

## CSA Notice of Approval Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*

June 25, 2015

### Introduction

The Canadian Securities Administrators (the CSA or we) have approved amendments (the Amendments) to the following:

- National Instrument 21-101 *Marketplace Operation* (NI 21-101), including:
  - Form 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* (Form 21-101F1);
  - Form 21-101F2 *Initial Operation Report Alternative Trading System* (Form 21-101F2);
  - Form 21-101F3 *Quarterly Report of Marketplace Activities* (Form 21-101F3);
  - Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* (Form 21-101F4);
  - Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5); and
  - Form 21-101F6 *Cessation of Operations Report for Information Processor* (Form 21-101F6 and, together with Form 21-101F1, Form 21-101F2, Form 21-101F3, Form 21-101F4, and Form 21-101F5, the Forms);
- National Instrument 23-101 *Trading Rules* (NI 23-101);
- Companion Policy 21-101CP (21-101CP); and
- Companion Policy 23-101CP (23-101CP and, together with NI 21-101, 21-101CP and NI 23-101, the Marketplace Rules).

Provided all necessary ministerial approvals are obtained, the Amendments will come into force on **October 1, 2015**. Implementation of certain of the Amendments is discussed in greater detail below.

We are publishing the text of the Amendments in Annexes B and C to this notice, together with certain other relevant information at Annexes A through H of this notice. Text of the Amendments is also available on the websites of the CSA jurisdictions, including at:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.gov.ns.ca/nssc](http://www.gov.ns.ca/nssc)

www.fcnb.ca  
www.osc.gov.on.ca  
www.fcaa.gov.sk.ca  
www.msc.gov.mb.ca

## **Substance and Purpose**

The substance and purpose of the Amendments is to update the Marketplace Rules to reflect developments that have occurred since they were last revised. The Amendments include revisions to the requirements applicable to marketplaces' and information processors' systems and business continuity planning and other various areas where we identified that updates or additional guidance are required.

The Amendments apply to marketplaces, including alternative trading systems (ATSs), recognized quotation and trade reporting systems (QTRSs), recognized exchanges, and information processors.

## **Background**

We initially published proposed amendments to the Marketplace Rules on April 24, 2014. After considering the comments received in response to the initial publication, we have made changes to certain parts of the NI 21-101, 21-101CP, the Forms, NI 23-101 and 23-101CP. For additional background on the substance and purpose of the proposed amendments, please refer to the notice published with the proposed amendments on April 24, 2014.

Proposed amendments to section 8.6 of NI 21-101 regarding the transparency exemption for government debt securities were initially published along with the additional proposed amendments to the Marketplace Rules on April 24, 2014. The CSA has since approved amendments to section 8.6 of NI 21-101, which took effect on December 31, 2014. Please see notice of the CSA's approval of these amendments, published October 23, 2014.

## **Summary of Written Comments Received by the CSA**

During the comment period, we received submissions from 8 commenters. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Annex F of this notice and a summary of their comments, together with our responses, is contained in Annex G of this notice.

## **Summary of Changes to the Proposed Amendments**

See Annex A of this notice for a summary of notable changes made to the proposed amendments to NI 21-101, the Forms, and 21-101CP since initial publication in April 2014. No notable changes have been made to the proposed amendments to NI 23-101 and 23-101CP.

## **Implementation of the Amendments**

The Amendments introduce certain new requirements in relation to the information required to be filed by marketplaces in the Forms as well as new requirements for the annual certification of the information in a marketplace's Form 21-101F1 or Form 21-101F2 and the annual filing by a marketplace of an updated and consolidated Form 21-101F1 or Form 21-101F2. We do not expect marketplaces to provide the new information required by the Forms as of the effective date of the Amendments. Instead, we expect that marketplaces will provide this new information at the time that they file their updated and consolidated Form 21-101F1 or Form 21-101F2.

## **Local Matters**

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex H of this notice.

## **Annexes**

- A. Description of notable changes to the Marketplace Rules from the proposed amendments published on April 24, 2014.
- B. Amendments to NI 21-101
- C. Changes to Companion Policy 21-101CP.
- D. Amendments to NI 23-101
- E. Changes to Companion Policy 23-101CP.
- F. List of commenters who provided submissions on the proposed amendments published on April 24, 2014.
- G. Summary of comments, together with the CSA's response to the comments, on the proposed amendments.

## Questions

Please refer your questions to any of the following:

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## ANNEX A

### DESCRIPTION OF NOTABLE CHANGES TO THE PROPOSED AMENDMENTS

This Annex describes the notable changes to the Marketplace Rules from the proposed amendments published for comment on April 24, 2014. It contains the following sections:

1. Marketplace systems and business continuity planning;
2. Use of marketplace participants' trading information for research; and
3. Provision of data to an information processor.

#### 1. MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

We have revised NI 21-101 and certain of the Forms to account for issues raised by the commenters in areas related to business continuity planning, the use of uniform test symbols in marketplace production environments, material changes to marketplace technology requirements and the information required to be provided in Form 21-101F1 and Form 21-101F2.

##### (i) Business continuity planning

In our April 24, 2014 notice of proposed amendments to the Marketplace Rules, we noted that the increase in marketplace fragmentation for listed equities has made the recovery process in the case of a disaster significantly more complex and that a successful industry-wide business continuity test is key to any realistic expectation of a Canadian capital markets recovery from a major disaster within a reasonable length of time. Consequently, we have amended NI 21-101 to include a requirement for the mandatory participation in industry-wide business continuity tests as determined by a regulation services provider, regulator, or in Québec, a securities regulatory authority, as initially proposed. However, in response to comments, we have revised the requirement such that a "participant dealer", as defined in Part 1 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), rather than a "marketplace participant" must participate in the tests. As defined, a "participant dealer" means a marketplace participant that is an investment dealer. The effect of this change is that buy-side institutional investors will not be required to participate in industry-wide business continuity tests, reflecting the fact that such participants have historically not participated in these tests.

We have also revised subsection 12.4(2) of NI 21-101 such that a marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system operated by or on behalf of the marketplace that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within 2 hours following the

declaration of a disaster by the marketplace. We have similarly revised subsection 14.6(3) of NI 21-101 to require an information processor to establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical information technology systems can resume operation within one hour following the declaration of a disaster by the information processor.

Lastly, we have included guidance in section 14.3 of 21-101CP to reflect the CSA's expectation that the policies and procedures required by section 12.4 of NI 21-101 will form part of the entity's business continuity and disaster recovery plans.

(ii) Uniform test symbols in production environments

As initially proposed, we have amended NI 21-101, at section 12.3.1, to require a marketplace to use uniform test symbols for the purpose of testing to be performed in the production environment. We have included guidance in section 14.2.1 of 21-101CP to reflect the CSA's view that the use of uniform test symbols is in furtherance to a marketplace's obligation under section 5.7 of NI 21-101 to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

We have also include guidance in section 14.2.1 of 21-101CP to reflect our view that the use of uniform test symbols is not intended to facilitate stress testing by marketplace participants. To the extent that the use of test symbols may negatively impact the performance of a marketplace's production environment, our view is that a marketplace may suspend access to a test symbol where its use reasonably represents undue risk to the operation or performance of the marketplace's production environment. We also note our view that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of NI 23-103.

We will be consulting with industry stakeholders on the implementation of uniform test symbols in advance of the new provision taking effect.

(iii) Material changes to marketplace technology requirements

As we indicated in the notice of the proposed amendments, the failure of a marketplace's systems can have wide-reaching and unintended consequences. A marketplace beginning operations or making a material change to its systems can therefore negatively impact many other parties if these actions are not carried out in a careful manner. In our view, marketplace participants and service vendors must have a reasonable opportunity to adapt to the systems changes demanded by the launch of new marketplaces and material changes to a marketplace's technology requirements.

We had initially proposed amendments to section 12.3 of NI 21-101 in order to codify practices regarding the launch of new marketplaces and the implementation of material changes to a marketplace's technology requirements, which have been established by OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes*. As proposed, these amendments would have prohibited the launch of new marketplaces and the implementation of

material changes to a marketplace's technology requirements until at least three months following notification of the marketplace of the completion of the regulatory review process.

Due to different practices in the various CSA jurisdictions, we have removed these provisions from section 12.3 and they will be retained in OSC Staff Notice 21-706.

(iv) Information in Form 21-101F1 and Form 21-101F2

We have also revised the proposed amendments to Exhibit G to Form 21-101F1 and Form 21-101F2 to clarify the kind of information that a marketplace should provide regarding its business continuity and disaster recovery plans. In particular, Exhibit G has been revised to require information about the creation, management, and oversight of the plans; escalation procedures; internal and external communications procedures; and triggering scenarios included in a marketplace's business continuity and disaster recovery plans.

## **2. USE OF MARKETPLACE PARTICIPANTS' TRADING INFORMATION FOR RESEARCH**

### *Background*

Subsection 5.10(1) of NI 21-101 prohibits a marketplace from providing a marketplace participant's order and trade information to a person or company other than the market participant, a securities regulatory authority or an RSP unless (i) the marketplace participant has consented in writing, (ii) the release of the order and trade information is required by applicable law or NI 21-101, or (iii) the order and trade information was disclosed by another person or company, and the disclosure was lawful. An unintended consequence to the previous amendments to the Marketplace Rules was that all marketplaces, including exchanges, were prohibited from providing order and trade information for capital markets research without the written consent of all of their marketplace participants. In Ontario, an exemption order was granted to marketplaces to allow them to provide marketplace participants' data for capital markets research.<sup>1</sup>

### *Amendments*

As we indicated in the notice that accompanied the proposed amendments, we support capital markets research and our view is that marketplaces should be permitted to provide third parties with marketplace participants' order and trade information to carry out this research, provided that appropriate safeguards are in place to prevent the inappropriate use and disclosure of that information.

