ANNEX A

DESCRIPTION OF CHANGES TO THE MARKETPLACE RULES AND FORMS

This Annex describes the Proposed Amendments. It contains the following sections:

1. Information transparency for government debt securities
2. Marketplace systems and business continuity planning
3. Use of marketplace participants' trading information for research
4. Co-location and other access arrangements with a service provider
5. Information in Forms 21-101F1, 21-101F2 and 21-101F3
6. Provision of data to information processors
7. Obligations of a recognized exchange to a regulation services provider
8. Form of information provided to regulators
9. Clearing and settlement
10. Requirements applicable to information processors

1. INFORMATION TRANSPARENCY FOR GOVERNMENT DEBT SECURITIES

Background

Part 8 *Information Transparency Requirements for Marketplaces Dealing in Unlisted Debt Securities, Inter-Dealer Bond Brokers and Dealers* of NI 21-101 sets out the transparency requirements for the entities trading unlisted debt securities, including government debt securities. The specific pre-trade and post-trade transparency requirements applicable to government debt securities are set out in section 8.1 of NI 21-101. Section 8.6 of NI 21-101 provides an exemption from these requirements until January 1, 2015. The exemption was last renewed in 2012. The purpose of the exemption is to maintain the regulatory framework for government debt transparency, but delay imposing regulatory requirements until such time they are appropriate. In the past, we indicated that no other jurisdiction had established mandatory

transparency requirements for government debt securities, and that we extended the exemption from the transparency requirement to allow us to review international regulatory developments and progress towards additional transparency in Canada to determine what, if any, mandatory requirements are needed in this area. [1]

Since the 2012 Amendments were finalized, we have monitored domestic and international regulatory developments in the fixed income market and have summarized them below.

Domestic developments

In Canada, there have been a number of regulatory developments which are noteworthy. In October 2011, IIROC implemented Dealer Member Rule 3300 - *Fair Pricing of Over-The-Counter Securities* (the Fair Pricing Rule), which seeks to accomplish a number of objectives, including ensuring that dealers' clients, in particular retail clients, are given prices for over-the-counter securities that are fair and reasonable in relation to prevailing market conditions.

On January 9, 2014, IIROC re-published for comment Proposed Rule 2800C – *Transaction Reporting for Debt Securities* (Proposed IIROC Rule).[2] The Proposed IIROC Rule, previously published for comment on February 20, 2013,[3] will require dealers to report, on a post-trade basis, all debt market transactions executed by the dealer member, including those executed on an ATS or through an inter-dealer bond broker (IDB). The Proposed IIROC Rule will facilitate the creation of a database of transaction information that would enable IIROC to carry out its responsibilities with respect to the surveillance and oversight of over-the-counter debt market trading.

On July 15, 2013, a number of amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) came into force and implemented the second phase of the CSA Client Relationship Model (CRM) Project (CSA CRM 2). The purpose of the amendments is to ensure that clients of all registrants, including dealers, receive clear and complete disclosure of all charges and registrant compensation associated with the investment products, including fixed income products, and services they receive. The amendments introduced requirements for registrants to: (i) disclose the annual yield to maturity of debt securities on trade confirmations issued to clients after their purchase[4]; (ii) disclose either total compensation or the gross commission[5] on all debt security trade confirmations issued to all clients; and (iii) where the gross commission is disclosed, provide a prescribed general notification.[6] On December 31, 2013, IIROC published for comment a series of proposed rule amendments to implement CSA CRM 2 in its dealer member rules. The rule amendments are substantially the same as the CSA CRM 2 amendments, including those described above.

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[1] CSA Notice of Proposed Amendments to NI 21-101 and NI 23-101 published at (2011) 34 OSCB (Supp-1).
[2] Available at http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=201312361&tocID=22.
[3] Available at http://www.iiroc.ca/Documents/2013/2e5bf850-7ea6-4b36-9217-f744517554a9_en.pdf.
[4] Subsection 14.12(b.1) of NI 31-103.
[5] "Total compensation" is the total amount of any mark-up or mark-down, commission or other services that were charged on a debt security trade. "Gross commission" is the commission a registrant charges on the debt security trade (as compared to "net commission, which is the Registered Representative's portion of the commission charged on the trade).
[6] Subsection 14.12(c.1) of NI 31-103.

We also met with dealers and institutional buy-side representatives, individually or through their committees, and with ATS and IDB representatives to discuss fixed income market developments, the sources of information for those participating in the fixed income markets, including retail investors, and whether there was a need for additional transparency in the fixed income market.

The market participants involved in our consultations generally indicated that there was sufficient information available regarding fixed income securities. Some believed, however, that there was information asymmetry, and that different information was available to different market participants. For example, larger market participants (dealers and buy-side representatives) have access to a wealth of information, including indicative pricing information shared through the Bloomberg platform, composite pricing data offered by a fixed income marketplace, dealers' information and index pricing. In addition, certain larger market participants also subscribe to the Fixed Income Price Service (FIPS) of CDS Innovations Inc., which provides details of all fixed income trades reported to CDS Clearing and Depository Services Inc. (CDS) on a daily basis.[7] FIPS includes all fixed income federal, provincial, municipal and corporate securities that are eligible for deposit at CDS.

