

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

### **PART 1 INTRODUCTION**

#### **1.1. Introduction**

~~Traditionally, the Canadian securities regulatory authorities have regulated securities markets by regulating dealers, exchanges and, in some jurisdictions Exchanges, quotation and trade reporting systems. In recent years, particularly in the United States, new types of markets have emerged that take different forms and trade securities in a different manner than on those markets. These entities are referred to as alternative trading systems. While the existing regulatory system will generally apply to the activities of these markets, there are instances where the existing regulatory system needs to be supplemented. Accordingly, and ATSS are marketplaces that provide a market facility or venue on which securities can be traded. The areas of interest from a regulatory perspective are in many ways similar for each of these marketplaces since they may have similar trading activities. The regulatory regime for exchanges and quotation and trade reporting systems arises from the securities legislation of the various jurisdictions. Exchanges and quotation and trade reporting systems are recognized under orders from the Canadian securities regulatory authorities have adopted Regulation 21-101 Respecting, with various terms and conditions of recognition. ATSS, which are not recognized as exchanges or quotation and trade reporting systems, are regulated under Regulation 21-101 respecting Marketplace Operation (the "Regulation") to create an appropriate regulatory regime to deal with these new types of markets and to supplement the regime applicable to exchanges and quotation and trade reporting systems.) and Regulation 23-101 respecting Trading Rules (Regulation 23-101). The Regulations, which were adopted at a time when new types of markets were emerging, provide the regulatory framework that allows and regulates the operation of multiple marketplaces.~~

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

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

#### **1.2. Definition of Exchange-Traded Security**

Section 1.1 of the Regulation defines an "exchange-traded security" as a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of ~~the Regulation 21-101 and Regulation 23-101 Respecting Trading Rules ("Regulation 23-101"). and Regulation 23-101.~~

~~If a security trades on a recognized exchange or recognized quotation and trade reporting system on a "when issued" basis, as defined in IIROC's Universal Market Integrity Rules, the security would be considered to be listed on that recognized exchange or quoted on that recognized quotation and trade reporting system and would therefore be an exchange-traded security.~~

~~If no "when issued" market has been posted by a recognized exchange or recognized quotation and trade reporting system for a security, an ATS may not allow this security to be traded on a "when issued" basis on its marketplace.~~

A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed on a foreign exchange or quoted on a foreign quotation and trade reporting system, ~~and~~but is not listed or quoted on a domestic exchange or

quotation and trade reporting system, falls within the definition of “foreign exchange-traded security”.

#### ~~1.3~~ **1.3. Definition of Foreign Exchange-Traded Security**

The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at [www.iosco.org](http://www.iosco.org).

#### **1.4. Definition of Regulation Services Provider**

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

### **PART 2 MARKETPLACE**

#### ~~2.1~~ **2.1. Marketplace**

(1) The Regulation uses the term “marketplace” to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Paragraphs (c) and (d) of the definition of “marketplace” describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders of exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of “marketplace” and an ATS.<sup>22</sup>

(2) Two of the characteristics of a “marketplace” are

- (a) that it brings together orders for securities of multiple buyers and sellers; and
- (b) that it uses established, non-discretionary methods under which the orders interact with each other.

(3) The Canadian securities regulatory authorities consider that a person brings together orders for securities if it

- (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or
- (b) receives orders centrally for processing and execution (regardless of the level of automation used).

(4) The Canadian securities regulatory authorities are of the view that “established, non-discretionary methods” include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be “established, non-discretionary methods.”

(5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Regulation:

~~1.(a)~~ A system operated by a person that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors. ~~This does not include a dealer referred to in subsection (7) below.~~

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

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

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

(6) A person operating any of the systems described in subsection (5) should consider whether the person is ~~trading for the purposes of securities legislation and is~~ required to be registered as a dealer under securities legislation.

(7) Inter-dealer bond brokers that conduct traditional inter-dealer bond broker activity have a choice as to how to be regulated under the Regulation and Regulation 23-101. Each inter-dealer bond broker can choose to be subject to IROC Rule 36 and IROC Rule 2100, fall within the definition of inter-dealer bond broker in the Regulation and be subject to the transparency requirements of Part 8 of the Regulation. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Regulation and Regulation 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to Rule 36 or IROC Rule 2100, but will be subject to all other IROC requirements applicable to a dealer.

