ANNEX A

Summary of the Amendments and Notable Changes

This Annex summarizes the Amendments and describes the notable changes from the proposed amendments published in both the 2014 Notice and the 2015 Notice. Further, it provides details regarding additional matters relating to the Amendments. The information in this annex is set out in the following sections:

1. Market Share Threshold

2. Locked or Crossed Orders

3. Trading Fees

4. Intentional Order Processing Delays

5. Data Fees Methodology

6. Best Execution Obligations and Disclosure

7. Pilot Study on Prohibition on Payment of Rebates by Marketplaces

For purposes of this Annex, we refer to marketplaces that will display orders that are protected pursuant to OPR, as 'protected marketplaces', and other marketplaces not displaying protected orders as 'unprotected marketplaces'.

1. Market Share Threshold

We continue to believe that OPR is a valuable part of the regulatory framework, but recognize that the current application of OPR has introduced inefficiencies and costs. Further, we believe the rule acts as a form of regulatory support for marketplaces by requiring that marketplace participants access either directly or indirectly, all protected marketplaces, and pay associated costs in doing so. The Amendments will provide flexibility to marketplace participants in determining if and when to access trading on certain marketplaces by limiting the application of OPR to orders displayed on marketplaces that meet a market share threshold determined by the CSA.

The comments received in relation to the publication of the 2014 Notice provided mixed views with respect to the market share threshold. Supporters of the threshold approach were not unanimous in support of the specific level of the threshold proposed, with arguments presented for both higher and lower percentages. Many commenters expressed the view that any threshold percentage applied would be an arbitrary figure. Those who were not supportive of the threshold approach conveyed concerns about both the impact on competition, as well as additional market complexities that would result from an environment where some visible marketplaces would display orders that

would be protected under OPR, while others would display orders that would not be protected.

We recognize the concerns expressed in some of the comment letters. However, after considering all of the comments received, we believe that at this time, the threshold approach is the most appropriate method of balancing the benefits of OPR with the costs associated with its application.

We remain supportive of marketplace competition, but believe that the benefits of competition should be achieved in combination with an allowance for users of marketplace services to exercise some element of discretion when determining whether to access marketplaces and pay for marketplace services. This is especially true in relation to the launch of new visible marketplaces in Canada, to which market participants are currently required to immediately connect or access in order to ensure compliance with OPR.

The market share threshold will be initially set in each jurisdiction by the regulator, or in Quebec, the securities regulatory authority, at 2.5% based on an average share of the adjusted[3] volume and value traded (equally weighted) over a one-year period,[4] and applied at the market or facility level where the marketplace is comprised of more than one visible market or facility.[5] Excluded from the market share threshold calculation will be:

- trades involving dark passive orders,
- the non-interfered portion of intentional crosses,[6]
- trades from call markets or call facilities (including existing opening and closing call facilities)
- odd-lot trades,
- auto-executed trades in fulfillment of market maker obligations or participation rights, and
- trades involving special terms orders.

The displayed orders of a recognized exchange that does not meet the market share threshold will be protected, but only with respect to those securities listed by and traded on the exchange. In these circumstances, in a similar manner to the application of the market share threshold, protection for displayed orders for listed securities on a recognized exchange will be applied at the market or facility level where the recognized exchange is comprised of more than one market or facility.

[3] Volume and value traded will be adjusted to exclude certain trades.
[4] Volume and value will be calculated on a total market basis, rather than calculated separately on the basis of listing marketplace.
[5] Certain marketplaces have distinct visible continuous auction order books, to which the market share threshold will be applied separately.
[6] On some marketplaces, the execution of an intentional cross by a dealer can be broken up or "interfered" with by an existing order from same dealer, which has already been entered on the marketplace at the same price as the intentional cross. Because the interfering order would have been protected under OPR, it would be included in the market share calculation.

(i) Market Share Threshold Calculation

Once the threshold is set in each jurisdiction by the regulator, or in Quebec, the securities regulatory authority, the market share and the list of protected marketplaces will be made publicly available on the websites of both the CSA and the Investment Industry Regulatory Organization of Canada (IIROC). The initial calculation of protected marketplaces will be effective for a six month period and will be published during the first week of June 2016. It will come into effect on October 1, 2016 and will be based on trading data from June 1, 2015 to May 31, 2016.

After the initial period, on an ongoing basis, the application of OPR for displayed orders as it relates to the market share threshold, will be effective for a period of one year, and subject to annual renewal. Marketplace participants will be given approximately three months after each list is published to facilitate any required operational changes. The criteria for calculating the threshold and the process for communicating the list of protected marketplaces for the effective period will also be made publicly available, and any changes to the market share threshold will be set by the regulator, or in Quebec, the securities regulatory authority and will be communicated publicly via CSA Staff Notice.

