AMENDMENTS TO *POLICY STATEMENT TO REGULATION 21-101 RESPECTING MARKETPLACE OPERATION*

1. *Policy Statement to Regulation 21-101 respecting Marketplace Operation* is amended by inserting, after section 1.3, the following:

"**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.".

2. Section 2.1 of the Policy Statement is amended :

(1) by replacing, in paragraph (1) of the French text, the word "couplent" with the word "apparient" and the words "alinéas" and "l'alinéa" with, respectively, the words "paragraphes" and "le paragraphe";

(2) by replacing, wherever they appear in paragraph (7), "IDA" with "IIROC", "By-law No. 36" with "Rule 36" and "Regulation 2100" with "Rule 2100".

3. Section 3.4 of the Policy Statement is amended:

(1) by replacing, in paragraph (3) of the French text, the words "l'alinéa" with the words "le paragraphe";

(2) by replacing, in paragraph (4) of the French text, the words "l'alinéa" with the words "le paragraphe";

(3) by replacing, in paragraph (5), "IDA" with "IIROC" and, in the French text, the words "L'alinéa" with the words "Le paragraphe".

4. Paragraph (6) of section 6.1 of the Policy Statement is amended by replacing the words "any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers." with the words "a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.".

5. Section 7.1 of the Policy Statement is replaced with the following:

"**7.1. Access Requirements**

(1) Section 5.1 of the Regulation 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 Regulation 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 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" in subsection (b) includes a system or facility that is operated by a person and a person that obtains access through a member or user.

(3) The reference to "services" in paragraph 5.1(b) of the Regulation means all services that may be offered to a person 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 Regulation. 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.".

6. Section 8.2 of the Policy Statement is replaced with the following:

"**8.2. Access Requirements**

(1) Section 6.13 of the Regulation 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 Part 6 of Regulation 23-101, an ATS should permit fair and efficient access to

(a) a subscriber that directly accesses the ATS,

(b) a person 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" in subsection (b) includes a system or facility that is operated by a person and a person that obtains access through a subscriber that is a dealer.

(3) The reference to "services" in paragraph 6.13(b) of the Regulation means all services that may be offered to a person 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 Regulation. 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.".

7. Section 9.1 of the Policy Statement is amended:

(1) by replacing the first two sentences of paragraph (1) with the following:

"Subsection 7.1(1) of the Regulation requires a marketplace that displays orders of exchange-traded securities to any person 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.";

(2) by replacing paragraph (2) with the following:

"(2) In complying with sections 7.1 and 7.2 of the Regulation, a marketplace should not make the required order and trade information available to any other person 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.".

8. The Policy Statement is amended by inserting, after section 10.1, the following, and renumbering section 10.2, which becomes section 10.3:

"**10.2. Availability of Information**

In complying with the requirements in sections 8.1 and 8.2 of the Regulation 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 on a more timely basis than it makes that information available to the information processor or information vendor.".

9. The Policy Statement is amended by inserting, after section 12.1, the following:

"**12.2. Discriminatory Terms**

Section 10.2 of the Regulation 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.".

10. The Policy Statement is amended by replacing section 13.2 with the following:

"**13.2. Synchronization of Clocks**

Subsections 11.5(1) and (2) of the Regulation 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 Regulation 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.".

11. Section 14.1 of the Policy Statement is replaced with the following:

"**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 Regulation.

(1) Paragraph 12.1(a) of the Regulation 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 Regulation 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 Regulation 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 Regulation. A qualified party is a person or a group of persons 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.

(4) Under section 15.1 of the Regulation, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the requirement to engage a qualified party to conduct an annual independent systems review and prepare a report under subsection 12.2(1) of the Regulation provided that the marketplace prepare a control self-assessment and file this self-assessment with the regulator or in Québec, the securities regulatory authority. The scope of the self-assessment would be similar to the scope that would have applied if the marketplace underwent an independent systems review. Reporting of the self-assessment results and the timeframe for reporting would be consistent with that established for an independent systems review.

In determining if the exemption is in the public interest, 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.

14.2. Availability of Technology Specifications and Testing Facilities

(1) Subsection 12.3(1) of the Regulation 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 Regulation 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 Regulation 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.”.

12. Section 16.1 of the Policy Statement is amended by replacing paragraph (2) with the following:

“(2) An information processor is required under subsection 14.4(2) of the Regulation 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 Regulation 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 group of persons on a more timely basis than is afforded to others, and will not show preference to any single person or group of persons in relation to pricing.".

13. Subparagraph (b) of paragraph (1) of section 16.2 of the Policy Statement is amended by deleting "which are not unreasonably discriminatory".

14. The Policy Statement is amended by inserting, after section 16.3, the following:

"**16.4. System Requirements**

Section 14.1 of this Policy Statement contains guidance on the systems requirements as it applies to an information processor.".