Smaller market participants also have access to fixed income information, but not to the same extent as the larger market participants. For some, the cost of information appears to be an issue. The sources of fixed income information available to retail investors are limited and have not changed significantly. Mostly, they rely on their dealer's information, and the prices they receive are those offered by their registered representatives (RR), which are based on the dealers' retail desk prices with an additional mark-up representing the RR's commission. Some market participants involved in our consultations believed that there should be more education of investors about fixed income securities and their risks and that this may be more beneficial than additional fixed income information.

International developments

In the United States, the Trade Reporting and Compliance Engine (TRACE) was originally established to provide transparency for corporate debt securities. The scope of the securities reportable to TRACE includes, and has included for some time, all securities issued or guaranteed by an agency or a government-sponsored enterprise, except securities issued by the U.S. Treasury.[8] No new developments have occurred.

In Europe, on January 14, 2014, the European Parliament and the Council announced that they agreed in principle on updated rules for markets in financial instruments (MiFID II). For the first time, MiFID II would introduce a pre- and post-trade transparency regime for non-equity instruments, where pre-trade transparency waivers would be available for large orders, requests for quote and voice trading, and post-trade transparency would be provided with the possibility

[7] See details at http://www.tmx.com/en/data/products_services/regulatory_depository/fixed_income_price_service.html.
[8] The definition of a TRACE-eligible security is in FINRA Rule 6710, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4400.

of deferred publication or volume masking, as appropriate.[9] The agreement will be forwarded to the European Securities and Markets Authority for details regarding how the various provisions are to be implemented. At this time, it is expected that the rules will be finalized this year, with general compliance required by 2016.

Proposed Amendments

The initiatives described above are a step forward in the development of a robust regulatory framework for fixed income securities. While we continue to be of the view that transparency in the fixed income market is important, we have delayed imposing requirements that would mandate transparency in government debt and propose to extend the exemption from transparency for government debt securities until January 1, 2018. .

However, we are of the view that there is a role for regulatory policy in this area and, for this reason, we do not propose to remove the transparency requirements currently set out in NI 21-101. We believe this is appropriate because we did not find, through our review of fixed income market developments, that there has been significant progress towards more transparency in our markets. We are of the view that smaller market participants, and in particular retail investors, could benefit from additional sources of information, including information that meets regulatory standards and is not cost prohibitive.

At the same time, we are mindful that the Canadian fixed income market is relatively small as compared to fixed income markets globally, and believe it would not be appropriate to mandate transparency for government debt securities before other jurisdictions. As we noted, at this time, no other international jurisdiction has mandated transparency for government debt securities, although this will change when MiFID II is implemented. As it is currently believed that MiFID II will be implemented in 2016, we plan to review the effects of its implementation prior to proposing any transparency requirements through NI 21-101. If, after this review, the CSA believe that it would be beneficial to mandate transparency for government debt securities, we will first need to ensure the appropriate framework is in place before implementing such a requirement.

As the current transparency exemption expires on December 31, 2014, we note that the CSA may have to take steps to expedite the approval and implementation of this specific proposed amendment in order to meet this deadline.

We note that, currently, NI 21-101 includes transparency requirements for corporate debt securities[10] and an information processor for corporate debt securities, CanPX Inc. (CanPX), is in place. CanPX currently requires firms that have achieved a de minimus market share of 0.5% of the total corporate debt trading in two of the three most recent quarters to report the corporate

[9] According to press release of the European Commission, available at http://europa.eu/rapid/press-release_MEMO-14-15_en.htm?locale=en.

[10] Section 8.2 of NI 21-101 requires marketplaces to report accurate and timely information for orders of designated corporate debt securities to an information processor, as required by the information processor. It also requires marketplaces, IDBs and dealers to report accurate and timely information regarding details of trades of corporate debt securities to the information processor, as required by the information processor. Section 8.3 of NI 21-101 requires the information processor to produce an accurate consolidated feed in real-time showing the information provided to it.

bond trade information for a number of designated corporate debt securities.[11] While we are not proposing any changes to the requirements applicable to corporate debt securities at this time, we note that we are reviewing the framework for corporate debt transparency and will consider steps to increase corporate debt transparency in the coming year.

2. MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

Background

In Canada, trading has been conducted electronically for many years. The high degree of connectivity among marketplaces and marketplace participants required for electronic equity trading means that the impact of marketplace systems failures can have wide-reaching and unintended consequences. Part 12 of NI 21-101 sets out requirements for marketplace systems and business continuity planning to mitigate the probability and effects of systems failures and we think that it is important for these requirements to be updated so that they continue to be effective in helping ensure that marketplace systems are reliable, robust and have adequate controls.