For ease of reference, the following table outlines the initial 6 month timeframe and reference period, as well as the timing of the annual calculations thereafter.

	Calculation Period	Date of Publication of Protected Marketplace List	Effective Period
Initial Implementation	Trading data from June 1, 2015 to May 31, 2016	First week of June 2016	October 1, 2016 to March 31, 2017
First Full Implementation	Trading data from January 1, 2016 to December 31, 2016	By January 15, 2017	April 1, 2017
Ongoing Implementation	Trading data from the first through last day of the year annually	Annually by January 15 of each year	Annually on April 1

(ii) Ongoing Review of the Impact of the Threshold

We intend to monitor the impact of the threshold on an ongoing basis. We commit to conducting a review of the impact and cost savings associated with the market share threshold and the percentage at which it is set, once one year of data is available and can be analyzed.

(iii) Changes to Proposed Amendments in 2014 Notice

In the 2014 Notice we proposed to set the market share threshold at 5%. As noted above, the comments received in relation to the proposed threshold were mixed. As a result of both feedback received during the public comment process and CSA

discussions, we intend to set the market share threshold at 2.5% based on an equally weighted average of the share of adjusted volume and value traded.

This lower threshold will serve to address some of the concerns related to potential impacts on competition, but will still provide a base level of trading activity at or above which displayed orders will be protected. The lower market share threshold will still offer dealers an element of choice with respect to new marketplaces and those marketplaces below the threshold level.

2. Locked or Crossed Orders

The provisions in section 6.5 of the Instrument related to locked or crossed orders will be limited in application to "protected orders". This change will not preclude participants from entering orders on protected marketplaces that would lock or cross an order on an unprotected marketplace.

3. Trading Fees

The Amendments will introduce a cap on active trading fees charged by marketplaces.[7] As proposed in the 2014 Notice, the cap will apply to continuous auction trading in equity securities and exchange-traded funds (ETFs) and will be set at $0.0030 per share or unit traded for securities priced at or above $1.00, and $0.0004 per share or unit traded for securities priced below $1.00.

As was discussed in the 2014 Notice, the $0.0030 per share cap for securities priced at or above $1.00 is set at the same level as the cap set in the U.S. under Rule 610(c) of Regulation National Market System. We recognize that the trading fee cap is higher than the fees currently charged by most Canadian marketplaces and acknowledge feedback received as part of the public comment process that the cap is too high. We are finalizing the cap as proposed, in order to establish an interim ceiling on active trading fees while we consider additional steps to address the level of trading fees in Canada.

We recognize the views of some stakeholders that the fee cap should be lower. However, our market is highly integrated with the U.S., and there is significant trading activity in securities that are listed in both Canada and the U.S. (Inter-listed Securities). As a result, we are concerned about potential negative consequences for the Canadian market from establishing a trading fee cap for Inter-listed Securities that is significantly different than comparable regulatory requirements in the U.S. As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by those marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S.

[7] In the context of the Amendments, active trading fees refer to fees charged by marketplaces for the execution of an order that was entered to execute against a displayed order on that marketplace in continuous auction trading.

for Inter-listed Securities is too large, a shift of liquidity to U.S marketplaces and widening spreads on Canadian marketplaces could result.

However, in addition to the fee caps approved as part of the Amendments, we have published today a separate notice requesting comment on a revised active trading fee cap applicable only to securities priced at or above $1.00 that are listed on a Canadian exchange, but not also listed on a U.S. exchange (Non-Inter-listed Securities). The proposed cap on Non-Inter-listed Securities priced at or above $1.00 would be $0.0017 per share (further details can be found in that notice). Upon approval of this lower cap for Non-Inter-listed Securities, the active-trading fee cap of $0.0030 per share for securities valued at $1.00 or more would only apply to Inter-listed Securities.

4. Intentional Order Processing Delays

As previously noted, the 2015 Notice proposed amendments to 23-101CP related to the implementation of marketplace 'speed bumps' that delay the entry of orders into a marketplace trading engine. We proposed to add OPR-related guidance to 23-101CP, such that where a marketplace has introduced an intentional order processing delay that results in the inability to provide for an immediate execution against displayed volume, orders displayed on that marketplace would not be "protected orders" as defined in the Instrument.

After considering the comments received, we are finalizing those proposals with certain non-material changes in response to requests by a number of commenters to clarify the language of the amendment. These changes are designed to provide greater clarity around how we interpret the definition of "automated trading functionality" in the Instrument and the types of factors considered in determining whether a marketplace offers the ability for an "immediate" execution.