However, in response to comments made on the proposed amendments, we have revised subsection 5.10(1.1) of NI 21-101 to impose certain obligations directly on a marketplace that proposes to disclose a marketplace participant's order and trade information for purposes of capital markets research. In particular, we have revised the subsection to provide that, in order

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<sup>1</sup> Available at [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_ord\\_20131003\\_210\\_alpha-trading.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20131003_210_alpha-trading.htm)

for a marketplace to release a marketplace participant's order or trade information, the marketplace must reasonably believe that the information will be used solely for the purpose of capital markets research. In the event that the information would identify, directly or indirectly, a marketplace participant or client of the marketplace participant, the marketplace must also reasonably believe that the information is required for the purpose of the capital markets research and that the research is not intended for the purpose of identifying a particular marketplace participant or a client of the marketplace participant or identifying a trading strategy, transactions, or market positions of the marketplace participant or its client.

We have also included guidance in subsection 7.7(0.2) of 21-101CP to reflect our expectation that, in order for a marketplace to reasonably believe that the information will be used for the purpose of capital markets research, the marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Similarly, where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, our expectation is that the marketplace will make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or client or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.

We have also included guidance in subsection 7.7(0.3) of 21-101CP reflecting our view that marketplaces should exercise caution when considering releasing order or trade information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, our view is that a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.

Lastly, we have revised subsection 5.10(1.1) of NI 21-101 to include additional requirements on a recipient of information released by a marketplace when the recipient proposes onward disclosure of the information for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the result of the research prior to publication.

### **3. PROVISION OF DATA TO AN INFORMATION PROCESSOR**

In the notice accompanying the proposed amendments to the Marketplace Rules, we expressed the view that, given the important role than an information processor (or information vendor, in its absence) plays in a multiple marketplace environment for listed equity securities, an information processor must receive accurate and timely information from marketplaces. This view is reflected in the amendments to sections 7.1 and 7.2 of NI 21-101, which codify guidance initially in 21-101 CP. These sections now prohibit a marketplace from making pre- and post-trade information available to any person or company before it makes that information available to an information processor or an information vendor.



We have revised section 9.1 of 21-101CP to indicate that, in order to comply with new subsections 7.1(3) and 7.2(2) of NI 21-101, we expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.

## ANNEX B

### Amendments to National Instrument 21-101 *Marketplace Operation*

1. *National Instrument 21-101 Marketplace Operation is amended by this Instrument.*
2. *National Instrument 21-101 Marketplace Operation is amended by replacing “shall” wherever it occurs with “must”.*
3. *Section 1.1 is amended*
  - (a) *in paragraph (c) of the definition of “government debt security” by adding “in Canada” after “body”,*
  - (b) *in the definition of “information processor” by adding “and, in Québec, that is a recognized information processor” after “Form 21-101F5”,*
  - (c) *in subparagraph (a)(iv) of the definition of “marketplace” by replacing “;” with “,”,*
  - (d) *in the definition of private enterprise by replacing “Accouting” with “Accounting”, and*
  - (e) *by adding the following definition:*

*“participant dealer” means a participant dealer as defined in Part 1 of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces;.*
4. *Section 1.4 is amended*
  - (a) *in subsection (1) by deleting “Alberta and”, and*
  - (b) *by replacing “Commodity Futures Act” with “Commodity Futures Act” wherever it occurs.*
5. *Section 3.2 is amended*
  - (a) *in subsection (1) by replacing “Form” with “applicable form” after “in the manner set out in the”,*
  - (b) *by adding the following subsection:*
    - (1.1) A marketplace that has entered into an agreement with a regulation services provider under NI 23-101 must not implement a significant change to a matter set out in Exhibit E – Operation of the

Marketplace of Form 21-101F1 or Exhibit E – Operation of the Marketplace of Form 21-101F2 as applicable, or Exhibit I – Securities of Form 21-101F1 or Exhibit I – Securities of Form 21-101F2 as applicable, unless the marketplace has provided the applicable exhibit to its regulation services provider at least 45 days before implementing the change.,

(c) ***in subsection (3) by replacing “Form” with “applicable form” after “amendment to the information provided in the”, and***

(d) ***by adding the following subsections:***

(4) The chief executive officer of a marketplace, or an individual performing a similar function, must certify in writing, within 30 days after the end of each calendar year, that the information contained in the marketplace’s current Form 21-101F1 or Form 21-101F2, as applicable, including the description of its operations, is true, correct, and complete and that the marketplace is operating as described in the applicable form.

(5) A marketplace must file an updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, within 30 days after the end of each calendar year..

6. ***Paragraph 4.1(1)(c) is amended by adding “unmodified” before “auditor’s report”.***

7. ***Section 5.1 is amended by replacing “;” with “,” wherever it occurs.***

8. ***Section 5.7 is amended by deleting an additional space after “not”.***

9. ***Section 5.10 is amended***

(a) ***in subsection (1) by replacing “;” with “,” wherever it occurs, and***

(b) ***by adding the following subsections:***

(1.1) Despite subsection (1), a marketplace may release a marketplace participant’s order or trade information to a person or company if the marketplace

(a) reasonably believes that the information will be used solely for the purpose of capital markets research,

(b) reasonably believes that if information identifying, directly or indirectly, a marketplace participant or a client of the marketplace participant is released,

- (i) it is required for the purpose of the capital markets research, and
- (ii) that the research is not intended for the purpose of
  - (A) identifying a particular marketplace participant or a client of the marketplace participant, or
  - (B) identifying a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant,
- (c) has entered into a written agreement with each person or company that will receive the order and trade information from the marketplace that provides that
  - (i) the person or company must
    - (A) not disclose to or share any information with any person or company if that information could, directly or indirectly, identify a marketplace participant or a client of the marketplace participant without the marketplace's consent, other than as provided under subparagraph (ii) below,
    - (B) not publish or otherwise disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or a client of the marketplace participant,
    - (C) not use the order and trade information, or provide it to any other person or company, for any purpose other than capital markets research,
    - (D) keep the order and trade information securely stored at all times,
    - (E) keep the order and trade information for no longer than a reasonable period of time after the completion of the research and publication process, and
    - (F) immediately inform the marketplace of any breach or possible breach of the confidentiality of the information provided,

- (ii) the person or company may disclose order or trade information used in connection with research submitted to a publication if
  - (A) the information to be disclosed will be used solely for the purposes of verification of the research carried out by the person or company,
  - (B) the person or company must notify the marketplace prior to disclosing the information for verification purposes, and
  - (C) the person or company must obtain written agreement from the publisher and any other person or company involved in the verification of the research that the publisher or the other person or company will
    - (I) maintain the confidentiality of the information,
    - (II) use the information only for the purposes of verifying the research,
    - (III) keep the information securely stored at all times,
    - (IV) keep the information for no longer than a reasonable period of time after the completion of the verification, and
    - (V) immediately inform the marketplace of any breach or possible breach of the agreement or of the confidentiality of the information provided, and
- (iii) the marketplace has the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement.

(1.2) A marketplace that releases a marketplace participant's order or trade information under subsection (1.1) must

- (a) promptly inform the regulator or, in Québec, the securities regulatory authority, in the event the marketplace becomes aware of any breach or possible breach of the confidentiality of the information provided or of the agreement, and

- (b) take all reasonable steps necessary to prevent or address a breach or possible breach of the confidentiality of the information provided or of the agreement..

10. **Section 5.12 is amended by deleting “.” after “the marketplace must”.**

11. **In the following provisions “key services and systems” is replaced with “key services or systems”:**

(a) **Paragraph 5.12(b);**

(b) **Paragraph 5.12(c).**

12. **Paragraph 5.12(e) is amended by deleting “,” after “on behalf of the marketplace”.**

13. **National Instrument 21-101 Marketplace Operation is amended by adding the following section:**

#### **5.13 Access Arrangements with a Service Provider**

If a third party service provider provides a means of access to a marketplace, the marketplace must ensure the third party service provider complies with the written standards for access that the marketplace has established pursuant to paragraph 5.1(2)(a) when providing the access services..

14. **In the following provisions “;” is replaced with “,”:**

(a) **Paragraph 6.7(1)(a);**

(b) **Paragraph 6.7(1)(b).**

15. **Section 7.1 is amended by adding the following subsection:**

- (3) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor..

16. **Section 7.2 is amended by renumbering it as subsection 7.2(1) and by adding the following subsection:**

- (2) A marketplace that is subject to subsection (1) must not make the information referred to in that subsection available to any person or company before it makes that information available to an information processor or, if there is no information processor, to an information vendor..
17. **Subsection 8.1(5) is amended by replacing “interdealer” with “inter-dealer”.**
18. **Section 8.4 is amended by replacing “interdealer” with “inter-dealer”.**
19. **Section 10.1 is amended**
- (a) **by adding “,” after “disclose”,**
  - (b) **by adding “,” after “website”,**
  - (c) **by adding “,” after “including”,**
  - (d) **by adding “,” after “but not limited to”, and**
  - (e) **by deleting “:” after “information related to”.**
20. **In the following provisions “;” is replaced with “,”:**
- (a) **Paragraph 10.1(a);**
  - (b) **Paragraph 10.1(b);**
  - (c) **Paragraph 10.1(c);**
  - (d) **Paragraph 10.1(d);**
  - (e) **Paragraph 10.1(e);**
  - (f) **Paragraph 10.1(f).**
21. **Paragraph 10.1(g) is amended by replacing “; and” with “,”.**
22. **Paragraph 10.1(h) is amended by replacing “.” with “,”.**
23. **Section 10.1 is amended by adding the following paragraphs:**
- (i) any access arrangements with a third party service provider, including the name of the third party service provider and the standards for access to be complied with by the third party service provider, and
  - (j) the hours of operation of any testing environments provided by the marketplace, a description of any differences between the testing environment and production environment of the marketplace and the potential impact of these differences on the effectiveness of testing, and any policies and procedures relating to a marketplace’s use of uniform test symbols for purposes of testing in its production environment..
24. **Subparagraph 11.2(1)(c)(xviii) is amended by replacing “;” with “,”.**
25. **Section 11.2.1 is amended**
- (a) **in paragraph (a) by deleting “,” following “the information required by the regulation services provider”,**
  - (b) **in paragraph (a) by adding “and in the manner requested by the regulation services provider,” after “in electronic form”,**

- (c) *in paragraph (b) by deleting “,” following “under securities legislation”, and*
- (d) *in paragraph (b) by adding “and in the manner requested by the securities regulatory authority” after “in electronic form”.*

**26. Subsection 11.3(1) is amended**

- (a) *in paragraph (f) by deleting “and”,*
- (b) *in paragraph (g) by replacing “.” with “;” after “subsections 13.1(2) and 13.1(3)”, and*
- (c) *by adding the following paragraphs:*
  - (h) a copy of any agreement referred to in section 5.10; and
  - (i) a copy of any agreement referred to in paragraph 5.12(c)..