The Ontario Securities Commission (OSC) engaged a consultant, Fionnuala Martin and Associates (Consultant), to conduct a review of the risks of electronic trading and to determine if any changes were necessary to current rules to address any identified gaps. The Consultant completed a report with a number of recommendations, including: increased transparency regarding marketplace testing environments, the use of industry-wide test symbols in marketplace production environments and for marketplace requirements related to business continuity planning to be equivalent to those of marketplace participants.[12]

Upon reviewing all of the Consultant's recommendations and conducting our own review of current systems requirements, we propose adding requirements with respect to five main areas: (i) business continuity testing; (ii) use of uniform test symbols in marketplace production environments and increased transparency of testing environments; (iii) security breaches; (iv) expansion of the scope of independent systems reviews (ISRs); and (v) marketplace launches and material changes to marketplace technology requirements.

(i) Business Continuity Testing

Section 12.4 of NI 21-101 requires that marketplaces develop and maintain reasonable business continuity and disaster recovery plans (BCP and DRP) and test these plans annually. We propose to amend subsection 12.4(1) to clarify that the testing of business continuity plans must be done according to prudent business practices.

In addition, we think that the increase in marketplace fragmentation for listed equities has made the recovery process in the case of a disaster significantly more complex and that a successful industry-wide BCP test is key to any realistic expectation of a Canadian capital markets recovery

[11] The most recent list of designated corporate debt securities is available at http://www.canpxonline.ca/selectioncriteria.php.

[12] The complete report with recommendations may be found at Appendix A of OSC Staff Notice 23-702 Electronic Trading Risk Analysis Update published on December 12, 2013 at (2013), 36 OSCB 11767.

from a major disaster within a reasonable length of time. We also note that the U.S. Securities and Exchange Commission has proposed to require certain entities to participate in industry BCP and DRP tests in Regulation Systems Compliance and Integrity (Reg SCI).[13]

Compulsory participation in BCP and DRP tests by marketplaces and clearing agencies has been discussed several times over the last few years and based on the above analysis, the CSA have concluded that it is appropriate to propose that marketplaces, recognized clearing agencies, information processors, and marketplace participants must participate in industry-wide business continuity tests as determined by an RSP, regulator, or in Québec, a securities regulatory authority.

It is our expectation that participation in industry-wide BCP tests will improve the resilience of Canadian market infrastructure entities, including marketplaces, and reduce recovery time after a disaster. As an extension of this result, we are also proposing in subsection 12.4(2) of NI 21-101 that a marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must ensure that each system operated by or on behalf of the marketplace that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within 2 hours following the declaration of a disaster by the marketplace. In addition, subsection 14.6(3) of NI 21-101 would require an information processor to be able to resume operations of its critical information technology systems within one hour following the declaration of a disaster by the information processor.

(ii) Uniform test symbols in production environments

Although marketplaces currently provide testing environments for participants, these environments remain unconnected, do not utilize uniform test symbols and in some cases are offered in facilities that may not be a reasonably good proxy of the marketplace's production environment. In order for participants to have the ability to properly test their IT systems in today's fragmented yet interdependent market, we have proposed the requirement for marketplaces to use uniform test symbols for the purpose of testing to be performed in the production environment. We expect that the details of how to best implement this proposed requirement will be discussed with industry groups and we welcome any comments with respect to the implementation of this proposed requirement.

In the meantime, in order for marketplace participants and their clients to better understand the current testing environments of the marketplaces that they trade on, we have proposed to include in section 10.1 of NI 21-101 that a marketplace publicly disclose the hours of operation of its testing environment, and describe any difference between its testing and production environments along with a description of the potential impact of these differences on the effectiveness of testing by its participants.

[13] Subparagraph 1000(b)(9)(ii) of Reg SCI would require an SCI entity to coordinate the testing of business continuity and disaster recovery plans on an industry- or sector-wide basis with other SCI entities. For more information see https://www.federalregister.gov/articles/2013/03/25/2013-05888/regulation-systems-compliance-and-integrity.

(iii) Security breaches

Due to the growing complexity and interconnectedness of the various marketplace systems, a security breach of one system that shares network resources could impact other systems vital to the operation and integrity of the marketplace. Security breaches not only include cyber-attacks originated by outsiders but all unauthorized systems breaches. Such system intrusions can be perpetrated by outsiders, employees or agents of the marketplace, and can be both intentional and inadvertent.

As a result of the growing concern with system security, we have proposed a requirement in subsection 12.1(c) of NI 21-101 for a marketplace to promptly notify the regulator or in Québec, the securities regulatory authority, of any material security breach, in addition to the existing requirement to provide notification of any material systems failure, malfunction or delay of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing (trading related systems). In addition, proposed subsection 12.1.1(b) of NI 21-101 would require a marketplace to promptly notify the regulator or in Québec, the securities regulatory authority, if there is a security breach of any system that shares network resources with one or more of the trading related systems, that if breached would pose a security threat to a trading related system (auxiliary system).