5. Data Fees Methodology

To provide for a transparent process for regulatory oversight of real-time professional market data fees, we are finalizing and formally adopting the Data Fees Methodology proposed in the 2014 Notice, and currently being used informally in the review of professional market data fees in Ontario.

As discussed in the 2014 Notice, the Data Fees Methodology estimates a fee or fee range for top-of-book (Level 1) and depth-of-book (Level 2) market data for each marketplace based on their contribution to price discovery and trading activity.

The Data Fees Methodology has a three step approach that involves:

- the calculation of pre- and post-trade metrics;
- a ranking of marketplaces on a relative basis; and
- an estimation of a fee or fee range for the professional market data fees charged by each marketplace based on a reference amount.

Where relevant to the calculations, the pre-trade metrics will include quotes displayed across all Canadian marketplaces whether these orders are considered protected or unprotected for the purposes of OPR.

The Data Fees Methodology will be used to assess the relative value of real-time market data feeds provided by each marketplace to its professional data subscribers, and will be applied in the context of:

(a) an annual review of professional market data fees charged by each marketplace for both Level 1 and Level 2 data feeds and reapproval where fees are determined to be unreasonably high; and

(b) the review and approval of any changes to Level 1 and Level 2 professional market data fees proposed by marketplaces.

Subsection 3.2(5) of National Instrument 21-101 *Marketplace Operation* requires each recognized exchange and alternative trading system (ATS) to file an updated and consolidated Form NI 21-101F1 or Form NI 21-101F2 within 30 days after the end of each calendar year. In Ontario, the OSC will apply the Data Fees Methodology to the Level 1 and Level 2 professional market data fees submitted in that consolidation under Exhibit L – *Fees*, to determine if the marketplace's fees are higher than the range identified through the Data Fees Methodology.

The Data Fees Methodology will apply to all marketplaces regardless of their protected or unprotected status. This is because we believe it is appropriate to maintain a level of oversight and ensure a consistent balance across all marketplaces, between the value assessed using the Data Fees Methodology and the associated fees that are charged for data. This is particularly important in the context of compliance with applicable best execution requirements.

(i) Changes to the Proposed Data Fee Methodology

We note that although the general approach to market data fees has not changed relative to that proposed in the 2014 Notice, to reflect stakeholders' comments and our ongoing observations, the Data Fees Methodology has been adjusted as discussed below. For more detailed information, please refer to Appendix A-2 of the 2014 Notice, and Annex F to this notice.

(a) Pre- and Post- trade Metrics

Appendix A-2 to the 2014 Notice detailed a number of specific metrics, both pre- and post-trade which would be used to rank the relative contribution of each marketplace to price discovery and trading activity. One such metric, referred to as "$Time(equal)", would measure a marketplace's contribution to the depth of liquidity quoted at the best bid and offer. Concerns have been expressed by stakeholders that the use of this

specific metric in a ranking model would inflate the ranking of marketplaces that display quotes in illiquid securities and could be subject to manipulation. Given these concerns, this specific pre-trade metric and the ranking model that uses it (discussed below) will no longer be included in the Data Fees Methodology.

One proposed post-trade metric, referred to as "Scope of Trading," measured the number of symbols traded on each marketplace. In the 2014 Notice we identified certain disadvantages or downsides to the use of this metric in a ranking model, specifically that it might disproportionately advantage marketplaces with significant market share and disadvantage smaller competitors or new entrants. The use of the metric could also "double penalize" marketplaces that do not trade all securities, and could potentially be manipulated. Given further consideration, we have excluded the "Scope of Trading" metric from the ranking model in which it is used (discussed below). However, we will continue to use this metric independently of the ranking model to better understand the range of securities traded on each marketplace compared to all securities traded across all marketplaces.

(b) Ranking Models

Appendix A-2 to the 2014 Notice set out the proposed relative ranking models for marketplaces. Concerns were raised by commenters with respect to one ranking model, referred to as the "SIP(equal),[8]" that uses the "$Time(equal)" metric discussed above. Specifically, commenters indicated that this ranking model would weigh the various pre-trade metrics it uses equally, rather than on the basis of value traded. Further, this ranking model would not distinguish between stocks that trade often and those that rarely trade, and as a result, would inflate the ranking of those marketplaces that trade in illiquid securities. Based on the concerns identified, we have excluded this ranking model from the Data Fees Methodology.