**27. Section 12.1 is amended**

- (a) *by replacing “For each of its systems that support” with “For each system, operated by or on behalf of the marketplace, that supports”,*
- (b) *by replacing “;” with “,” wherever it occurs,*
- (c) *in paragraph (c) by deleting “or delay”, and*
- (d) *in paragraph (c) by adding “, delay or security breach and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the marketplace’s internal review of the failure, malfunction, delay or security breach.” after “malfunction”.*

**28. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**

**12.1.1 Auxiliary Systems** – For each system that shares network resources with one or more of the systems, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, that, if breached, would pose a security threat to one or more of the previously mentioned systems, a marketplace must

- (a) develop and maintain an adequate system of information security controls that relate to the security threats posed to any system that supports order entry, order routing, execution, trade reporting,



trade comparison, data feeds, market surveillance and trade clearing, and

- (b) promptly notify the regulator, or in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material security breach and provide timely updates on the status of the breach, the resumption of service, where applicable, and the results of the marketplace's internal review of the security breach..

**29. Subsection 12.2(1) is replaced with:**

- (1) A marketplace must annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that the marketplace is in compliance with
  - (a) paragraph 12.1(a),
  - (b) section 12.1.1, and
  - (c) section 12.4..

**30. Paragraph 12.2(2)(b) is replaced with the following:**

- (b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30<sup>th</sup> day after providing the report to its board of directors or the audit committee or the 60<sup>th</sup> day after the calendar year end..

**31. Section 12.3 is amended**

**(a) by replacing subsection (3) with the following:**

- (3) A marketplace must not begin operations before
  - (a) it has complied with paragraphs (1)(a) and (2)(a),
  - (b) its regulation services provider, if applicable, has confirmed to the marketplace that trading may commence on the marketplace, and
  - (c) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed.,

**(b) by adding the following subsection:**

- (3.1) A marketplace must not implement a material change to the systems referred to in section 12.1 before
- (a) it has complied with paragraphs (1)(b) and (2)(a), and
  - (b) the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing to the regulator, or in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed., **and**

**(c) in subsection (4) by replacing “Paragraphs 12.3(1)(b) and 2(b) do” with “Subsection (3.1) does”.**

**32. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**

**12.3.1 Uniform Test Symbols**

A marketplace must use uniform test symbols, as set by a regulator, or in Québec, the securities regulatory authority, for the purpose of performing testing in its production environment..

**33. Section 12.4 is replaced with the following:**

**12.4 Business Continuity Planning**

- (1) A marketplace must
- (a) develop and maintain reasonable business continuity plans, including disaster recovery plans, and
  - (b) test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (2) A marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that supports order entry, order routing, execution, trade reporting, trade comparison,

data feeds, and trade clearing, can resume operations within two hours following the declaration of a disaster by the marketplace.

- (3) A recognized exchange or quotation and trade reporting system, that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the marketplace, that is critical and supports real-time market surveillance, can resume operations within two hours following the declaration of a disaster at the primary site by the exchange or quotation and trade reporting system.
- (4) A regulation services provider, that has entered into a written agreement with a marketplace to conduct market surveillance for the marketplace, must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system, operated by or on behalf of the regulation services provider, that is critical and supports real-time market surveillance can resume operations within two hours following the declaration of a disaster at the primary site by the regulation services provider..

**34. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**

#### **12.4.1 Industry-Wide Business Continuity Tests**

A marketplace, recognized clearing agency, information processor, and participant dealer must participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority..

**35. In the following provisions “and settled” is replaced with “to a clearing agency”:**

- (a) *Subsection 13.1(2);*
- (b) *Subsection 13.1(3).*

**36. National Instrument 21-101 Marketplace Operation is amended by adding the following section:**

#### **13.2 Access to Clearing Agency of Choice**

- (1) A marketplace must report a trade in a security to a clearing agency designated by a marketplace participant.
- (2) Subsection (1) does not apply to a trade in a security that is a standardized derivative or an exchange-traded security that is an option..

**37. Section 14.4 is amended**

- (a) in subsection (4) by adding “or changes to an electronic connection” after “in a timely manner an electronic connection”, and**
- (b) by adding the following subsections:**
  - (6.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the income statement and the statement of cash flow of the information processor and any other information necessary to demonstrate the financial condition of the information processor within 90 days after the end of the financial year of the person or company.
  - (7.1) If an information processor is operated as a division or unit of a person or company, the person or company must file the financial budget relating to the information processor within 30 days of the start of the financial year of the person or company..

**38. Section 14.5 is amended**

- (a) by replacing “;” with “,” wherever it occurs, and**
- (b) by replacing subparagraph (d)(ii) with the following:**
  - (ii) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30<sup>th</sup> day after providing the report to its board of directors or the audit committee or the 60<sup>th</sup> day after the calendar year end, and.

**39. Section 14.6 is replaced by the following:**

**14.6 Business Continuity Planning**

An information processor must

- (a) develop and maintain reasonable business continuity plans, including disaster recovery plans,
- (b) test its business continuity plans, including disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually, and
- (c) establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.

40. **Section 14.7 is amended**
- (a) **by replacing** “with this Instrument, or other than a securities regulatory authority, unless:” **with** “with this Instrument or a securities regulatory authority, unless”, **and**
  - (b) **in subsection (a) by replacing** “;” **with** “,”.
41. **Section 14.8 is amended**
- (a) **by deleting** “:” **after** “but not limited to”, **and**
  - (b) **by replacing** “;” **with** “,” **wherever it occurs**.
42. **Form 21-101F1 is amended**
- (a) **by replacing** “shall” **wherever it occurs with** “must”,
  - (b) **by replacing** “should” **wherever it occurs with** “must”, **and**
  - (c) **under “Type of Filing” by adding** “; AMENDMENT No.” **after** “AMENDMENT”.
43. **Exhibit C of Form 21-101F1 is amended by adding** “and the Board mandate” **after** “including their mandates”.
44. **Exhibit D of Form 21-101F1 is amended**
- (a) **in paragraph 6 by deleting** “:” **wherever it occurs**,
  - (b) **by deleting** “;” **wherever it occurs**, **and**
  - (c) **by adding** “,” **after** “private enterprises”.
45. **Exhibit E of Form 21-101F1 is amended**
- (a) **by replacing** “not be limited” **with** “is not limited”,
  - (b) **by replacing** “Description” **wherever it occurs with** “A description”, **and**
  - (c) **by adding the following to the end of the exhibit:**  
The filer must provide all material contracts related to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing..
46. **Exhibit F of Form 21-101F1 is amended**
- (a) **by adding** “,” **after** “routing, trading, execution, data”, **and**
  - (b) **by adding the following sections:**
    - 4. A copy of the marketplace’s policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.

5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider protects the proprietary, order, trade or any other confidential information of the participants of the marketplace.
8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

**47. Exhibit G of Form 21-101F1 is replaced with the following:**

*General*

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

*Business Continuity Planning*

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.

2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.
7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

### *Systems Capacity*

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.

3. How often or at what point stress testing is performed.

#### Systems

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.
4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.