(8) Section 1.2 of the Regulation contains an interpretation of the definition of “marketplace”. The Canadian securities regulatory authorities do not consider a system that only routes unmatched orders to a marketplace for execution to be a marketplace. If a dealer uses a system to match buy and sell orders or pair orders with contra-side orders outside of a marketplace and route the matched or paired orders to a marketplace as a cross, the Canadian securities regulatory authorities may consider the dealer to be operating a marketplace under paragraph (c) of the definition of “marketplace”. The Canadian securities regulatory authorities encourage dealers that operate or plan to operate such a system to meet with the applicable securities regulatory authority to discuss the operation of the system and whether the dealer’s system falls within the definition of “marketplace”.

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

#### ~~3.1~~ **3.1. Exchange**

(1) ~~Canadian securities~~ Securities legislation of most jurisdictions does not define the term “exchange”.

(2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

(a) requires an issuer to enter into an agreement in order for the issuer’s securities to trade on the marketplace, i.e., the marketplace provides a listing function;

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis.

For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;

(c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or

(d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.

(3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

(4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

### **3.23.2. Quotation and Trade Reporting System**

(1) ~~Canadian securities~~Securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under ~~Canadian~~ securities legislation in those jurisdictions as a person, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.

(2) A quotation and trade reporting system is considered to have "quoted" a security if

(a) the security has been subject to a listing or quoting process, and

(b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

### **3.33.3. Definition of an ATS**

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

(a) requiring listing agreements,

(b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,

(c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and

(d) disciplining subscribers.

A marketplace, other than a quotation and trade reporting system, that engages in any of these activities or meets these criteria would, in the view of the Canadian securities regulatory authorities, be an exchange and would have to be recognized as such in

order to carry on business, unless exempted from this requirement by the securities regulatory authorities.

(2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be “requirements governing the conduct of subscribers”.

(3) A marketplace that would otherwise meet the definition of an ATS in the Regulation may apply to the Canadian securities regulatory authorities for recognition as an exchange.

#### **3.4.3.4. Requirements Applicable to ATSS**

(1) Part 6 of the Regulation applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Regulation and Regulation 23-101. If an ATS is recognized as an exchange, the provisions of the Regulation relating to marketplaces and recognized exchanges apply.

(2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.

(3) Under ~~subsection~~paragraph 6.1(a) of the Regulation, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Regulation and Regulation 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under ~~Canadian~~ securities legislation, including, the requirements imposed by the Regulation and Regulation 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.

(4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under ~~subsection 6.1(a)~~paragraph 6.1(a) and all other requirements in the Regulation and in Regulation 23-101 of the Regulation and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.

(5) ~~Subsection~~Paragraph 6.1(b) of the Regulation prohibits an ATS to which the provisions of the Regulation apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IIROC is the only entity that would come within the definition.

(6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Regulation), because of the fact that it is also a marketplace and different considerations apply.

(7) Subsection 6.7(1) of the Regulation requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS, and its structure and operations in order to consider whether the person operating the ATS should be considered to be an exchange for purposes of securities

legislation ~~or if additional terms and conditions should be placed on the registration of the ATS.~~ The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having significant market dominance over presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) ~~and section 12.2~~ of the Regulation are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, ~~preferred securities~~, debt securities or options.

(8) Any marketplace that is required to provide notice under section 6.7 of the Regulation will determine the calculation based on publicly available information.

~~(9) Subsections 6.10(2) and 6.11(2) of the Regulation require an ATS to obtain an acknowledgement from its subscribers. The acknowledgement may be obtained in a number of ways, including requesting the subscriber's signature or requesting that the subscriber initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the subscriber has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the ATS to ensure that an acknowledgement is obtained from the subscriber in a timely manner. (paragraph deleted).~~

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

##### **4.1.1 Recognition as an Exchange or Quotation and Trade Reporting System**

(1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.

(2) In ~~exercising this discretion~~ determining whether it is in the public interest to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities will look at a number of factors, including

(a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Regulation;

(b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;

(c) whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions; ~~and~~

(d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors;

(e) whether the exchange or quotation and trade reporting system has policies and procedures to effectively identify and manage conflicts of interest arising from its operation or the services it provides;

(f) whether the requirements of the exchange or quotation and trade reporting system relating to access to its services are fair and reasonable; and

(g) whether the exchange or quotation and trade reporting system's process for setting fees is fair, transparent and appropriate, and whether the fees are equitably allocated

among the participants, issuers and other users of services, do not have the effect of creating barriers to access and at the same time ensure that the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions.

