NI 21-101 and NI 23-101. 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, and is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of "foreign exchange-traded security".

**1.2 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

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1.3 exchange or quotation and trade reporting system, falls within the definition of "foreign exchange-traded security".  
**Definition of Foreign Exchange-Traded Security** - The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at [www.iosco.org](http://www.iosco.org).

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

## PART 2 MARKETPLACE

### 2.1 Marketplace

- (1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Paragraphs (c) and (d) of the definition of "marketplace" describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders of exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of "marketplace" and an ATS.
- (2) Two of the characteristics of a "marketplace" are
  - (a) that it brings together orders for securities of multiple buyers and sellers; and
  - (b) that it uses established, non-discretionary methods under which the orders interact with each other.
- (3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it
  - (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or
  - (b) receives orders centrally for processing and execution (regardless of the level of automation used).
- (4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."
- (5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:

1-(a) A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.

2-(b) A system that merely routes orders for execution to a facility where the orders are executed.

3-(c) A system that posts information about trading interests, without facilities for execution.

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

- (6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is ~~trading for the purposes of securities legislation and is~~ required to be registered as a dealer under securities legislation.
- (7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IIROC Rule 36 and IIROC Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an

ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to Rule 36 or IROC Rule 2100, but will be subject to all other IROC requirements applicable to a dealer.

(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 considered by the Canadian securities regulatory authorities to be operating a marketplace under paragraph (c) of the definition of "marketplace".

### **PART 3 CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSs**

#### **3.1 Exchange**

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

#### **3.2 Quotation and Trade Reporting System**

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

#### **3.3 Definition of an ATS**

- (1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as
  - (a) requiring listing agreements,

- (b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,
- (c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and
- (d) disciplining subscribers.

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

- (2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be "requirements governing the conduct of subscribers".
- (3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

### 3.4 Requirements Applicable to ATSs

- (1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.
- (2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.
- (3) Under subsection 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under Canadian securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.
- (4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under subsection 6.1(a) and all other requirements in the Instrument and in NI23-101 of the Instrument and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.
- (5) Subsection 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IROC is the only entity that would come within the definition.
- (6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.

~~(7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS, its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having market dominance over 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) and section 12.2 of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, preferred securities, debt securities or options.~~

(7) Subsection 6.7 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, its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, debt securities or options.

- (8) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.
- (9) Subsections 6.10(2) and 6.11(2) of the Instrument requires an ATS to obtain an acknowledgement from its subscribers. The acknowledgement may be obtained in a number of ways, including requesting the subscriber's signature or requesting that the subscriber initial an initial box or check a check-off box. 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 subscriber has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the ATS to ensure that an acknowledgement is obtained from the subscriber in a timely manner.

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

##### a.4.1 Recognition as an Exchange or Quotation and Trade Reporting System

- (1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.
- (2) In determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, exercising this discretion, the Canadian securities regulatory authorities will look at a number of factors, including
  - (a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;
  - (b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;
  - (c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions; ~~and~~
  - (d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors; ~~and~~
  - (ee) 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;
  - (fd) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and
  - (gf) 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.

##### 4.2 Process

Although the basic requirements or criteria for recognition of an exchange or quotation and trade reporting system may be

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similar in various jurisdictions, the precise requirements and the process for seeking a recognition or an exemption from recognition in each jurisdiction is determined by that jurisdiction

**PART 5 ORDERS**

**5.1 Orders**

- (1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders". However, if those prices or quantities are implied and determinable, for example by knowing the features of the marketplace, the indications of interest may be considered an order.
- (2) The label put on a transaction is not determinative of whether the transaction constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated price, based on understandings or past dealings, will be viewed as an order.
- (2) The terminology used is not determinative of whether an indication of interest constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty (i.e. the indication is "actionable"). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated or an implied price, based on understandings or past dealings, will be viewed as an order.
- (3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.
- (4) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

**PART 6 FORMS FILED BY MARKETPLACES**

**6.1 Forms Filed by Marketplaces**

- (1) Subsection 3.1(1) of the Instrument requires an applicant for recognition as an exchange to file Form 21-101F1. This subsection does not apply to an exchange that was recognized before the Instrument came into force.
- (2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.
- (3) Under subsection 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to the information provided in Form 21-101F1, in each case, in the manner set out in Form 21-101F1. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, G, I, J, K, M, N, P and Q of Form 21-101F1. This is also applicable to recognized quotation and trade-reporting systems under subsection 4.2(1) of the Instrument.
- (4) A recognized exchange or recognized quotation and trade-reporting system that files amendments to the information provided

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in Form 21-101F1 should number each filing consecutively.