#### IT Risk Assessment

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
  2. How the impact of risks are measured according to qualitative and quantitative criteria.
  3. The documentation process for acceptable residual risks with related offsets.
  4. The development of management's action plan to implement a risk response to a risk that has not been accepted..
48. **Exhibit I of Form 21-101F1 is amended by replacing "Filer" wherever it occurs with "filer".**
  49. **Exhibit J of Form 21-101F1 is amended by replacing "Exhibit E.4" with "Exhibit E item 4".**
  50. **Exhibit K of Form 21-101F1 is amended**
    - (a) **in section 4 by adding "Please identify if the marketplace participant accesses the marketplace through co-location." after "or other access.",**
    - (b) **in section 5 by deleting ":" after "indicating for each", and**
    - (c) **in section 5 by replacing ";" wherever it occurs with ",."**
  51. **Exhibit M of Form 21-101F1 is amended**
    - (a) **in section 2 by adding "a copy of" after "and its members, provide", and**



- (b) **by deleting “.” after “regulation services provider” after the box following section 2.**
52. **Exhibit N of Form 21-101F1 is amended by adding “Marketplace Operation” after “21-101”.**
53. **Form 21-101F2 is amended**
- (a) **in the title by replacing “INITIAL OPERATION REPORT” with “INFORMATION STATEMENT”,**
- (b) **by replacing “should” wherever it occurs with “must”,**
- (c) **by replacing “shall” wherever it occurs with “must”,**
- (d) **under “Type of Filing” by adding “; AMENDMENT No.” after “AMENDMENT”,**
- and
- (e) **in subsection 12 of the Instructions by adding “name of” after “contracted with [”.**
54. **Exhibit E of Form 21-101F2 is amended**
- (a) **by replacing “not be” with “is not”,**
- (b) **by replacing “Description” wherever it occurs with “A description”, and**
- (c) **by adding the following to the end of Exhibit E:**  
The filer must provide all material contracts relating to order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing..
55. **Exhibit F of Form 21-101F2 is amended**
- (a) **by deleting “the” after “including any function associated with”,**
- (b) **by adding “data” after “clearing and settlement,”, and**
- (c) **by adding the following sections:**
4. A copy of the marketplace’s policies and procedures for the selection of service providers to which key services and systems may be outsourced and for the evaluation and approval of such outsourcing arrangements that are established and maintained pursuant to paragraph 5.12(a) of National Instrument 21-101 *Marketplace Operation*.
  5. A description of any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced and a copy of the policies and procedures to mitigate and manage such conflicts of interest that have been established pursuant to paragraph 5.12(b) of National Instrument 21-101 *Marketplace Operation*.
  6. A description of the measures the marketplace has taken pursuant to paragraph 5.12(f) of National Instrument 21-101 *Marketplace Operation* to ensure that the service provider has established, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan.
  7. A description of the measures the marketplace has taken pursuant to paragraph 5.12(g) of National Instrument 21-101 *Marketplace*

*Operation* to ensure that the service provider protects the proprietary order, trade or any other confidential information of the participants of the marketplace.

8. A copy of the marketplace's processes and procedures to regularly review the performance of a service provider under an outsourcing arrangement that are established pursuant to paragraph 5.12(h) of National Instrument 21-101 *Marketplace Operation*.

**56. *Exhibit G of Form 21-101F2 is replaced with the following:***

*General*

Provide:

1. A high level description of the marketplace's systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and if applicable, market surveillance and trade clearing.
2. An organization chart of the marketplace's information technology group unless otherwise provided as part of the report required by subsection 12.2(1) of the Instrument.

*Business Continuity Planning*

Please provide a description of the marketplace's business continuity and disaster recovery plans that includes, but is not limited to, information regarding the following:

1. Where the primary processing site is located.
2. What the approximate percentage of hardware, software and network redundancy is at the primary site.
3. Any uninterruptible power source (UPS) at the primary site.
4. How frequently market data is stored off-site.
5. Any secondary processing site, the location of any such secondary processing site, and whether all of the marketplace's critical business data is accessible through the secondary processing site.
6. The creation, management, and oversight of the plans, including a description of responsibility for the development of the plans and their ongoing review and updating.

7. Escalation procedures, including event identification, impact analysis, and activation of the plans in the event of a disaster or disruption.
8. Procedures for internal and external communications, including the distribution of information internally, to the securities regulatory authority, and, if appropriate, to the public, together with the roles and responsibilities of marketplace staff for internal and external communications.
9. The scenarios that would trigger the activation of the plans.
10. How frequently the business continuity and disaster recovery plans are tested.
11. Procedures for record keeping in relation to the review and updating of the plans, including the logging of tests and deficiencies.
12. The targeted time to resume operations of critical information technology systems following the declaration of a disaster by the marketplace and the service level to which such systems are to be restored.
13. Any single points of failure faced by the marketplace.

#### *Systems Capacity*

Please provide information regarding:

1. How frequently future market activity is evaluated in order to adjust processing capacity.
2. The approximate excess capacity maintained over average daily transaction volumes.
3. How often or at what point stress testing is performed.

#### *Systems*

Please provide information regarding:

1. Whether the trading engine was developed in-house or by a commercial vendor.
2. Whether the trading engine is maintained in-house or by a commercial vendor and provide the name of the commercial vendor, if applicable.
3. The marketplace's networks. Please provide a copy of a high-level network diagram of the systems referred to in section 12.1 of the

Instrument, as applicable, together with a description of the external points of contact for the marketplace's networks.

4. The message protocols supported by the marketplace's systems.
5. The transmission protocols used by the marketplace's systems.

#### *IT Risk Assessment*

Please describe the IT risk assessment framework, including:

1. How the probability and likelihood of IT threats are considered.
2. How the impact of risks are measured according to qualitative and quantitative criteria.
3. The documentation process for acceptable residual risks with related offsets.
4. The development of management's action plan to implement a risk response to a risk that has not been accepted..

**57. Exhibit I of Form 21-101F2 is amended by adding "list" after "If this is an initial filing,".**

**58. Exhibit J of Form 21-101F2 is amended**

- (a) *in section 1 by replacing "Exhibit E.4" with "Exhibit E item 4", and*
- (b) *in section 2 by deleting ", " after "institution".*

**59. Exhibit K of Form 21-101F2 is amended**

- (a) *in section 4 by adding "Please identify if the marketplace participant accesses the marketplace through co-location." after "access.",*
- (b) *in section 5 by deleting ":" after "for each", and*
- (c) *in section 5 by replacing ";" wherever it occurs with ",".*

**60. Exhibit N of Form 21-101F2 is amended by adding "Marketplace Operation" after "21-101".**

**61. Form 21-101F3 is amended by replacing "should" wherever it occurs with "must".**

**62. Section 4 of Part A of Form 21-101F3 is replaced with the following:**

4. A list of all amendments in the information in Form 21-101F1 or 21-101F2 that were filed with the Canadian securities regulatory authorities and implemented during the period covered by the report. The list must include a brief description of each amendment, the date filed and the date implemented..
- 63. Section 5 of Part A of Form 21-101F3 is replaced with the following:**
  5. A list of all amendments in the information in Form 21-101F1 or 21-101F2 that have been filed with the Canadian securities regulatory authorities but not implemented as of the end of the period covered by the report. The list must include a brief description of each amendment, the date filed and the reason why it was not implemented..
- 64. Section 6 of Part A of Form 21-101F3 is replaced with the following:**
  6. Systems - If any outages occurred at any time during the period for any system relating to trading activity, including trading, routing or data, provide the date, duration, reason for the outage and its resolution..
- 65. Section 7 of Part A of Form 21-101F3 is replaced with the following:**
  7. Systems Changes – A brief description of any significant 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 that were planned, under development, or implemented during the quarter. Please provide the current status of the changes that are under development..
- 66. Section 8 of Part A of Form 21-101F3 is repealed.**
- 67. Section 1 of Part B in Chart 2 of Form 21-101F3 is amended**
  - (a) *by deleting “%” wherever it occurs, and*
  - (b) *by deleting “% Number of exchange traded securities that are”.*
- 68. Section 1 of Part B in Chart 3 of Form 21-101F3 is amended by deleting “%” wherever it occurs.**
- 69. Section 1 of Part B of Form 21-101F3 is amended by replacing “third-party” with “third party” in item 6 beneath Chart 5.**
- 70. Section 1 of Part B of Form 21-101F3 is amended by deleting item 7 beneath Chart 6.**
- 71. Section 2 of Part B of Form 21-101F3 is amended**

- (a) **by adding** “during the quarter” **after** “regular trading hours” **in item 1,**
- (b) **by replacing** “the 10 most traded fixed income securities” **with** “each fixed income security traded” **in item 2, and**
- (c) **by deleting** “(based on the value of the volume traded) for trades executed” **in item 2.**

72. Section 2 of Part B in Chart 8 of Form 21-101F3 is replaced with the following:

**Chart 8 – Traded fixed income securities**

<b>Category of Securities</b>	<b>Value Traded</b>	<b>Number of Trades</b>
Domestic Unlisted Debt Securities - <b>Government</b> 1. Federal [Enter issuer, maturity, coupon]		
2. Federal Agency [Enter issuer, maturity, coupon]		
3. Provincial and Municipal [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities - <b>Corporate</b> [Enter issuer, maturity, coupon]		
Domestic Unlisted Debt Securities - <b>Other</b> [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – <b>Government</b> [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – <b>Corporate</b> [Enter issuer, maturity, coupon]		
Foreign Unlisted Debt Securities – <b>Other</b> [Enter issuer, maturity, coupon]		

73. **Section 4 of Part B in Chart 15 of Form 21-101F3 is amended**
- (a) **by deleting “%” wherever it occurs, and**
  - (b) **by deleting “of” before “Volume”.**
74. **Section 4 of Part B in Chart 16 of Form 21-101F3 is amended by deleting “%” wherever it occurs.**
75. **Section 4 of Part B of Form 21-101F3 is amended by deleting item 6 beneath Chart 18.**
76. **Form 21-101F4 is amended by replacing “shall” with “must” wherever it occurs.**
77. **Form 21-101F5 is amended**
- (a) **by replacing “INITIAL OPERATION REPORT FOR” with “INFORMATION STATEMENT” in the title,**
  - (b) **in “Type of Filing” by adding “: AMENDMENT No.” after “AMENDMENT”,**
  - (c) **by replacing “should” wherever it occurs with “must”,**
  - (d) **by replacing “shall” wherever it occurs with “must”, and**
  - (e) **by adding “,” after “National Instrument 21-101” under the heading “Exhibits”.**
78. **Section 1 of Exhibit C of Form 21-101F5 is amended**
- (a) **by adding “,” after “standing committees of the board”, and**
  - (b) **by adding “,” after “previous year”.**
79. **Section 1 of Exhibit G of Form 21-101F5 is amended**
- (a) **by replacing “system” with “System” in paragraph 3,**
  - (b) **by replacing “Description” with “A description” in paragraph 5.**
80. **Section 2 of Exhibit J of Form 21-101F5 is amended**
- (a) **by replacing “exists” with “exist”, and**
  - (b) **by adding “provide” after “National Instrument 21-101,”.**
81. **Section 3 of Exhibit K of Form 21-101F5 is amended by replacing “who” with “that”.**
82. **Form 21-101F6 is amended by replacing “shall” with “must” wherever it occurs.**
83. **The Instrument comes into force on October 1, 2015.**