#### 4.2. Process

Although the basic requirements or criteria for recognition of an exchange or quotation and trade reporting system may be similar in various jurisdictions, the precise requirements and the process for seeking a recognition or an exemption from recognition in each jurisdiction is determined by that jurisdiction.

### **PART 5 ORDERS**

#### **5.1. Orders**

(1) The term “order” is defined in section 1.1 of the Regulation as a firm indication by a person, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying “orders”. However, if those prices or quantities are implied and determinable, for example, by knowing the features of the marketplace, the indications of interest may be considered an order.

(2) The ~~label put on a transaction~~terminology used is not determinative of whether ~~the transaction~~an indication of interest constitutes an order. Instead, whether or not an indication is “firm” will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person entering the indication and the counterparty (i.e. the indication is “actionable”). The Canadian securities regulatory authorities would consider an indication of interest to be actionable if it includes sufficient information to enable it to be executed without communicating with the marketplace participant that entered the order. Such information may include the symbol of the security, side (buy or sell), size, and price. The information may be explicitly stated, or it may be implicit and determinable based on the features of the marketplace. Even if the person must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated or an implied price, based on understandings or past dealings, will be viewed as an order.

(3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Regulation, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.

(4) The securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of the Regulation to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties provided that

(a) order details are shown only to the negotiating parties,

(b) other than as provided by paragraph (a), no actionable indication of interest or order is displayed by either party or the marketplace, and

(c) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Regulation.

(5) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

**PART 6 ~~FORMS FILED BY MARKETPLACES~~ MARKETPLACE INFORMATION AND FINANCIAL STATEMENTS**

**6.4.6.1. Forms Filed by Marketplaces**

~~(1) Subsection 3.1(1) of the Regulation requires an applicant for recognition as an exchange to file Form 21-101F1. This subsection does not apply to an exchange that was recognized before the Regulation came into force.~~ (1) The definition of marketplace includes exchanges, quotation and trade reporting systems and ATSS. The legal entity that is recognized as an exchange or quotation and trade reporting system, or registered as a dealer in the case of an ATS, owns and operates the market or trading facility. In some cases, the entity may own and operate more than one trading facility. In such cases the marketplace may file separate forms in respect of each trading facility, or it may choose to file one form covering all of the different trading facilities. If the latter alternative is chosen, the marketplace must clearly identify the facility to which the information or changes apply.

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

~~(3) Under subsection 3.2(1) of the Regulation, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to the information provided in Form 21-101F1, in each case, in the manner set out in Form 21-101F1. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, G, I, J, K, M, N, P and Q of Form 21-101F1. This is also applicable to recognized quotation and trade reporting systems under subsection 4.2(1) of the Regulation.~~ (3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and market participants to be better informed as to how securities trade on the marketplace.

(4) Under subsection 3.2(1) of the Regulation, a marketplace is required to file an amendment to the information provided in Form 21-101F1 or Form 21-101F2, as applicable, at least 45 days prior to implementing a significant change. The Canadian securities regulatory authorities consider a significant change to be a change that could significantly impact a marketplace, marketplace participants, investors, or the Canadian capital markets. The Canadian securities regulatory authorities would consider significant changes to include:

(a) changes in the structure of the marketplace, including procedures governing how orders are entered, displayed (if applicable), executed, how they interact, are cleared and settled;



(b) new or changes to the services provided by the marketplace, including the hours of operation

(c) new or changes to the means of access to the market or facility and its services;

(d) new or changes to order types;

(e) new or changes to types of securities traded on the marketplace;

(f) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;

(g) new or changes to types of marketplace participants;

(h) changes to the systems and technology used by the marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity;

(i) changes to the governance of the marketplace, including the structure of its board of directors and changes in the board committees and their mandates;

(j) changes in control over marketplaces;

(k) changes in affiliates that provide services to or on behalf of the marketplace;

(l) new or changes in outsourcing arrangements for key marketplace services or systems;

(m) new or changes in custody arrangements; and

(n) changes in fees and the fee model of the marketplace.