(iv) Expansion of scope of ISRs

We propose in paragraph 12.2(1)(b) of NI 21-101 that the annual ISR by a qualified party review a marketplace's information security controls of the marketplace's auxiliary systems. We think that a review of the information security controls of auxiliary systems will aid in ensuring the security of a marketplace's systems.

We have further proposed that the report resulting from the ISR must be furnished to the regulatory authority within the earlier of 30 days of providing the report to its board of directors or the audit committee or 60 days after the calendar year end.

(v) Launch of new marketplaces and material changes to marketplace technology requirements

As mentioned above, the failure of a marketplace's systems can have wide-reaching and unintended consequences. A marketplace beginning operations or making a material change to its systems can therefore negatively impact many other parties if these actions are not carried out in a careful manner. Therefore, we are proposing requirements to ensure that, from a systems perspective, the launching of new marketplaces and material changes made to a marketplace's technology requirements are conducted according to prudent business practices and are implemented so that marketplace participants and service vendors have a reasonable opportunity to adapt to these changes.[14]

[14] These Proposed Amendments codify staff practice outlined in OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes* published on October 4, 2012 at (2012) 35 OSCB 8928.

Paragraphs 12.3(5)(c) and 12.3(6)(b) of NI 21-101 would require a marketplace's senior executive to certify that all information technology systems have been tested according to prudent business practices and are operating as designed prior to a marketplace beginning operations or implementing material changes to its technology requirements. We expect that these proposed requirements will help mitigate systems risks that arise when a new marketplace or a material systems change to a marketplace's technology requirements is introduced.

In order to give marketplace participants and their service providers a reasonable opportunity to make any necessary changes to their systems to access and interface with a new marketplace or to accommodate a significant change to a marketplace's technology requirements, we propose to amend subsection 12.3(3) of NI 21-101 so that a marketplace would not be able to launch operations or implement a material change to its technology requirements before the later of three months after a regulator or a securities regulatory authority, as applicable, has completed its review and a reasonable time that would allow marketplace participants to complete any necessary systems work and testing.

(vi) Other systems related amendments

Given the growing diversity and complexity of marketplace systems, marketplaces are increasingly looking to third parties to provide vital equipment and know-how to operate certain systems. We believe that system requirements denoted in subsection 12.1 of NI 21-101 should apply to each marketplace system that supports order entry, order routing, execution, trade comparison, data feeds, surveillance and trade clearing. To that end, we have made clear in these amendments that system requirements apply to systems not only operated by a marketplace but also operated *on behalf of* a marketplace.

We are also proposing to amend section 6.8 of NI 23-101 to ensure that marketplaces that trade standardized derivatives will immediately notify its marketplace participants if the marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data.

Lastly, we are revising the information required in Exhibit G in Form 21-101F1 and Form 21-101F2 to ensure we receive relevant and consistent information from marketplaces regarding systems, contingency planning, system capacity and IT risk management.

3. USE OF MARKETPLACE PARTICIPANTS' TRADING INFORMATION FOR RESEARCH

Background

Subsection 5.10(1) of NI 21-101 prohibits a marketplace from providing a marketplace participant's order and trade information to a person or company other than the market participant, a securities regulatory authority or an RSP unless (i) the marketplace participant has consented in writing, (ii) the release of the order and trade information is required by applicable

law or NI 21-101, or (iii) the order and trade information was disclosed by another person or company, and the disclosure was lawful.

Before the 2012 Amendments were implemented, the requirement applied only to ATSs. It was extended, as part of the 2012 Amendments, to recognized exchanges and QTRSs to harmonize the rules for all marketplaces. An unintended result of this was that all marketplaces, including exchanges, were prohibited from providing order and trade information for capital markets research without the written consent of all of their marketplace participants. In Ontario, an exemption order was granted to marketplaces to allow them to provide marketplace participants' data for capital markets research. [15]

Proposed Amendments

We support capital markets research and are of the view that marketplaces should be allowed to provide marketplace participants' data for research provided that certain terms and conditions are met. Therefore, we propose an exception from the confidentiality requirements in subsection 5.10(1) of NI 21-101 to allow marketplaces to provide their marketplace participants' data without their consent to capital market researchers.[16] In proposed subsection 7.7(1) of 21-101CP, we clarify that proposed subsection 5.10(1.1) of NI 21-101 does not impose any obligation on a marketplace to disclose its marketplace participants' information if requested by a researcher. In fact, the marketplace may choose to maintain this information in confidence, and this may be codified in its contracts with marketplace participants.

Proposed subsection 5.10(1.1) of NI 21-101 contains the provision that allows a marketplace to release a marketplace participant's order or trade information to a person or company if that marketplace has entered into a written agreement with each person or company that will receive the order and trade information.