- (5) Securities legislation or the terms and conditions of the recognition of the exchange or quotation and trade reporting system may require that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority.
- (6) Under subsection 6.4(2) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F2, an ATS is required to file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2. The Canadian securities regulatory authorities consider that a significant change includes a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.
- (7) Subsection 6.4(4) of the Instrument requires an ATS to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).
- (8) If an ATS files notice of its intention to carry on exchange activities pursuant to section 6.6 of the Instrument, and the ATS intends to begin to carry on business as an exchange, the ATS is required to file Form 21-101F4.

**6.2 Forms Filed in Electronic Format** – The Canadian securities regulatory authorities request that all forms and exhibits required to be filed under the Instrument be filed in electronic format, where possible.

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

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- (g) changes to or new types of marketplace participants;
- (h) changes to the systems and technology used by the marketplace that support trading and, if applicable, market surveillance, 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;
- (l) changes in and new outsourcing arrangements for key services or systems;
- (m) changes in and new custody arrangements; and
- (n) changes in fees and the fee model of the marketplace.

These would not include housekeeping or administrative changes to information in Form 21-101F1 or Form 21-101F2, such as changes in the routine processes, practice or administration of the marketplace, changes due to standardization of terminology, or 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.

- (5) 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.
- (6) 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.
- (7) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Instrument. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.
- (8) 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 IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

## **PART 7 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS**

### **7.1 Access Requirements**

- (1) Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not restrict the authority of a recognized exchange or recognized quotation and trade reporting system to maintain reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, fees and practices of the exchange or quotation and trade reporting system do not unreasonably create barriers to access to the services provided by the exchange or quotation and trade reporting system.

- (2) For the purposes of complying with the order protection requirements in Part 6 of NI-23-101, a recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access to
- (a) a member or user that directly accesses the exchange or quotation and trade reporting system;
  - (b) a person or company that is indirectly accessing the exchange or quotation and trade reporting system through a member or user, or
  - (c) a marketplace routing an order to the exchange or quotation and trade reporting system.

The reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a member or user.

- (3) The reference to "services" in paragraph 5.1(b) 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 and data.
- (4) Recognized exchanges and recognized quotation and trade reporting systems 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 recognized exchange or recognized quotation and trade reporting system 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 exchange or quotation and trade reporting system, 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 recognized exchange or recognized quotation and trade reporting system unreasonably condition or limit access to its services. With respect to trading fees, our view is 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 recognized exchange's or recognized quotation and trade reporting system'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 recognized exchange's or recognized quotation and trade reporting system's services when taking into account factors including those listed above.

**7.2 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.

**7.3 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. It is the intention of the securities regulatory authority to 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.

## **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 and data.
- (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.
- (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 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 applicable 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** – Section 5.7 of the Instrument establishes the requirement that a marketplace operate 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.

**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** - 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, and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.

**7.9** **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. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facility. 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.

**PART 8** **REQUIREMENTS ONLY APPLICABLE TO ATSS**

**8.1** **Confidential Treatment of Trading Information by ATSS**

(1) Subsection 6.8(2) of the Instrument provides that an ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information. These include

- (a) limiting access to the trading information of subscribers, such as the identity of subscribers and their orders, to those employees of, or persons or companies retained by, the ATS to operate the system or to be responsible for its compliance with Canadian securities legislation; and
- (b) having in place procedures to ensure that employees of the ATS cannot use such information for trading in their own accounts.

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- (2) ~~The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ATS, whether or not they have direct responsibility for the operation of the ATS.~~
- (3) ~~Nothing in section 6.8 of the Instrument prohibits an ATS from complying with National Policy 41 Shareholder Communication, or its successor instrument. This statement is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Policy 41, or its successor instrument, and may be required to disclose information under that Instrument~~
- 8.1 Risk disclosure to non-registered subscribers** - Subsection 6.11(2) of the Instrument requires an ATS to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature or the marketplace participant or requesting that the marketplace participant initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the marketplace participant has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that an acknowledgement is obtained from the marketplace participant in a timely manner.

**8.2 Access Requirements**

- (1) ~~Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. The purpose of these access requirements is to ensure that the policies, procedures, fees and practices of the ATS do not unreasonably create barriers to access to the services provided by the ATS.~~
- (2) ~~For the purposes of complying with the order protection requirements in section 6 of NI 23-101, an ATS should permit fair and efficient access to~~
- (a) ~~a subscriber that directly accesses the ATS,~~
  - (b) ~~a person or company that is indirectly accessing the ATS through a subscriber, or~~
  - (c) ~~a marketplace routing an order to the ATS.~~

~~In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a subscriber that is a dealer.~~

- (3) ~~The reference to "services" in paragraph 6.13(b) of the Instrument means all services that may be offered to a person or company and includes all services related to order entry, trading, execution, routing and data.~~
- (4) ~~ATSs are responsible for ensuring that the fees they set are in compliance with section 6.13 of the Instrument. In assessing whether its fees unreasonably condition or limit access to its services, an ATS 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 ATS, 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 an ATS unreasonably condition or limit access to its services. With respect to trading fees, our view is 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 an ATS'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 an ATS's services when taking into account factors including those listed above. **[repealed]**~~

**PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES**

**9.1 Information Transparency Requirements for Exchange-Traded Securities**

(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires a marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, 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.