(5) Significant changes would not include changes to information in Form 21-101F1 or Form 21-101F2, that

(a) would not have an impact on the marketplace's market structure or marketplace participants, investors, issuers or the capital markets; or

(b) are housekeeping or administrative changes such as

(i) changes in the routine processes, policies, practices, or administration of the marketplace,

(ii) changes due to standardization of terminology,

(iii) corrections of spelling or typographical errors,

(iv) necessary changes to conform to applicable regulatory or other legal requirements, and

(v) minor system or technology changes that would not significantly impact the system or its capacity.

Such changes would be filed in accordance with the requirements outlined in subsection 3.2(3) of the Regulation.

(6) The Canadian securities regulatory authorities generally consider a change in a marketplace's fees or fee structure to be a significant change. However, the Canadian

securities regulatory authorities recognize that in the current, competitive multiple marketplace environment, which may at times require that frequent changes be made to the fees or fee structure of marketplaces, marketplaces may need to implement fee changes within tight timeframes. To facilitate this process, subsection 3.2(2) of the Regulation provides that marketplaces may provide information describing the change in fees or fee structure in a shorter timeframe, at least seven business days before the expected implementation date of the change in fees or fee structure.

~~(4) — A recognized exchange or recognized quotation and trade reporting system that files amendments to the information provided in Form 21-101F1 should number each filing consecutively.~~ (7) — For the changes referred to in subsection 3.2(3) of the Regulation, the Canadian securities regulatory authorities may review these filings to ascertain the appropriateness of the categorization of such filings. The marketplace will be notified in writing if there is disagreement with respect to the categorization of the filing.

~~(5) — Securities legislation or the terms and conditions of the recognition of the exchange or quotation and trade reporting system may require that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority.~~ ~~(8) The Canadian securities regulatory authorities will make best efforts to review amendments to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of the Regulation. However, where the changes are complex, raise regulatory concerns, or when additional information is required, the period for review may exceed these timeframes. The Canadian securities regulatory authorities will review changes to the information in Forms 21-101F1 and 21-101F2 in accordance with staff practices in each jurisdiction.~~

~~(6) — Under subsection 6.4(2) of the Regulation, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F2, an ATS is required to file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2. The Canadian securities regulatory authorities consider that a significant change includes a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.~~

~~(7) — Subsection 6.4(4)~~ (9) Section 3.3 of the Regulation requires ~~an ATS~~ a marketplace to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).

## 6.2. Filing of Financial Statements

Part 4 of the Regulation sets out the financial reporting requirements applicable to marketplaces. Subsections 4.1(2) and 4.2(2) respectively require an ATS to file audited financial statements initially, together with Form 21-101F2, and on an annual basis thereafter. These financial statements may be in the same form as those filed with IIROC. The annual audited financial statements may be filed with the Canadian securities regulatory authorities at the same time as they are filed with IIROC.

## PART 7 — MARKETPLACE REQUIREMENTS

### 7.1. Access Requirements

~~(8) — If an ATS files notice of its intention to carry on exchange activities pursuant to section 6.6 of the Regulation, and the ATS intends to begin to carry on business as an exchange, the ATS is required to file Form 21-101F1.~~

~~6.2 — Forms Filed in Electronic Format~~

~~The Canadian securities regulatory authorities request that all forms and exhibits required to be filed under the Regulation be filed in electronic format, where possible.~~

~~PART 7 — CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS~~

~~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~~marketplace. The Canadian securities regulatory authorities note that the requirements regarding access for ~~members~~marketplace participants do not restrict the ~~authority of a recognized exchange or recognized quotation and trade reporting system to maintain~~marketplace from maintaining reasonable standards for access. The purpose of these access requirements is to ensure that rules, policies, procedures, ~~and fees and practices of the exchange or quotation and trade reporting system, as applicable, of the marketplace~~ do not unreasonably create barriers to access to the services provided by the ~~exchange or quotation and trade reporting system~~marketplace.

(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~~marketplace should permit fair and efficient access to

(a) a ~~member or user~~marketplace participant that directly accesses the ~~exchange or quotation and trade reporting system~~marketplace,

(b) a person that is indirectly accessing the ~~exchange or quotation and trade reporting system~~marketplace through a ~~member or user~~marketplace participant, or

(c) ~~a~~ another marketplace routing an order to the ~~exchange or quotation and trade reporting system~~marketplace.