The terms and conditions under which marketplaces would be able to provide data are listed in proposed subsections 5.10(1.1), 5.10(1.2) and 5.10(1.3) of NI 21-101. Proposed paragraph 5.10(1.1)(a) lists the minimum provisions that must be included in such agreements. The purpose of these provisions is to ensure that the marketplace participants' data provided by a marketplace is not misused. Proposed subparagraph 5.10(1.1)(a)(ii) requires that the agreement should have provisions that ensure that the person or company does not publish or disseminate data or information that discloses, directly or indirectly, the transactions, trading strategies or the market position of a particular marketplace participant or its clients. Proposed subparagraph 5.10(1.1)(a)(iii) requires that the agreement stipulate that the order and trade information not be used for any purpose other than capital markets research. This proposed subparagraph does not dictate the nature of the research, or who may conduct such research. However, in proposed subsection 7.7(1) of 21-101CP, we clarify that using marketplace participants' data for trading, advising others to trade or for reverse engineering trading strategies are examples where data would not be used for capital markets research. This proposed provision would apply to the

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

[16] The proposed amendments to NI 21-101 that would allow for this exception are substantially similar to the terms and conditions in the OSC exemption order granting marketplaces an exemption from the requirement to keep order and trade information in confidence.

researcher or any other person, such as a research assistant, or company with whom the researcher works. If the researcher engages another person or company, they would have to seek the marketplace's consent, as required by proposed subparagraph 5.10(1.1)(a)(i) before passing along the order or trade information received to that person or company. The purpose of the marketplace notification and consent is to allow the marketplace to determine the appropriate course of action to ensure that the data is not misused. This may include, for example, requiring that any other person or company working with a researcher enter into an agreement with the marketplace.

Proposed subparagraphs 5.10(1.1)(a)(iv) and (v) require that the marketplace participants' information received is kept securely stored and only for a reasonable period of time after the completion of the research and publication process. Proposed subparagraph 5.10(1.1)(a)(vi) requires that the agreement has a provision that would require a researcher to inform the marketplace of any breach or possible breach of the confidentiality of the information provided.

Proposed subsection 5.10(1.2) sets out the requirements applicable to marketplaces that release their marketplace participants' order and trade data to researchers. A marketplace is required to take all appropriate steps, that in its sole discretion, are necessary to prevent or deal with a breach or possible breach of the confidentiality of the information provided or of the agreement with the researcher. In the event of a breach or possible breach of the confidentiality of the information provided or of the agreement, a marketplace is also required to inform the regulator or, in Québec, the securities regulatory authority. We consider a breach of the agreement or of the confidentiality of the information provided sufficiently important to warrant regulatory notification. If notified, the regulators would monitor whether the marketplace is taking all appropriate steps to deal with the breach or possible breach.

Proposed subsection 5.10(1.3) of NI 21-101 sets out the conditions that must be met for a person or company receiving order and trade information from a marketplace to disclose this information. The only exception permitted by this subsection is to allow those conducting peer reviews to have access to the marketplace's order and trade data solely for the purpose of verifying the research prior to its publication. Proposed paragraph 5.10(1.3)(b) requires the peer reviewer to maintain the confidentiality of the information.

To help regulators determine if the marketplace has entered into the agreements required under section 5.10 of NI 21-101, we propose to add that a copy of any agreement referred to in section 5.10 be added to the list of documents that must be maintained for at least seven years in section 11.3 Record Preservation Requirements of NI 21-101.

4. CO-LOCATION AND OTHER ACCESS ARRANGEMENTS WITH A SERVICE PROVIDER

Background and Proposed Amendments

Co-location is the ability of traders (be it participants of a marketplace or their clients operating through direct electronic access) to install servers in close physical proximity to a marketplace's trading engine, thus effectively reducing trading latency. Currently, a number of third party

service providers provide co-location access to various marketplaces. We are of the view that co-location, and any other form of marketplace access, should be provided on a fair and transparent basis.

To help ensure that co-location, and any other form of marketplace access, is provided on a fair basis, proposed section 5.13 of NI 21-101 would require a marketplace that allows a third party service provider to provide access to its trading engine to ensure the third party service provider complies with the access provisions the marketplace has established under section 5.1 of NI 21-101. Section 5.1 requires a marketplace to not: (i) unreasonably prohibit, condition or limit access by a person or company to services offered by it; (ii) permit unreasonable discrimination among clients; and (iii) impose any burden on competition that is not reasonably necessary and appropriate and subsection 5.1(2) requires a marketplace to establish written standards for granting access to each of its services.

To increase transparency regarding when access to a marketplace is provided by a third party service provider, proposed subsection 10.1(i) of NI 21-101 would require a marketplace to disclose any access arrangements with a third party service provider, including the name of the provider and the standards for access to be complied with by the provider on the marketplace's website.

5. INFORMATION IN FORMS 21-101F1, 21-101F2 AND 21-101F3

Background

The information a recognized exchange provides in its Form 21-101F1 or an ATS provides in its Form 21-101F2 is crucial for regulators to understand the various important aspects of the marketplace, including its operations, marketplace participants and the securities that it trades. Form 21-101F3 is a form that is to be filed quarterly by marketplaces and the information in a Form 21-101F3 provides us with helpful information such as the types of trading activity that occurs on a marketplace. Together, the information in all of these forms allows us to regulate marketplaces and monitor changes in market activity more effectively.