## ANNEX C

### Changes to Companion Policy 21-101CP *Marketplace Operation*

1. The changes to Companion Policy 21-101CP are set out in this Schedule.
2. **Section 1.1 is changed by replacing** "Instruments," **with** "Instrument and N1 23-101," **immediately before** "which were adopted at a time when".
3. **Subsection 2.1(1) is changed**
  - (a) **by replacing** "Paragraphs (c) and (d)" **with** "Subparagraphs (a)(iii) and (a)(iv)" **immediately before** "of the definition of "marketplace" ", **and**
  - (b) **by replacing** "of" **with** "for" **immediately after** "that internalizes its orders".
4. **Subsection 2.1(8) is changed by replacing** "paragraph (c)" **with** "subparagraph (a)(iii)" **immediately after** "to be operating a marketplace under".
5. **Subsection 3.3(1) is changed by adding** "Canadian" **immediately after** "exempted from this requirement by the".
6. **Section 6.1 is changed by replacing subsection (4) with the following:**
  - (4) Under subsection 3.2(1) of the Instrument, 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, its systems, its market structure, its marketplace participants or their systems, investors, issuers or the Canadian capital markets

A change would be considered to significantly impact the marketplace if it is likely to give rise to potential conflicts of interest, to limit access to the services of a marketplace, introduce changes to the structure of the marketplace or result in costs, such as implementation costs, to marketplace participants, investors or, if applicable, the regulation services provider.

The following types of changes are considered to be significant changes as they would always have a significant impact:

- (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 order types, and
- (c) changes in the fees and the fee model of the marketplace.

The following may be considered by the Canadian securities regulatory authorities as significant changes, depending on whether they have a significant impact:

- (d) new or changes to the services provided by the marketplace, including the hours of operation;
- (e) new or changes to the means of access to the market or facility and its services;
- (f) new or changes to types of securities traded on the marketplace;
- (g) new or changes to types of securities listed on exchanges or quoted on quotation and trade reporting systems;
- (h) new or changes to types of marketplace participants;
- (i) 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;
- (j) changes to the corporate governance of the marketplace, including changes to the composition requirements for the board of directors or any board committees and changes to the mandates of the board of directors or any board committees;
- (k) changes in control over marketplaces;
- (l) changes in affiliates that provide services to or on behalf of the marketplace;
- (m) new or changes in outsourcing arrangements for key marketplace services or systems; and
- (n) new or changes in custody arrangements..

**7. Section 6.1 is changed by replacing subsection (5) with the following:**

- (5) Changes to information in Form 21-101F1 or Form 21-101F2 that

- (a) do not have a significant impact on the marketplace, its market structure, marketplace participants, investors, issuers or the Canadian 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, and
  - (vi) changes to the list of marketplace participants and the list of all persons or entities denied or limited access to the marketplace,

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

**8. Subsection 6.1(6) is changed**

- (a) **by replacing** “The” **with** “As indicated in subsection (4) above, the” **at the beginning of the subsection,**
- (b) **by removing** “generally” **immediately after** “Canadian securities regulatory authorities”, **and**
- (c) **by replacing** “fee structure” **wherever it occurs with** “fee model”.

**9. Section 6.1 is changed by adding the following subsections:**

- (8.1) In order to ensure records regarding the information in a marketplace’s Form 21-101F1 or Form 21-101F2 are kept up to date, subsection 3.2(4) of the Instrument requires the chief executive officer of a marketplace to certify, within 30 days after the end of each calendar year, that the information contained in the marketplace’s Form 21-101F1 or Form 21-101F2 as applicable, is true, correct and complete and the marketplace is operating as described in the applicable form. This certification is required at the same time as the updated and consolidated Form 21-101F1 or Form 21-101F2, as applicable, is required to be filed pursuant to subsection 3.2(5) of the Instrument. The certification under subsection

3.2(4) is also separate and apart from the form of certification in Form 21-101F1 and Form 21-101F2.

(8.2) The Canadian securities regulatory authorities expect that the certifications provided pursuant to subsection 3.2(4) of the Instrument will be preserved by the marketplace as part of its books and records obligation under Part 11 of the Instrument..

**10. Subsection 6.1(9) is changed by adding “calendar” before “quarter” wherever it occurs.**

**11. Section 7.7 is changed by adding the following subsections:**

(0.1) The Canadian securities regulatory authorities are of the view that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used solely for capital markets research and only if certain terms and conditions are met. Subsection 5.10(1.1) is not intended to impose any obligation on a marketplace to disclose information if requested by a researcher and the marketplace may choose to maintain its marketplace participants' order and trade information in confidence. However, if the marketplace decides to disclose this information, it must ensure that certain terms and conditions are met to ensure that the marketplace participant's information is not misused.

(0.2) In order for a marketplace to disclose a marketplace participant's order or trade information, subparagraphs 5.10(1.1)(a)-(b) of the Instrument require a marketplace to reasonably believe that the information will be used by the recipient solely for the purposes of capital markets research and to reasonably believe that if information identifying, directly or indirectly, a marketplace participant, or a client of the marketplace participant is released, the information is necessary for the research and that the purpose of the research is not intended to identify the marketplace participant or client or to identify a trading strategy, transactions, or market positions of the marketplace participant or client. The Canadian securities regulatory authorities expect that a marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, the Canadian securities regulatory authorities also expect the marketplace to make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the

research and that the purpose of the research is not to identify a particular marketplace participant or a client of the marketplace participant or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.

- (0.3) In considering releasing order or trade information, the Canadian securities regulatory authorities expect a marketplace to exercise caution regarding information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.
- (0.4) Subparagraph 5.10(1.1)(c) of the Instrument requires a marketplace that intends to provide its marketplace participants' order and trade information to a researcher to enter into a written agreement with each person or company that will receive such information. Subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that the person or company agrees to use the order and trade information only for capital markets research purposes. In the view of the Canadian securities regulatory authorities, commercialization of the information by the recipient, for example by using the information for the purposes of trading, advising others to trade or for reverse engineering a trading strategy, would not constitute use of the information for capital markets research purposes.
- (0.5) Subparagraph 5.10(1.1)(c)(i) of the Instrument provides that the agreement must also prohibit the recipient from sharing the marketplace participants' order and trade data with any other person or company, such as a research assistant, without the marketplace's consent. The marketplace will be responsible for determining what steps are necessary to ensure the other person or company receiving the marketplace participants' data is not misusing this data. For example, the marketplace may enter into a similar agreement with each individual or company that has access to the data.
- (0.6) To protect the identity of particular marketplace participants or their customers, subparagraph 5.10(1.1)(c)(i) of the Instrument requires the agreement to provide that recipients will not publish or disseminate data or information that discloses, directly or indirectly, a trading strategy, transactions, or market positions of a marketplace participant or its clients. Also, to protect the confidentiality of the data, the agreement must require that the order and trade information is securely stored at all times and that the data is kept for no longer than a reasonable period of time following the completion of the research and publication process.

- (0.7) The agreement must also require that the marketplace be notified of any breach or possible breach of the confidentiality of the information. Marketplaces are required to notify the appropriate securities regulatory authorities of the breach or possible breach and have the right to take all reasonable steps necessary to prevent or address a breach or possible breach of the agreement or of the confidentiality of the information provided. In the view of the Canadian securities regulatory authorities, reasonable steps in the event of an actual or apparent breach of the agreement or of the confidentiality of the information may include the marketplace seeking an injunction preventing any unauthorized use or disclosure of the information by a recipient.
- (0.8) Subparagraph 5.10(1.1)(c)(ii) of the Instrument provides for a limited carve-out from the restraints on the use and disclosure of the information by a recipient for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the research prior to the publication of the results of the research. In particular, clause 5.10(1.1)(c)(ii)(C) requires a marketplace to enter into a written agreement with a person or company receiving order or trade information from the marketplace that provides that the person or company may disclose information used in connection with research submitted to a publication so long as the person or company obtains a written agreement from the publisher and anyone involved in the verification of the research that provides for certain restrictions on the use and disclosure of the information by the publisher or the other person or company. A marketplace may consider requiring a person or company that proposes to disclose order or trade information pursuant to subparagraph 5.10(1.1)(c)(ii) to acknowledge that it has obtained the agreement required by clause 5.10(1.1)(c)(ii)(C) at the time that it notifies the marketplace prior to disclosing the information for verification purposes, as required by clause 5.10(1.1)(c)(ii)(B)..

12. ***Subsection 7.7(1) is changed by replacing “shall” with “must”.***

13. ***Companion Policy 21-101CP is changed by adding the following section:***

**7.10 Access Arrangements with a Service Provider** – If a third party service provider provides a means of access to a marketplace, section 5.13 of the Instrument requires the marketplace to ensure the third party service provider complies with the written standards for access the marketplace has established pursuant to paragraph 5.1(2)(a) of the Instrument when providing access services. A marketplace must establish written standards for granting access to each of its services under paragraph 5.1(2)(a) and the Canadian securities regulatory authorities are of the view that it is the responsibility of the marketplace to ensure that these written standards are complied with when access to its platform is provided by a third party..