The reference to “a person” in ~~subsection~~paragraph (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~~section 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 ~~and includes co-location~~.

(4) ~~Recognized exchanges and recognized quotation and trade reporting systems~~Marketplaces that send indications of interest to a selected smart order router or other system should send the information to other smart order routers or systems to meet the fair access requirements of the Regulation.

(5) Marketplaces 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~~marketplace should consider a number of factors, including

(a) the value of the security traded,

(b) the amount of the fee relative to the value of the security traded,

(c) the amount of fees charged by other marketplaces to execute trades in the market,

(d) with respect to market data fees, the amount of market data fees charged relative to the market share of the ~~exchange or quotation and trade reporting system~~marketplace, and,

(e) with respect to order-execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.

The Canadian securities regulatory authorities will consider these factors, among others, in determining whether the fees charged by a ~~recognized exchange or recognized quotation and trade reporting system~~ marketplace unreasonably condition or limit access to its services. With respect to trading fees, ~~our view is~~ it is the view of the Canadian securities regulatory authorities that a trading fee equal to or greater than the minimum trading increment as defined in IIROC's Universal Market Integrity Rules, as amended, would unreasonably condition or limit access to a ~~recognized exchange's or recognized quotation and trade reporting system~~ marketplace's services as it would be inconsistent with the policy goals of order protection. Trading fees below the minimum trading increment may also unreasonably condition or limit access to a ~~recognized exchange's or recognized quotation and trade reporting system~~ marketplace's services when taking into account factors including those listed above.

## 7.2. Public Interest Rules

Section 5.3 of the Regulation sets out the requirements applicable to the rules, policies and similar instruments adopted by recognized exchanges and recognized quotation and trade reporting systems. These requirements acknowledge that recognized exchanges and quotation and trade reporting systems perform regulatory functions. The Regulation does not require the application of these requirements to an ATS's trading requirements. This is because, unlike exchanges, ATSs are not permitted to perform regulatory functions, other than setting requirements regarding conduct in respect of the trading by subscribers on the marketplace, i.e. requirements related to the method of trading or algorithms used by their subscribers to execute trades on the system. However, it is the expectation of the Canadian securities regulatory authority that the requirement in section 5.7 of the Regulation that marketplaces take reasonable steps to ensure they operate in a manner that does not interfere with the maintenance of fair and orderly markets, applies to an ATS's requirements. Such requirements may include those that deal with subscriber qualification, access to the marketplace, how orders are entered, interact, execute, clear and settle.

### 7.2.7.3. Compliance Rules

Section 5.4 of the Regulation requires a recognized exchange and recognized quotation and trade reporting system to have appropriate procedures to deal with violations of rules, policies or other similar instruments of the exchange or quotation and trade reporting system. This section does not preclude enforcement action by any other person, including the Canadian securities regulatory authorities or the regulation services provider.

### 7.2.7.4. Filing of Rules

Section 5.5 of the Regulation requires a recognized exchange and recognized quotation and trade reporting system to file all rules, policies and other similar instruments and amendments as required by the securities regulatory authority. Initially, all rules, policies and other similar instruments will be reviewed before implementation by the exchange or quotation and trade reporting system. ~~It is the intention of~~ Subsequent to recognition, the securities regulatory authority ~~to~~ may develop and implement a protocol that will set out the procedures to be followed with respect to the review and approval of rules, policies and other similar instruments and amendments.

## ~~PART 8~~ REQUIREMENTS ONLY APPLICABLE TO ATSs

### 7.5. Review of Rules

The Canadian securities regulatory authorities review the rules, policies and similar instruments of a recognized exchange or recognized quotation and trade reporting system in accordance with the recognition order and rule protocol issued by the jurisdiction in which the exchange or quotation and trade reporting system is recognized. The rules of recognized exchanges and quotation and trade reporting systems are included in their rulebooks, and

the principles and requirements applicable to these rules are set out in section 5.3 of the Regulation. For an ATS, whose trading requirements, including any trading rules, policies or practices, are incorporated in Form 21-101F2, any changes would be filed in accordance with the filing requirements applicable to changes to information in Form 21-101F2 set out in subsections 3.2(1) and 3.2(3) of the Regulation and reviewed by the Canadian securities regulatory authorities in accordance with staff practices in each jurisdiction.