In order to ensure that we receive current and accurate information in Forms 21-101F1 and 21-101F2 and can more easily review certain information contained in these forms, we have proposed changes related to: (a) guidance as to what constitutes a significant change to information in Form 21-101F1 and Form 21-101F2; (b) providing certain changes to these forms to a marketplace's RSP; (c) an annual certification pertaining to the information in the forms and (d) filing of materials related to outsourcing.

Based on past experiences in reviewing Form 21-101F3s filed by various marketplaces, we have also proposed changes to Form 21-101F3 as outlined in (e) below.

(a) Guidance regarding significant changes to Form 21-101F1 and Form 21-101F2

In order for regulators to have complete and accurate information regarding a marketplace, the

information in these forms needs to be kept up-to-date and any significant changes to this information need to be reviewed by a securities regulatory authority to ensure that they are in keeping with the public interest. Therefore, subsection 3.2(1) of NI 21-101 requires that a marketplace file an amendment to the information provided in Form 21-101F1 or in Form 21-101F2, as applicable, at least 45 days before implementing a significant change. Subsection 3.2(3) of NI 21-101 requires that changes to fee information set out in Exhibit L – Fees be filed at least seven business days before their implementation. To assist a marketplace in determining if a change is significant, subsection 6.1(4) of 21-101CP gives guidance that a change that could significantly impact a marketplace, its marketplace participants, investors or the Canadian capital markets is considered to be a significant change. Paragraphs 6.1(4)(a) through (n) of 21-101CP give examples of significant changes.

Under the current guidance in 21-101CP, all changes listed in paragraphs 6.1(4)(a) through (n) could be considered significant. However, feedback received from marketplaces and insight gained from reviewing marketplace filings show that some of these changes may or may not be significant, depending on their actual impact. For example, a change that would be considered significant to the operations of a continuous auction equity marketplace may not necessarily have the same impact on a request-for-quote fixed income marketplace.

Therefore, we propose amendments to subsection 6.1(4) to clarify that the types of changes currently listed in paragraphs 6.1(4)(a) through (n) of 21-101CP are only considered significant if they significantly impact a marketplace, its systems, market structure, marketplace participants or their systems, investors, issuers or the Canadian capital markets. The proposed guidance would further state that whether a change contemplated by a marketplace makes a significant impact depends on whether it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or results in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the RSP.

A number of changes made by a marketplace will always be considered significant. These changes, listed in proposed paragraphs 6.1(4)(a), (b) and (c) of 21-101CP, are changes to a marketplace's structure, including procedures governing how orders are entered, displayed (if applicable), executed, cleared and settled. They also include changes related to the introduction or modifications to order types, fees or fee models.

As set out above, other changes may or may not be significant, depending on their impact. They are listed in proposed paragraphs 6.1(4)(d) through (n). It is our expectation that a marketplace considering these changes will make a determination as to whether or not they have a significant impact, based on the guidance provided. If a marketplace's proposed changes to either Form 21-101F1 or Form 21-101F2 have a significant impact, the changes must be filed at least 45 days in advance of their implementation. Otherwise, the changes must be filed subsequent to their implementation, as required by subsection 3.2(3) of NI 21-101.

Subsection 6.1(5) of 21-101CP includes guidance regarding changes that are not considered to have a significant impact on a marketplace, its market structure, marketplace participants, investors, issuers or the capital markets.

(b) Provision of Proposed Form Changes to Regulation Services Provider

We are of the view that an RSP of a marketplace should be kept informed of changes to the operations of the marketplace in order to effectively perform its regulatory functions. To that end, proposed subsection 3.2(1.1) of NI 21-101 would require a marketplace that has entered into an agreement with an RSP to provide the RSP with any proposed significant changes to a matter set out in Exhibit E – Operation of the Marketplace of Form 21-101F1, where the marketplace is an exchange or Form 21-101F2 where the marketplace is an ATS. In addition, the marketplace would need to provide the RSP with any proposed significant changes to a matter set out in Exhibit I – Securities of Form 21-101F1, where the marketplace is an exchange or Exhibit I – Securities of Form 21-101F2 where the marketplace is an ATS.

We have proposed that only changes to Exhibits E and I must be provided to the RSP because this information may impact the monitoring of trading conducted by the RSP.

(c) Annual Certification of Form 21-101F1 and Form 21-101F2 Information

To help ensure the information in a marketplace's Form 21-101F1 or Form 21-101F2, as applicable, is accurate and updated regularly, proposed subsection 3.2(4) of NI 21-101 would require the chief executive officer of a marketplace to annually certify that the information in the marketplace's applicable form, is true, correct and complete and reflects the operations of the marketplace as they have been implemented. Along with this certification, we have proposed that a marketplace annually provide an updated and consolidated form in subsection 3.2(5) of NI 21-101.

These proposed changes will assist us in having an accurate and complete understanding of the operations of the marketplaces that we oversee and the risks faced by the market, thereby improving our ability to regulate more effectively.