14. **Section 9.1 is changed by replacing subsection (2) with the following:**
- (2) In complying with sections 7.1 and 7.2 of the Instrument, 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..
15. **Section 9.1 is changed by adding the following subsection:**
- (2.1) Subsections 7.1(3) and 7.2(2) prohibit a marketplace from making available order and trade information to any person or company before it makes the information available to the information processor or, if there is no information processor, to an information vendor. The Canadian securities regulatory authorities acknowledge that there may be differences between the time at which a marketplace participant that takes in market data directly from a marketplace receives the order and trade information and the time at which a marketplace participant that takes in market data from the information processor receives the information. However, in complying with subsections 7.1(3) and 7.2(2) of the Instrument, the Canadian securities regulatory authorities expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace..
16. **Section 14.1 is changed by adding** “whether operating in-house or outsourced.” **immediately after** “section 12.1 of the Instrument”.
17. **Subsection 14.1(1) is changed**
- (a) **by adding** “*® 5 Management Guidelines,*” **immediately after** “COBIT”, **and**
- (b) **by adding** “, © 2012 ISACA, *IT Infrastructure Library (ITIL) – Service Delivery best practices, ISO/IEC27002:2005 – Information technology – Code of practice for information security management.*” **Immediately after** “IT Governance Institute”.
18. **Section 14.1 is changed by adding the following subsection:**
- (2.1) Paragraph 12.1(c) of the Instrument refers to a material security breach. A material security breach or systems intrusion is any unauthorized entry into any of the systems that support the functions listed in section 12.1 of the Instrument or any system that shares network resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the regulator. The onus would be on the marketplace to document the reasons for any security breach it did not consider material. Marketplaces should also have documented criteria to guide the decision on when to publicly disclose a security breach. The

criteria for public disclosure of a security breach should include, but not be limited to, any instance in which client data could be compromised. Public disclosure should include information on the types and number of participants affected..

**19. Section 14.1 is changed by replacing subsection (3) with the following:**

- (3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment to ensure that the marketplace is in compliance with paragraph 12.1(a), section 12.1.1 and section 12.4 of the Instrument. The focus of the assessment of any systems that share network resources with trading-related systems required under subsection 12.2(1)(b) would be to address potential threats from a security breach that could negatively impact a trading-related system. A qualified party is a person or company or a group of persons or companies 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..

**20. Section 14.1 is changed by adding the following subsection:**

- (3.1) The Canadian securities regulatory authorities also note the critical importance of an appropriate system of cyber-security controls over the systems described in section 12.1 of the Instrument. We further note that, as a matter of best practices, marketplaces may also conduct a vulnerability assessment of these controls in addition to the independent systems review required by subsection 12.2(1) of the Instrument. To the extent that a marketplace carries out, or engages an independent party to carry out on its behalf, a vulnerability assessment and prepares a report of that assessment as part of the development and maintenance of the controls required by section 12.1 of the Instrument, we expect a marketplace to provide that report to the regulator or, in Québec, the securities regulatory authority in addition to the report required to be provided by subsection 12.2(2) of the Instrument..

**21. Subsection 14.2(1) is changed by adding the following paragraph:**

The Canadian securities regulatory authorities consider a material change to a marketplace's technology requirements to include a change that would require a person or company interfacing with or accessing the marketplace to incur a significant amount of systems-related development work or costs in order to accommodate the change or to fully interact with the marketplace as a result of the change. Such material changes could include changes to technology requirements that would significantly impact a marketplace participant's trading activities, such as the introduction of an order type, or significant changes to a

regulatory feed that a regulation services provider takes in from the marketplace..

**22. Section 14.2 is changed by adding the following subsections:**

- (2.1) Paragraph 12.3(3)(c) of the Instrument prohibits a marketplace from beginning operations before the chief information officer of the marketplace, or an individual performing a similar function, has certified in writing that all information technology systems used by the marketplace have been tested according to prudent business practices and are operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted.
- (2.2) In order to help ensure that appropriate testing procedures for material changes to technology requirements are being followed by the marketplace, subsection 12.3(3.1) of the Instrument requires the chief information officer of the marketplace, or an individual performing a similar function, to certify to the regulator or securities regulatory authority, as applicable, that a material change has been tested according to prudent business practices and is operating as designed. This certification may be based on information provided to the chief information officer from marketplace staff knowledgeable about the information technology systems of the marketplace and the testing that was conducted..

**23. Companion Policy 21-101CP is changed by adding the section:**

**14.2.1 Uniform Test Symbols**

- (1) Section 12.3.1 of the Instrument requires a marketplace to use uniform test symbols for the purpose of performing testing in its production environment. In the view of the Canadian securities regulatory authorities, the use of uniform test symbols is in furtherance to a marketplace's obligations at section 5.7 of the Instrument to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.
- (2) The use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace's production environment; it is not intended to enable stress testing by marketplace participants. The Canadian securities regulatory authorities are of the view that a marketplace may suspend access to a test symbol where its use in a particular circumstance reasonably represents undue risk to the operation or performance of the marketplace's production environment. The Canadian securities regulatory authorities also note that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of National Instrument 23-103 Electronic Trading and Direct Electronic Access to Marketplaces..



24. *Companion Policy 21-101CP is changed by replacing section 14.3 with the following:*

**14.3 Business Continuity Planning**

- (1) Section 12.4 of the Instrument 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. In fulfilling the requirement to develop and maintain reasonable business continuity plans, the Canadian securities regulatory authorities expect that marketplaces are to remain current with best practices for business continuity planning and to adopt them to the extent that they address their critical business needs.
- (2) Paragraph 12.4(1)(b) of the Instrument also requires a marketplace to test its business continuity plans, including disaster recovery plans, according to prudent business practices on a reasonably frequent basis and, in any event, at least annually.
- (3) Section 12.4 of the Instrument also establishes requirements for marketplaces meeting a minimum threshold of total dollar value of trading volume, recognized exchanges or quotation and trade reporting systems that directly monitor the conduct of their members, and regulation services providers that have entered into a written agreement with a marketplace to conduct market surveillance to establish, implement, and maintain policies and procedures reasonably designed to ensure that critical systems can resume operation within certain time limits following the declaration of a disaster. In fulfilling the requirement to establish, implement and maintain the policies and procedures prescribed by section 12.4, the Canadian securities regulatory authorities expect that these policies and procedures will form part of the entity's business continuity and disaster recovery plans and that the entities subject to the requirements at subsections 12.4(2) to (4) of the Instrument will be guided by their own business continuity plans in terms of what constitutes a disaster for purposes of the requirements..

25. *Companion Policy 21-101CP is changed by adding the following section:*

- 14.4 Industry-Wide Business Continuity Tests** - Section 12.4.1 of the Instrument requires a marketplace, recognized clearing agency, information processor, and participant dealer to participate in all industry-wide business continuity tests, as determined by a regulation services provider, regulator, or in Québec, the securities regulatory authority. The Canadian securities regulatory authorities expect that marketplaces will make their production environments available for purposes of all industry-wide business continuity tests..

26. **Section 15.1 is changed**

- (a) **by deleting** “that” **immediately after** “Subsection 13.1(1) of the Instrument requires”,
- (b) **by replacing** “shall” **with** “to” **immediately after** “trades executed through a marketplace”, **and**
- (c) **by removing** “either” **immediately after** “registered as a dealer under securities legislation”.

27. **Companion Policy 21-101CP is changed by adding the following section:**

**15.2 Access to Clearing Agency of Choice** – As a general proposition, marketplace participants should have a choice as to the clearing agency that they would like to use for the clearing and settlement of their trades, provided that such clearing agency is appropriately regulated in Canada. Subsection 13.2(1) of the Instrument thus requires a marketplace to report a trade in a security to a clearing agency designated by a marketplace participant.

The Canadian securities regulatory authorities are of the view that where a clearing agency performs only clearing services (and not settlement or depository services) for equity or other cash-product marketplaces in Canada, it would need to have access to the existing securities settlement and depository infrastructure on non-discriminatory and reasonable commercial terms.

Subsection 13.2(2) of the Instrument provides that subsection 13.2(1) does not apply to trades in standardized derivatives or exchange-traded securities that are options..

28. **Subsection 16.2 is changed by inserting** “In Québec, a person or company may carry on the activity of an information processor only if it is recognized by the securities regulatory authority.” **after** “to act as an information processor.”.

29. **Section 16.3 is changed in the heading of the section by replacing** “to” **with** “in”.

30. **Companion Policy 21-101CP is changed by adding the following section:**

**16.3.1 Filing of Financial Statements** – Subsection 14.4(6) of the Instrument requires an information processor to file annual audited financial statements within 90 days after the end of its financial year. However, where an information processor is operated as a division or unit of a person or company, which may be a marketplace, clearing agency, issuer or any other person or company, the person or company must file an income statement, a statement of cash flow and any other

information necessary to demonstrate the financial condition of the information processor. In this case, the income statement, statement of cash flow and other necessary financial information pertaining to the operation of the information processor may be unaudited..

31. These changes become effective on October 1, 2015.

## ANNEX D

### Amendments to National Instrument 23-101 Trading Rules

1. **National Instrument 23-101 Trading Rules is amended by this Instrument.**
2. **National Instrument 23-101 Trading Rules is amended by replacing “shall” wherever it occurs with “must”.**
3. **Section 5.1 is amended by**
  - (a) **replacing “no person or company” with “a person or company”, and**
  - (b) **adding “not” before “execute a trade”.**
4. **Section 6.7 is amended by**
  - (a) **replacing “no person or company” with “a person or company”, and**
  - (b) **adding “not” before “send an order to an exchange”.**
5. **Section 6.8 is amended by adding “, except for paragraph 6.3(1)(c),” after “In Québec, this Part”.**
6. **Section 7.1 is amended by adding the following subsection:**
  - (3) If a recognized exchange has entered into a written agreement under section 7.2, the recognized exchange must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized exchange and the conduct of the exchange’s members, and that enable the regulation services provider to effectively monitor trading on the exchange and across marketplaces..
7. **National Instrument 23-101 Trading Rules is amended by replacing section 7.2 with the following:**
  - 7.2 Agreement between a Recognized Exchange and a Regulation Services Provider –** A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will:
    - (a) monitor the conduct of the members of the recognized exchange,
    - (b) monitor the compliance of the recognized exchange with the requirements set under subsection 7.1(3), and

- (c) enforce the requirements set under subsection 7.1(1)..