#### 7.6. Fair and Orderly Markets

(1) Section 5.7 of the Regulation establishes the requirement that a marketplace take reasonable steps to ensure it operates in a way that does not interfere with the maintenance of fair and orderly markets. This applies both to the operation of the marketplace itself and to the impact of the marketplace's operations on the Canadian market as a whole.

(2) This section does not impose a responsibility on the marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or quotation and trade reporting system that has assumed responsibility for monitoring the conduct of its marketplace participants directly rather than through a regulation services provider. However, marketplaces are expected in the normal course to monitor order entry and trading activity for compliance with the marketplace's own operational policies and procedures. They should also alert the regulation services provider if they become aware that disorderly or disruptive order entry or trading may be occurring, or of possible violations of applicable regulatory requirements.

(3) Part of taking reasonable steps to ensure that a marketplace's operations do not interfere with fair and orderly markets necessitates ensuring that its operations support compliance with regulatory requirements including applicable rules of a regulation services provider. This does not mean that a marketplace must system-enforce all regulatory requirements. However, it should not operate in a manner that to the best of its knowledge would cause marketplace participants to breach regulatory requirements when trading on the marketplace.

#### 8.7.7. Confidential Treatment of Trading Information by ATSS

(1) Subsection ~~6.85.10~~ (2) of the Regulation provides that ~~an ATS~~ a marketplace shall not carry on business as ~~an ATS~~ a marketplace unless it has implemented reasonable safeguards and procedures to protect a ~~subscriber~~ marketplace participant's trading information. These include

(a) limiting access to the trading information of ~~subscribers~~ marketplace participants, such as the identity of ~~subscribers~~ marketplace participants and their orders, to those employees of, or persons retained by, the ~~ATS~~ marketplace to operate the system or to be responsible for its compliance with ~~Canadian~~ securities legislation; and

(b) having in place procedures to ensure that employees of the ~~ATS~~ marketplace cannot use such information for trading in their own accounts.

(2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ~~ATS~~ marketplace, whether or not they have direct responsibility for the operation of the ~~ATS~~ marketplace.

(3) Nothing in section ~~6.85.10~~ of the Regulation prohibits ~~an ATS~~ a marketplace from complying with ~~National Policy 41 Shareholder Communication, or its successor regulation Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer~~. This statement is necessary because an investment dealer that operates ~~an ATS~~ a marketplace may be an intermediary for the purposes of ~~National Policy 41, or its successor regulation, Regulation 54-101~~, and may be required to disclose information under that Regulation.

~~8.2 Access Requirements~~~~7.8. Management of Conflicts of Interest~~

~~(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. Marketplaces are required under section 5.11 of the Regulation to maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides. These may include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or its operators, referral arrangements and the responsibilities and sound functioning of the marketplace. For an exchange and quotation and trade reporting system, they may also include potential conflicts between the operation of the marketplace and its regulatory responsibilities.~~

~~(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 2) The marketplace’s policies should also take into account conflicts for owners that are marketplace participants. These may include inducements to send order flow to the marketplace to obtain a larger ownership position or to use the marketplace to trade against their clients’ order flow. These policies should be disclosed as provided in paragraph 10.1(e) of the Regulation.~~

- ~~— (a) the value of the security traded;~~
- ~~— (b) the amount of the fee relative to the value of the security traded;~~

~~7.9. Outsourcing~~

- ~~— (c) the amount of fees charged by other marketplaces to execute trades in the market;~~

~~Section 5.12 of the Regulation sets out the requirements that marketplaces that outsource any of their key services or systems to a service provider, which may include affiliates or associates of the marketplace, must meet. Generally, marketplaces are required to establish policies and procedures to evaluate and approve these outsourcing agreements. Such policies and procedures would include assessing the suitability of potential service providers and the ability of the marketplace to continue to comply with securities legislation in the event of the service provider’s bankruptcy, insolvency or termination of business. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facilities. The requirements~~

under section 5.12 of the Regulation apply regardless of whether the outsourcing arrangements are with third-party service providers, or with affiliates of the marketplaces.