(d) Filing of Materials Related to Outsourcing

To better ensure that marketplaces have established appropriate policies and procedures and other materials required under subsections 5.12(a), (b), (f), (g) and (h) of NI 21-101 related to the outsourcing of the operation of any key marketplace service or system to a service provider, we propose that marketplaces file these materials as part of Exhibit F of Form 21-101F1 or Form 21-101F2, as applicable.

(e) Changes to Form 21-101F3

Based on our past experience with reviewing and using data collected from Form 21-101F3 we have proposed changes to this form to include additional information that we think is important in our oversight of a marketplace and to remove certain information to facilitate the electronic filing of this form.

In particular, we have removed the requirement to provide a list of all marketplace participants that are using the marketplace's co-location services and the percentage of marketplace participants that use a marketplace's co-location services as we now propose to receive this information in Form 21-101F1 or Form 21-101F2. We also propose to remove the requirement to provide a list of participants granted, denied or limited access to the marketplace as we now propose to receive this information in Form 21-101F1 or Form 21-101F2 as well. In addition, we propose to revise how information is provided to us in Charts 2, 3, 15 and 16. Specifically, we propose that marketplaces provide the raw number of the volume, value and number of trades in charts 2, 15 and 16 rather than a percentage and that marketplaces provide the actual number of orders executed and cancelled rather than provide a percentage in chart 3. These Proposed Amendments would streamline some of the information in Form 21-101F3 and facilitate the electronic filing of this form.

With respect to Chart 8, we propose to ask for information on each fixed income security traded on the marketplace rather than only asking for information on the top ten fixed income securities (based on the value of the volume traded) that are traded on the marketplace. This additional information will help us better understand the trading that is conducted in the fixed income market.

Finally, we are proposing to receive information in Form 21-101F3 regarding significant systems and technology changes that were planned, under development or implemented during the quarter. We think that this information will help us anticipate and perhaps address issues that we may identify for marketplaces with respect to these significant changes.

6. PROVISION OF DATA TO AN INFORMATION PROCESSOR

Background and Proposed Amendments

We note that an information processor (or information vendor, in its absence), is a key element in the multiple marketplace environment for equity listed securities. It facilitates compliance by marketplace participants with relevant requirements in a multiple marketplace environment by ensuring the availability of consolidated data that meets regulatory standards and which users, as well as regulators, could use to demonstrate or evaluate compliance with certain regulatory requirements. As a result, it is important to ensure that the information processor receives accurate and timely information from marketplaces. This is reflected in the requirements that marketplaces provide accurate and timely data to the information processor in subsections 7.1(1) and 7.2(1) of NI 21-101.

Currently, subsection 9.1(2) of 21-101CP sets out the expectation that a marketplace will not make the order and trade information it is required to report under sections 7.1 and 7.2 of NI 21-101 to any other person or company on a more timely basis than it makes it available to the information processor or information vendor.

We are of the view that this information is not timely if it is made available by a marketplace to any other person or company before it is made available to the information processor, or if

applicable, information vendor. We have therefore proposed new subsections 7.1(3) and 7.2(2) of NI 21-101 to codify this requirement.

7. OBLIGATIONS OF A RECOGNIZED EXCHANGE TO A REGULATION SERVICES PROVIDER

Background

Section 7.1 of NI 23-101 provides a recognized exchange with an option to either directly monitor the conduct of its members or engage an RSP to perform this monitoring. Today, a number of recognized exchanges have engaged IIROC to act as their RSP and perform the required monitoring. When an exchange decides to engage an RSP to monitor the conduct of its members, section 7.2 of NI 23-101 requires, among other things, that an agreement between an exchange and RSP include that the recognized exchange will transmit to the RSP information that the RSP needs to effectively monitor: (i) the conduct of and trading by marketplace participants on and across marketplaces, and (ii) the conduct of the recognized exchange.

Proposed Amendments

The CSA have been told that the requirements under this subsection 7.2 of NI 23-101 are not necessarily clear to all recognized exchanges and that different interpretations exist as to what a recognized exchange's specific obligations are under these provisions. To help clarify these requirements, we have proposed a new section, 7.2.1 *Obligations of a Recognized Exchange to a Regulation Services Provider*, that turns certain provisions that currently must be included in an agreement with an RSP under section 7.2 into direct requirements that a recognized exchange would have to follow. We have also provided further guidance regarding proposed section 7.2.1 in 23-101CP to assist exchanges in understanding their obligations to an RSP. While we are of the view that these Proposed Amendments do not significantly change our expectations of a marketplace or its existing relationship with an RSP, we believe these changes will help eliminate incorrect interpretations of the current provisions.

Specifically, we propose in section 7.1(3) of NI 23-101 that a recognized exchange that has entered into a written agreement with an RSP must set requirements that are necessary for the RSP to be able to effectively monitor trading on the exchange and across marketplaces as required by the RSP. The proposed guidance in 7.1 of 23-101CP explains that a recognized exchange is expected to adopt all rules of the RSP that relate to trading as part of the requirements it must set under subsection 7.1(3). Further, it is proposed that the exchange transmit to the RSP information required by the RSP to monitor the conduct of the recognized exchange, including compliance of the recognized exchange with the requirements set under subsection 7.1(3). Analogous requirements relating to QTRSs have also been proposed in section 7.4.1 of NI 23-101.