**8. National Instrument 23-101 Trading Rules is amended by adding the following section:**

**7.2.1 Obligations of a Recognized Exchange to a Regulation Services Provider**

– A recognized exchange that has entered into a written agreement with a regulation services provider must

- (a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:
  - (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.1(1), and
  - (ii) the conduct of the recognized exchange, including the compliance of the recognized exchange with the requirements set under subsection 7.1(3) ; and
- (b) comply with all orders or directions made by the regulation services provider..

**9. Section 7.3 is amended by adding the following subsection:**

- (3) If a recognized quotation and trade reporting system has entered into a written agreement under section 7.4, the recognized quotation and trade reporting system must adopt requirements, as determined necessary by the regulation services provider, that govern the recognized quotation and trade reporting system and the conduct of the quotation and trade reporting system's users, and that enable the regulation services provider to effectively monitor trading on the recognized quotation and trade reporting system and across marketplaces..

**10. National Instrument 23-101 Trading Rules is amended by replacing section 7.4 with the following:**

**7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider** - A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider must enter into a written agreement with the regulation services provider which provides that the regulation services provider will

- (a) monitor the conduct of the users of the recognized quotation and trade

reporting system,

- (b) monitor the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3), and
- (c) enforce the requirements set under subsection 7.3(1)..

**11. National Instrument 23-101 Trading Rules is amended by adding the following section:**

**7.4.1 Obligations of a Quotation and Trade Reporting System to a Regulation Services Provider** – A recognized quotation and trade reporting system that has entered into a written agreement with a regulation services provider must

- (a) transmit to the regulation services provider the information required under Part 11 of NI 21-101 and any information reasonably required by the regulation services provider in the form and manner requested by the regulation services provider to effectively monitor:
  - (i) the conduct of and trading by marketplace participants on and across marketplaces, including the compliance of marketplace participants with the requirements set under subsection 7.3(1), and
  - (ii) the conduct of the recognized quotation and trade reporting system, including the compliance of the recognized quotation and trade reporting system with the requirements set under subsection 7.3(3); and
- (b) comply with all orders or directions made by the regulation services provider..

**12. Section 10.2 is amended by replacing “an agreement” with “a written agreement” before “with a regulation services provider that provides”.**

13. This Instrument comes into force on October 1, 2015.

## ANNEX E

### Changes to Companion Policy 23-101CP *Trading Rules*

1. The changes to Companion Policy 21-101CP are set out in this Schedule.
2. *Subparagraph 6.3(c)(ii) is changed by replacing “disaplayed” with “displayed”.*
3. *Subsection 6.4(1) is changed by replacing “shall” with “must”.*
4. *Companion Policy 23-101CP is changed by replacing section 7.1 with:*

**7.1 Monitoring and Enforcement of Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System** - Under section 7.1 of the Instrument, a recognized exchange will set its own requirements governing the conduct of its members. Under section 7.3 of the Instrument, a recognized quotation and trade reporting system will set its own requirements governing the conduct of its users. The recognized exchange or recognized quotation and trade reporting system can monitor and enforce these requirements either directly or indirectly through a regulation services provider. A regulation services provider is a person or company that provides regulation services and is either a recognized exchange, recognized quotation and trade reporting system or a recognized self-regulatory entity.

If a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with a regulation services provider, it is expected that the requirements adopted by the recognized exchange or recognized quotation and trade reporting system under Part 7 of the Instrument will consist of all of the rules of the regulation services provider that relate to trading. For example, if a recognized exchange or recognized quotation and trade reporting system has entered into a written agreement with IIROC, the rules adopted by the recognized exchange or recognized quotation and trade reporting system are all of IIROC’s Universal Market Integrity Rules. Clock synchronization, trade markers and trading halt requirements would be examples of these adopted rules that relate to the regulation services provider’s monitoring of trading on the recognized exchange or recognized quotation and trade reporting system and across marketplaces.

We are of the view that all of the rules of the regulation services provider related to trading must be adopted by a recognized exchange or recognized quotation and trade reporting system that has entered into a written agreement with the regulation services provider given the importance of these rules in the context of effectively monitoring trading on and across marketplaces. We note that the regulation services provider is required to monitor the compliance of, and enforce, the adopted rules as against the members of the recognized exchange

or users of the recognized quotation and trade reporting system. The regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules but it is the applicable securities regulatory authority that will enforce these rules against the recognized exchange or recognized quotation and trade reporting system.

Sections 7.2 and 7.4 of the Instrument require the recognized exchange or recognized quotation and trade reporting system that chooses to have the monitoring and enforcement performed by the regulation services provider to enter into an agreement with the regulation services provider in which the regulation services provider agrees to enforce the requirements of the recognized exchange or recognized quotation and trade reporting system adopted under subsection 7.1(1) and 7.3(1).

Specifically, sections 7.2 and 7.4 require the written agreement between a recognized exchange or recognized quotation and trade reporting system and its regulation services provider to provide that the regulation services provider will monitor and enforce the requirements set under subsection 7.1(1) or 7.3(1) and monitor the requirements adopted under subsection 7.1(3) or 7.3(3).

Paragraph 7.2.1(a)(i) mandates that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the conduct of and trading by marketplace participants on and across marketplaces. The reference to monitoring trading "across marketplaces" refers to the instance where particular securities are traded on multiple marketplaces. Where particular securities are only traded on one marketplace, the reference to "across marketplaces" may not apply in all circumstances.

Paragraph 7.2.1(a)(ii) requires that a recognized exchange must transmit information reasonably required by the regulation services provider to effectively monitor the compliance of the recognized exchange with the requirements adopted under subsection 7.1(3). As well, subsection 7.2.1(b) requires a recognized exchange to comply with all orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange's members on the recognized exchange and with the regulation services provider's oversight of the compliance of the recognized exchange with the requirements adopted under 7.1(3)..

5. These changes become effective on October 1, 2015.



## **ANNEX F**

### **LIST OF COMMENTERS**

Canadian Security Traders Association, Inc.  
Chi-X Canada ATS Limited  
CNSX Markets Inc.  
Connor, Clark & Lunn Investment Management Ltd.  
Investment Industry Association of Canada (IIAC)  
Liquidnet Canada Inc.  
Scotia Capital Inc.  
TMX Group Limited

## ANNEX G

### COMMENT SUMMARY AND CSA RESPONSES

<b>Topic</b>	<b>Summary of Comments</b>	<b>CSA Response</b>
<p><b>Marketplace systems and business continuity planning:</b></p> <p><b>(i) Business Continuity Testing</b></p>	<p>Commenters supported the general direction of the CSA’s proposal on business continuity testing.</p> <p>One commenter requested more clarity on what qualifies as a disaster and how the CSA interprets when a service, such as trading, is deemed to not be operative. Another commenter strongly encouraged the CSA to mandate a marketplace’s production environment for participation in this industry wide test since using a test environment significantly undermines the effectiveness of a BCP test.</p> <p>Three commenters questioned whether the obligation to participate in industry-wide testing should apply to all protected marketplaces, as defined in the “CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 Trading Rules”. One commenter suggests that mandatory participation as applied to marketplace participants should be limited to marketplace participants that are investment dealers.</p> <p>One commenter suggested that resumption times for marketplaces should be shortened to one hour from the currently stated two hours. Two commenters suggest the two hour mandated recovery time for marketplaces be moved to a best efforts standard. Two commenters suggested a lower threshold for the system resumption requirements in section 12.4.</p> <p>One commenter pointed out that the proposed</p>	<p>In regards to defining “disaster”, the CSA does not believe that the Instrument should prescribe what constitutes a disaster and that marketplaces should be guided by their own BCP plans in determining what qualifies as a disaster for purposes of the requirements at section 12.4. We have amended the Companion Policy (CP) to reflect this guidance.</p> <p>Our view is that all marketplaces, whether protected or not, have the potential to contribute risk to the capital markets and should therefore participate in industry-wide testing. We also expect that marketplaces will make their production environments available for industry-wide testing and have amended the CP to reflect this expectation.</p> <p>We have narrowed the obligation to participate in industry-wide BCP tests under 12.4.1 from marketplace participants to participant dealers. The definition of “participant dealer” has been incorporated from National Instrument 23-103 <i>Electronic Trading and Direct Electronic</i></p>

Topic	Summary of Comments	CSA Response
	<p>changes to section 12.4 of the Instrument would effectively require a marketplace to deploy a dedicated disaster recovery site, which would be a material undertaking for an exchange, and for its vendors and dealer customers.</p>	<p><i>Access to Marketplaces</i> (NI 23-103) for purposes of limiting participation in the industry-wide BCP test to dealers only.</p> <p>With respect to the system resumption requirements in section 12.4, we acknowledge that owing to the many, and at times unforeseen, variables that may affect a marketplace’s key systems, there may be instances where it is not possible for a marketplace to ensure that such systems resume operations within the specified times following the declaration of a disaster. We have therefore revised section 12.4 to require a marketplace that meets the threshold to establish, implement and maintain <i>policies and procedures</i> reasonably designed to ensure system recovery within the prescribed timeframes. As regards the threshold for the system resumption requirements in s.12.4, it is our view that 10% is the appropriate threshold at this time.</p> <p>Our view is that two hours strikes the appropriate balance between having key systems resume operations in a timely manner following a declaration of a disaster with allowing marketplaces sufficient time to diagnose and rectify systems issues in the event of disruption. We have therefore left the resumption periods in section 12.4 unchanged.</p>

