

March 31, 2025

**VIA EMAIL**

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Commission  
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To:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince  
Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service Newfoundland and Labrador  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office Dear

**Re:      *Comments on CSA Staff Notice 11-348***

Thank you for the opportunity to comment on the CSA Staff Notice 11-348 (the Notice). We agree that technology, and in this case, artificial intelligence, has the potential to change the way participants in the Canadian capital markets carry out their business. As a result, it is important to understand the risks that those changes bring and whether securities laws in Canada are robust enough to address them.

## General Comments

From a marketplace standpoint, the CSA has historically addressed the risks associated with the adoption of and reliance on technology in the Marketplace Rules and recognition orders, which have imposed principles-based requirements that are adaptable to changes in technology. For example, Part 12 of National Instrument 21-101 requires that the marketplace develop and maintain adequate internal and technology controls for critical systems, including those for information security, cyber resilience and change-management. The specific list is not exhaustive. We note that technology has long been a focus of the operational risk management adopted by CSE.

Before using AI for any of its critical systems, a marketplace should conduct its due diligence (assuming it is retaining a third party and not building in-house) and understand the functionality and the risks associated with its use. The ROs already mandate that the CSE conduct an annual risk assessment and a plan for addressing those risks. As part of that process, any implementation of AI would be assessed, evaluated and monitored on an ongoing basis.

In the Notice, we note the comment that

*Where marketplaces choose to deploy AI systems, they must comply with the requirements in Part 12 of NI 21-101, even when using an AI system that is not built in-house. Staff expects that a marketplace will comply with these requirements and any use of AI systems will be reviewed as part of the marketplace's periodic review processes, including, but not limited to, independent systems reviews and vulnerability assessments. Specific expertise should be required to perform these assessments due to the increased levels of complexity and scale of AI systems.*

We ask for clarity regarding what 'specific expertise' is expected. In our view, the assessment of the controls applicable to the use of AI in critical systems by an independent auditor in the context of the Independent Systems Review would be the same as for other areas.

## Manipulation and Fraud

One consideration is the implications of the use of AI on provisions or prohibitions that require evidence of intent. When a pattern of manipulation is found to be the outcome of AI

usage, how do regulators prove that the person or company engaging in the act or practice or course of conduct “knows or reasonably ought to know” that it would result in “a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or perpetrates a fraud on any person or company.”

We question how this could be enforced. A possible approach may be to impose strict liability on the person or company adopting the AI for trading decisions or routing and that the violation is triggered based on the outcome of the AI decision or direction.

### **Response to specific questions**

1-2 – CSE is of the view that no new rules are necessary. The rules applicable to marketplaces are broad enough to accommodate use cases for AI.

9. The outsourcing provisions applicable to marketplaces are sufficient to manage the outsourcing of AI. Should the regulators desire to keep track as the trend continues, a change could be made to the Form 21-101F1 to ask marketplaces to identify the use of AI in critical systems (which would include cyber monitoring or network monitoring).

10. The use of AI is just another advancement in the use of technology. Right-sized risk management should be undertaken – but we note that there are requirements on most entities that are systemically important to manage risks of using technology and thus, AI.

If you have any questions, please do not hesitate to contact me at [REDACTED] or by email at [REDACTED]

Sincerely,

[REDACTED]

Tracey Stern

Chief Legal Officer, General Counsel and Corporate Secretary