~~— (d) with respect to market data fees, the amount of market data fees charged relative to the market share of the ATS, and;~~

## **PART 8 RISK DISCLOSURE TO MARKETPLACE PARTICIPANTS**

~~— (e) with respect to order execution terms, including fees, whether the outcome of their application is consistent with the policy goals of order protection.~~

### **8.1 Risk disclosure to marketplace participants**

~~— 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 HROC'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. Subsections 5.9(2) and 6.11(2) of the Regulation require a marketplace to obtain an acknowledgement from its marketplace participants. The acknowledgement may be obtained in a number of ways, including requesting the signature of the marketplace participant or requesting that the marketplace participant initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the marketplace participant has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that an acknowledgement is obtained from the marketplace participant in a timely manner.~~

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

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

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

(2) In complying with sections 7.1 and 7.2 of the 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.

(3) (paragraph deleted).

(4) (paragraph deleted).

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

## **PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES**

### **~~10.10.1.~~ Information Transparency Requirements for Unlisted Debt Securities**

(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Regulation does not apply until January 1, ~~2012~~, 2015. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.

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

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

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

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

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



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

(c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Regulation by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.<sup>27</sup>

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

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

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

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

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

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

(9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Regulation. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.<sup>28</sup>

## 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.

~~10.3~~ **10.3. Consolidated Feed**

Section 8.3 of the Regulation requires the information processor to produce a consolidated feed in real-time showing the information provided to the information processor.

**PART 11 MARKET INTEGRATION**~~11.5~~ **11.5. Market Integration**

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

**PART 12 ~~DISCLOSURE OF TRADING FEES FOR MARKETPLACES~~ TRANSPARENCY OF MARKETPLACE OPERATIONS**~~12.1 Disclosure of Trading Fees by Marketplaces~~  
**12.1. Transparency of Marketplace Operations**

~~Section 10.1 of the Regulation requires that each marketplace make its schedule of trading fees publicly available. The schedule should include all trading fees and provide the minimum and maximum fees payable for certain representative transactions. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose transaction fees does not require a combined price calculation by each marketplace.~~ (1) Section 10.1 of the Regulation requires that marketplaces make publicly available certain information pertaining to their operations and services. While section 10.1 sets out the minimum disclosure requirements, marketplaces may wish to make publicly available other information, as appropriate. Where this information is included in a marketplace's rules, regulations, policies and procedures or practices that are publicly available, the marketplace need not duplicate this disclosure.

(2) Paragraph 10.1(a) requires marketplaces to disclose publicly all fees, including listing, trading, co-location, data and routing fees charged by the marketplace, an affiliate or by a third party to which services have directly or indirectly been outsourced or which directly or indirectly provides those services. This means that a marketplace is expected to publish and make readily available the schedule(s) of fees charged to any and all users of these services, including the basis for charging each fee (e.g., a per share basis for trading fees, a per subscriber basis for data fees, etc.) and would also include any fee rebate or discount and the basis for earning the rebate or discount. ~~With respect to trading fees, it is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed in this context.~~

(3) Paragraph 10.1(b) requires marketplaces to disclose information on how orders are entered, interact and execute. This would include a description of the priority of execution for all order types and the types of crosses that may be executed on the marketplace. A marketplace should also disclose whether it sends information regarding indications of interest or order information to a smart order router.

(4) Paragraph 10.1(e) requires a marketplace to disclose its conflict of interest policies and procedures. For conflicts arising from the ownership of a marketplace by marketplace participants, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients at least quarterly. This is consistent with the marketplace participant's existing obligations to disclose conflicts of interest under Regulation 31-103 respecting Registration

Requirements, Exemptions and Ongoing Registrant Requirements. A marketplace should disclose if a marketplace or affiliated entity of a marketplace intends to trade for its own account on the marketplace against or in competition with client orders.

(5) Paragraph 10.1(f) requires marketplaces to disclose a description of any arrangements where the marketplace refers its participants to the services of a third-party provider where the marketplace receives some benefit (fee rebate, payment, etc.) if the marketplace participant uses the services of the third-party service provider, and has a potential conflict of interest.

#### ~~12.2.—Discriminatory Terms~~

(6) Paragraph 10.1(g) requires marketplaces that offer routing services to disclose a description of how routing decisions are made. The subsection applies whether routing is done by a marketplace-owned smart order router, by an affiliate of a marketplace, or by a third-party to which routing was outsourced.