Further to the ranking models and as discussed above, in order to ensure that all marketplaces are treated fairly in the relative ranking process, we have adjusted the formula used for one specific ranking model, referred to as "Model 3," to specifically exclude the "Scope of Trading" metric that we initially proposed to use in its calculation.

(c) Interim Reference Benchmark

In the 2014 Notice, we also highlighted two potential references (domestic and international) that could be used to allocate an estimated fee or fee range to a marketplace. We noted at that time that selecting the appropriate reference was a key element in ensuring the appropriate application of the Data Fee Methodology.

It is our intention to retain external assistance to determine the appropriate benchmark in the coming months. In the interim, we will apply the *domestic reference,* as described in the 2014 Notice, which aggregates the market data fees charged by all marketplaces

[8] The SIP(equal) model is based on metrics used by the U.S. Securities Information Processor.

into a single “pool” and then redistributes the amount based on the ranking models obtained through the Data Fee Methodology.

We recognize the concerns raised that existing fees are too high and a domestic benchmark based on an aggregated amount may be unreasonable. Despite this, we are of the view that we need to formally implement the Data Fee Methodology in order to manage existing fee levels. While the methodology will be used to address fees that are determined to be unreasonably high, we will not apply the methodology or the benchmark to support fee increases until such time as the appropriate benchmark has been established.

(d) Non-professional Market Data User Fees

We indicated in the 2014 Notice that we were concerned about the level of real-time market data fees charged by marketplaces to non-professional data users in Canada. We also indicated that we were considering either a cap on non-professional data fees at a rate set as a percentage of that marketplace’s reviewed and/or approved professional data subscriber rate, or the development of a methodology similar to the one applied to professional data users.

We will continue to monitor any developments in relation to the market data fees charged to non-professional users and will consider whether any action is necessary in the future.

6. Best Execution Obligations and Disclosure

We are finalizing changes to 23-101CP that will introduce guidance designed to provide greater clarity for dealers with respect to best execution and accessing marketplaces that a dealer is not required to access for purposes of regulatory compliance.

Further related to best execution, in the 2014 Notice we proposed amendments that would introduce new disclosure requirements for dealers regarding their best execution policies. This disclosure relates primarily to order handling / routing and potential conflicts of interest, and would ensure that clients are provided with a minimum level of information to assist in making informed decisions regarding the use of a dealer’s services.

We are not finalizing the proposed amendments in relation to dealer best execution disclosure at this time. On December 10, 2015, IIROC published for comment *Proposed Provisions Respecting Best Execution* and related guidance[9]. The proposed IIROC amendments would update and consolidate best execution requirements in both the Universal Market Integrity Rules (UMIR) and Dealer Member Rules (DMR) into a single Dealer Member Rule respecting best execution. The updates as proposed would serve to assist dealers in complying with best execution obligations in a multiple marketplace

[9] Published at: http://www.iiroc.ca/Documents/2015/8df7a02c-4491-4fd0-b317-4c90bdc722a2_en.pdf

environment, and would reflect the amendments proposed in the 2014 Notice by the CSA.

We believe that delaying the finalization of the amendments proposed in the 2014 Notice related to dealer best execution disclosure will allow us to benefit from any comments received in relation to the proposed IIROC amendments.

7. Pilot Study on Prohibition on Payment of Rebates by Marketplaces

In the 2014 Notice, we expressed our intention to move forward with a pilot study that would examine the impact of disallowing the payment of rebates by Canadian marketplaces. We stated our view that the payment of rebates by a marketplace, or any other entity, impacts behaviours of marketplace participants in ways which may be contributing to increased fragmentation and segmentation of order flow, distorting the rationale for investment or trading decisions, and creating unnecessary conflicts of interest for dealer routing decisions that may be difficult to manage.

Although we continue to believe that a pilot study would be useful to determine what, if any, impact would result from disallowing the payment of rebates by marketplaces, significant issues have been raised both in the context of the comment process as well as through follow-on meetings with both industry participants and academics. The primary issue relates to the inclusion of Inter-listed Securities in a pilot study, and the potential negative consequences if a similar pilot was not also implemented in the U.S. We share the concerns raised about the potential loss or migration of liquidity in Inter-listed Securities if we were to proceed absent similar regulatory requirements in the U.S. We considered operating a pilot study that would exclude Inter-listed Securities but given their significance in terms of volume and value of trading activity[10], we are not certain that such a study would provide meaningful results. We will continue to monitor regulatory trends and liaise with our U.S. regulatory colleagues, and will consider the possibility of a joint pilot if and when such an opportunity arises.

[10] Based on 2015 data, we estimate that trading in Inter-listed Securities in Canada represented approximately 28% of total volume and approximately 56% of total value (source: Bloomberg).