8. FORM OF INFORMATION PROVIDED TO REGULATORS

Section 11.2.1 of NI 21-101 requires a marketplace to transmit information required by its RSP and its securities regulatory authority within ten business days in electronic form. To ensure that

regulators receive the information they need in the form and format that is most helpful for them to conduct their oversight, we propose to add the requirement that a marketplace transmit information in the manner that is requested by a securities regulatory authority and if applicable, its RSP.

9. CLEARING AND SETTLEMENT

Background and Proposed Amendments

Part 13 *Clearing and Settlement* of NI 21-101 sets out certain clearing and settlement requirements for all trades executed on a marketplace.

Proposed section 13.2 of NI 21-101 codifies the policy objective that marketplace participants should not be unreasonably prevented from having access to the clearing agency of their choice. This policy objective is important since the acquisition by Maple Group Acquisition Corporation of TMX Group Inc. and The Canadian Depository for Securities Limited resulted in the transformation of Canada's not-for-profit securities clearing and settlement utility into a vertically-integrated for-profit clearing agency. The CSA recognize that it is necessary to prevent potential impediments to competition in clearing and settlement to ensure that the markets are fair and efficient.

In April 2012, the Committee for Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO) published their report *Principles for financial market infrastructures* (PFMI Report).[17] The PFMI Report notes that competition among financial market infrastructures (such as clearing agencies) can be an important mechanism for facilitating efficient and low-cost services. The CPSS-IOSCO standards for the safe and efficient functioning of financial market infrastructures contained in the PFMI Report are currently being adopted by certain Canadian jurisdictions as ongoing regulatory requirements for recognized clearing agencies.[18]

Proposed subsection 13.2(2) of NI 21-101 limits the scope of subsection 13.2(1). Marketplace trades in standardized derivatives or exchange-traded securities that are options, would not be subject to the provision.

The CSA are not aware of any current plans by industry to develop or support competing clearing agencies that would serve domestic cash marketplaces. However, in the context of the Maple transactions we received strong stakeholder support for ensuring a regulatory framework that could allow for competition among clearing agencies. In the event that industry decides at some later stage that the benefits of competition would out-weigh the costs of supporting multiple clearing agencies, marketplaces should be required to accommodate any competition.

[17] The PFMI Report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

[18] See proposed OSC Rule 24-503 *Clearing Agency Requirements*, MSC Rule 24-503 *Clearing Agency Requirements*, and AMF Regulation 24-503 *Respecting clearing house, central securities depository and settlement system requirements*, together with their related companion policies.

The CSA recognize that should industry decide to support a multi-clearing agency environment in the Canadian cash markets, time will be needed by the relevant market infrastructures (i.e. marketplaces and clearing agencies) to consider and develop processes, interfaces and links to facilitate the clearing of cash market trades at multiple clearing agencies.

We seek stakeholder feedback on the above issues, and welcome your comments on proposed new section 13.2 of NI 21-101.

10. REQUIREMENTS APPLICABLE TO INFORMATION PROCESSORS

Background and Proposed Amendments

Part 14 *Requirements for an Information Processor* of NI 21-101 sets out the filing, systems and other requirements applicable to information processors.

Subsection 14.4(6) of NI 21-101 requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. Subsection 14.4(7) requires an information processor to file its financial budget within 30 days after the start of a financial year. The purpose of these requirements is to ensure that CSA staff receive some of the information they need to assess the financial condition of the information processor.

We note that an information processor may be operated as a division or unit of another person or company. For example, the information processor for equity securities other than options is operated as a division of TMX Group Inc. Under the current requirements, the information processor may file the audited financial statements and the budget of its parent company, which may not include sufficient detail to enable us to assess the financial viability of the information processor unit.

For this reason, we have proposed amendments to Part 14 to require, if an information processor is operated as a division or unit of a person or company, the person or company to file the income statement, statement of cash flow and any other information necessary to demonstrate the financial condition of the information processor. Proposed subsection 14.4(6.1) of NI 21-101 requires that this information must be filed within 90 days after the end of the financial year of the person or company that operates the information processor. We do not propose to require that this financial information be audited, because this information will be filed in addition to the audited financial statements of the person or company that operates the information processor.

We also have proposed subsection 14.4(7.1) of NI 21-101 that would require a person or company that operates an information processor as one of its divisions or units to file the financial budget of the information processor within 30 days from the beginning of the financial year of the person or company.

Finally, we have also proposed amendments to the systems requirements applicable to the information processor similar to those proposed for marketplace systems for consistency. Specifically, we have proposed amendments to subparagraph 14.5(d)(ii) to require an information processor to provide its independent systems review report within the earlier of 30

days of providing it to the board of directors or the audit committee, or 60 days after the calendar year end.