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

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

(3) [Repealed]

(4) [Repealed]

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

9.2 [Repealed]

## PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

### 10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2015. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.

(2) The requirements of the information processor for government debt securities are as follows:

(a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to unlisted debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and

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(ii)(b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.

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(3) The requirements of the information processor for corporate debt securities are as follows:

4-(a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than \$2 million, the trade details provided to the information processor are to be reported as "\$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than \$200,000, the trade details provided to the information processor are to be reported as "\$200,000+".

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2-(b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.

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3-(c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.

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(4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.

(5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.

(6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

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

(7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.

(8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.

(9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.

**10.2 Availability of Information** - In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.

**10.3 Consolidated Feed** - Section 8.3 of the Instrument requires the information processor to produce a consolidated feed in real-time showing the information provided to the information processor.

**PART 11 MARKET INTEGRATION**



11.1 [Repealed]

11.2 [Repealed]

11.3 [Repealed]

11.4 [Repealed]

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

## **PART 12 DISCLOSURE OF TRADING FEES FOR MARKETPLACES**

**12.1 Disclosure of Trading Fees by Marketplaces** – Section 10.1 of the Instrument requires that each marketplace make its schedule of trading fees publicly available. The schedule should include all trading fees and provide the minimum and maximum fees payable for certain representative transactions. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose trading fees does not require a combined price calculation by each marketplace.

**12.2 Discriminatory Terms** – Section 10.2 of the Instrument prohibits a marketplace from imposing terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.

## **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) Subsection 10.1(a) requires marketplaces to disclose publicly their fee schedule, including listing, trading, data and routing fees charged by the marketplace. The trading fees should provide the minimum and maximum fees payable for certain representative transactions. 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. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose trading fees does not require a combined price calculation by each marketplace.
- (3) Subsection 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of how orders are prioritized for execution 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) Subsection 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 conflicts of interest.
- (5) Subsection 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.
- (6) Subsection 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Instrument requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party



vendors.

## PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

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

## PART 14 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

- 14.1 Systems Requirements** - This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.
- (1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include 'Information Technology Control Guidelines' from the Canadian Institute of Chartered Accountants (CICA) and 'COBIT' from the IT Governance Institute.
- (2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, ~~business-continuity~~ and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.
- (3) ~~Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a) of the Instrument. 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. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority. 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.~~
- (4) 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 scope that would have applies 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, 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, and changes to systems or staff of the marketplace. In determining if the exemption is in the public interest and the length of the exemption, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, changes to systems or staff of the marketplace and whether the marketplace has experienced material systems failures, malfunction or delays.

#### **14.2 Availability of Technology Specifications and Testing Facilities**

- (1) Subsection 12.3(1) of the Instrument requires marketplaces to make their technology requirements regarding interfacing with or accessing the marketplace publicly available in their final form for at least three months. If there are material changes to these requirements after they are made publicly available and before operations begin, the revised requirements should be made publicly available for a new three month period prior to operations. The subsection also requires that an operating marketplace make its technology specifications publicly available for at least three months before implementing a material change to its technology requirements.
- (2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been made publicly available. Should the marketplace make its specifications publicly available for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities publicly available for at least two months before implementing the material systems change.
- (3) Subsection 12.3(4) of the Instrument provides that if a marketplace must make a change to its technology requirements regarding interfacing with or accessing the marketplace to immediately address a failure, malfunction or material delay of its systems or equipment, it must immediately notify the regulator or, in Québec, the securities regulatory authority, and, if applicable, its regulation services provider. We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

#### **14.3 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.

### **PART 15 CLEARING AND SETTLEMENT**

- 15.1 Clearing and Settlement** - Subsection 13.1(1) of the Instrument requires that all trades executed through an ATS all trades executed through a marketplace shall be reported and settled through a clearing agency. Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, either the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.

### **PART 16 INFORMATION PROCESSOR**

#### **16.1 Information Processor**

- (1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).
- (2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure

that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

- (3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to fair access, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relating to pricing.

## 16.2 Selection of an Information Processor

- (1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,

8-(a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;

9-(b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms;

10-(c) personnel qualifications;

11-(d) whether the information processor has sufficient financial resources for the proper performance of its functions;

12-(e) the existence of another entity performing the proposed function for the same type of security;

13-(f) the systems report referred to in subsection 14-5(b)/14.5(c) of the Instrument.

- (2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.

- (3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

**16.3 Change to Information** - Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, F, G, H, O, P, Q, R and S and Item 10 of Form 21-101F5.

**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

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

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

**16.4 System Requirements** – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.

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

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