~~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.~~

(7) Paragraph 10.1(h) applies to marketplaces that disseminate indications of interest or any information in order to attract order flow. The Regulation requires that these marketplaces make publicly available information regarding their practices regarding the dissemination of information. This would include a description of the type of information included in the indication of interest displayed, and the types of recipients of such information. For example, a marketplace would describe whether the recipients of an indication of interest are the general public, all of its subscribers, particular categories of subscribers or smart order routers operated by their subscribers or by third party vendors.

## **PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES**

### ~~13.1~~**13.1. Recordkeeping Requirements for Marketplaces**

Part 11 of the Regulation requires a marketplace to maintain certain records. Generally, under provisions of ~~Canadian~~ securities legislation, the ~~Canadian~~ securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.

### ~~13.2~~**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.

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

#### ~~14.1~~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, such as external auditors or third party information system consultants. Before engaging a qualified party, a marketplace should discuss its choice with the regulator or, in Québec, the securities regulatory authority.

(4) Paragraph 12.1(c) of the Regulation requires the marketplace to notify the regulator or, in Québec, the securities regulatory authority of any material systems failure. The Canadian securities regulatory authorities consider a failure, malfunction or delay to be "material" if the marketplace would in the normal course of operations escalate the matter to or inform its senior management ultimately accountable for technology. The Canadian securities regulatory authorities also expect that, as part of this notification, the marketplace will provide updates on the status of the failure, the resumption of service and the results of its internal review of the failure.

(5) Under section 15.1 of the Regulation, a regulator or the securities regulatory authority may consider granting a marketplace an exemption from the ~~requirement~~requirements 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 and the length of the exemption, the regulator or securities regulatory authority may consider a number of factors including: the market share of the marketplace, the timing of the last independent systems review, ~~and changes to systems or staff of the marketplace;~~ and whether the marketplace has experienced material systems failures, malfunction or delays.

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

(1) Subsection 12.3(1) of the 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.

#### **14.3. Business Continuity Planning**

Section 12.4 of the Regulation requires that marketplaces develop and maintain reasonable business continuity plans, including disaster recovery plans. Business continuity planning should encompass all policies and procedures to ensure uninterrupted provision of key services regardless of the cause of potential disruption. The Canadian securities regulatory authorities expect that, in order for a marketplace to have a reasonable business continuity plan, including disaster recovery plan, it test it on a periodic basis, and at least annually and it should participate in industry-wide tests.

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

#### **~~15.1~~ 15.1. Clearing and Settlement**

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

### **PART 16 INFORMATION PROCESSOR**

#### **~~16.1~~ 16.1. Information Processor**

(1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular

securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).

(2) An information processor is required under subsection 14.4(2) of the 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.

#### ~~16.2~~ 16.2. Selection of an Information Processor

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

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

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

(c) personnel qualifications;

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

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

(f) the systems report referred to in subsection 14.5(~~b~~c) of the Regulation.

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

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

#### ~~16.3~~ 16.3. Change to Information

Under subsection 14.2(1) of the Regulation, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the

manner set out in Form 21-101F5. ~~In the view of the~~The Canadian securities regulatory authorities, ~~a significant change includes a change to the information contained in Exhibits A, B, F, G, H, O, P, Q, R and S and Item 10 of Form 21-101F5.~~ would consider significant changes to include:

(a) changes to the governance of the information processor, including the structure of its board of directors and changes in the board committees and their mandates;

(b) changes in control over the information processor;

(c) changes affecting the independence of the information processor, including independence from the marketplaces, inter-dealer bond brokers and dealers that provide their data to meet the requirements of the Regulation;

(d) changes to the services or functions performed by the information processor;

(e) changes to the data products offered by the information processor;

(f) changes to the fees and fee structure related to the services provided by the information processor;

(g) changes to the revenue sharing model for revenues from fees related to services provided by the information processor;

(h) changes to the systems and technology used by the information processor, including those affecting its capacity;

(i) new arrangements or changes to arrangements to outsource the operation of any aspect of the services of the information processor;

(j) changes to the means of access to the services of the information processor;  
and

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

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

#### **16.4. System Requirements**

~~Section~~The guidance in section 14.1 of this Policy Statement ~~contains guidance on~~ applies to the systems requirements ~~as it applies to~~ for an information processor.