Topic	Summary of Comments	CSA Response
		<p>Finally, it is not the intention of the amendments to require marketplaces to maintain a dedicated disaster recovery site.</p>
<p><b>Marketplace systems and business continuity planning:</b></p> <p><b>(ii) Uniform Test Symbols in Production Environments</b></p>	<p>One commenter expressed concerns that a marketplace’s production environment may be negatively impacted by marketplace participants using test symbols to try out trading strategies. One supporter of this provision notes that all symbols in a production environment demand system resources and that a marketplace should be able to exercise its power under Part 4 of National Instrument 23-103 to suspend access to a test symbol in a production environment if it is negatively impacting the production environment.</p> <p>Two commenters suggest the formation of an industry working committee to assist in identifying issues related to implementation of this provision and to ensure that any changes to marketplace operations are implemented effectively across all marketplaces.</p> <p>A commenter suggested a requirement for marketplaces to disclose their policies relating to this type of testing. Another commenter suggested mandating the duration of testing.</p> <p>One commenter would like clarity as to whether the rule amendments would preclude a marketplace to use, and make available to participants, non-uniform test symbols for the purposes of performing testing in the production environment where appropriate.</p>	<p>We have amended the CP to indicate that the use of uniform test symbols is intended to facilitate the testing of functionality in a marketplace’s production environment and is not intended to enable stress testing by marketplace participants. To the extent that the use of test symbols may negatively impact the performance of a marketplace’s production environment, our view is the marketplace may suspend access to a test symbol where its use reasonably represents undue risk. We have also reflected in the CP the CSA’s view that misuse of test symbols by marketplace participants may amount to a breach of the fair and orderly markets provisions of NI 23-103.</p> <p>As indicated in the Notice accompanying the proposed amendments, our expectation is that the details of how best to implement the test symbols requirement will be discussed with an industry working group. Clearing firms and information processors could be included in the consultation so that coordination, if</p>

Topic	Summary of Comments	CSA Response
		<p>necessary, is achieved. However, it is beyond the scope of the proposed amendments to mandate the use of test symbols by clearing agencies and information processors at this time.</p> <p>We have amended section 10.1 of the Instrument to provide for the disclosure, on a marketplace’s website, of any policies and procedures relating to a marketplace’s use of uniform test symbols for purposes of testing in its production environment.</p> <p>We are also of the view that the proposed amendments regarding test symbols would not preclude a marketplace from using its non-uniform test symbols to carry out testing in the production environment where appropriate.</p>
<p><b>Marketplace systems and business continuity planning:</b></p> <p><b>(iii) Security Breaches</b></p>	<p>Two commenters support a requirement that a marketplace notify a regulator or securities regulatory authority of any material security breach in a timely manner.</p> <p>One commenter believes the proposed amendments in relation to notification of material security breaches are extremely broad and that reporting of such information will expose confidential and sensitive system information to unnecessary leakage. The commenter submits that assessing the materiality of a security breach based on the potential impact of such a breach would be a more practical standard.</p>	<p>The CSA believes that notification of security breaches is important and useful and that such notification is an important part of our ongoing oversight of marketplaces.</p> <p>The provisions for the reporting of material security breaches are comprehensive. As expressed in the CP, a material security breach would be any unauthorized entry into any of the listed systems and that, as a result, virtually any <i>successful</i> security breach</p>

Topic	Summary of Comments	CSA Response
		<p>would be considered material. Since this provision is not intended to cover <i>unsuccessful</i> attempts at unauthorized entry, the CSA believes that the number of reportable security breaches should be reasonable.</p> <p>While we acknowledge the concerns raised with respect to risks associated with the reporting of confidential and sensitive information around security breaches, we note that Canadian securities regulatory authorities maintain secure systems and have implemented policies and procedures designed to safeguard confidential and sensitive information. We also note that in Ontario, the Ontario Securities Commission has ordered that the forms required to be filed pursuant to the Instrument be held in confidence pursuant to section 140(2) of the Securities Act (Ontario).</p>
<p><b>Marketplace systems and business continuity planning:</b></p> <p><b>(iv) Expansion of scope of ISRs</b></p>	<p>One commenter requested further clarity on the definition of “auxiliary systems” and points out that agreements with third party providers would have to be reviewed and amended to provide access for the ISR audit team. The commenter submits that third party providers may not be amenable to exposing components of their own security measures to ISR auditors.</p>	<p>While we acknowledge the comment, the CSA’s view is that the description of “auxiliary systems” and the corresponding requirements in section 12.1.1 of the Instrument are clear.</p> <p>We also note guidance from the Securities and Exchange Commission in Regulation SCI on systems operated on behalf of an SCI entity by a third party:</p>

Topic	Summary of Comments	CSA Response
		<p>“SEC believes that permitting such systems to be excluded from the requirements of Regulation SCI would significantly reduce the effectiveness of the regulation in promoting the national market system by ensuring the capacity, integrity, resiliency, availability, and security of those systems important to the functioning of the U.S. securities markets.</p> <p>Further, if the definition did not include systems operated on behalf of an SCI entity, the Commission is concerned that some SCI entities might be inclined to outsource certain of their systems solely to avoid the requirements of Regulation SCI, which would further undermine the goals of Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.”</p>
<p><b>Marketplace systems and business continuity planning:</b></p> <p><b>(v) Launch of new marketplaces and material</b></p>	<p>With respect to the requirement to provide marketplace participants and service vendors reasonable opportunity to adapt to the launching of new marketplaces and material changes made to a marketplace’s technology requirements, one commenter suggests this requirement should apply only where the proposed change would require participants of the applicable marketplace or market participants generally to implement material</p>	<p>We acknowledge the comment regarding the possible impact of the amendments on the timing for implementation by marketplaces of material system changes.</p> <p>Although, in the CSA’s view, it is essential that marketplace participants and access vendors</p>

Topic	Summary of Comments	CSA Response
<p><b>changes to marketplace technology requirements</b></p>	<p>changes to their own technology.</p> <p>One commenter noted that, unlike OSC Staff Notice 21-706, the amendments do not permit any flexibility regarding the time and effort required to introduce a “material system change” other than what constitutes a material change itself. As a result, the commenter suggests that the amendments may limit and restrict marketplaces from implementing beneficial technology changes in a timely manner and may also have a negative impact on marketplace advancement and competitiveness. The commenter also suggests that guidance be provided as to what would constitute a “material system change” and whether there is any intended relationship between the terms “significant change” and “significant impact” under Section 6.1(4) of the CP21-101.</p> <p>In connection with <b>certification</b> by a marketplace’s chief information officer that all IT systems have been tested according to prudent business practices and are operating as designed prior to a marketplace beginning operations or implementing material changes to its technology requirements, one commenter believes that this provision will impose unnecessary costs and unduly delay beneficial market changes from being implemented. The commenter submits that rather than a formal certification, policies and procedures that support appropriate testing and internal sign offs prior to implementation of material systems’ changes could meet the intent of this provision.</p>	<p>have sufficient time to undertake the necessary work to accommodate the launch of new marketplaces or material systems changes made by existing marketplaces following the regulatory review process, we have decided to not adopt the proposed amendment to subsection 12.3(3) at this time.</p> <p>We acknowledge the comment about the possibility of delay associated with the certification by a marketplace’s CIO but, in our view, the importance of ensuring that proposed systems changes have been properly tested warrants the requirement.</p>
<p><b>Marketplace systems and business continuity</b></p>	<p>One commenter expressed concerns with the proposed amendments to Exhibit G of Forms 21-101F1 and 21-101F2 as, in the view of the commenter, the new requirements are broad</p>	<p>We acknowledge the comment regarding the changes to Exhibit G of Forms 21-101F1 and 21-101F2. However, the</p>



Topic	Summary of Comments	CSA Response
<p><b>planning:</b></p> <p><b>(vi) Other System Related Amendments</b></p>	<p>and onerous and would introduce systemic risk, as well as create an unacceptable and unnecessary security risk for confidential marketplace information.</p>	<p>CSA’s view is that the additional information requested in Exhibit G is essential for the Canadian securities regulatory authorities to have an informed understanding of the marketplace’s systems and its approach to contingency planning that is in keeping with the interconnectedness of marketplaces and the impact that systems disruptions can have on the market overall.</p> <p>We note that some additional reporting requirements have been included in Exhibit G to Forms 21-101F1 and 21-101F2, including some additional description regarding a marketplace’s business continuity and disaster recovery plans, which will provide for a more complete representation of the marketplace’s BCP/DRP and is consistent with international regulatory approaches to the oversight of business continuity planning by marketplaces. We have also revised the reporting requirements for a marketplace’s network diagram and organization chart for a marketplace’s IT group in order the clarify the requirements and avoid duplicative reporting.</p> <p>Lastly, as discussed above in 2(iii), we note that the Canadian securities regulatory authorities maintain secure</p>

Topic	Summary of Comments	CSA Response
		<p>systems and have implemented policies and procedures designed to safeguard confidential and sensitive information.</p>
<p><b>Use of marketplace participants' trading information for research.</b></p>	<p>A number of commenters had specific concerns regarding the proposed amendments for the disclosure of the order and trade information of marketplace participants for purposes of capital markets research.</p> <p>Commenters' concerns related to the risks of misuse of the information once disclosed by the marketplace, risks around the safe storage of information by recipients, and risks that marketplace participants may nevertheless be identified through disclosure of their order and trade information.</p> <p>Specific concerns identified by commenters included the risk that recipients might be able to reverse engineer the trading strategies of marketplace participants based on the information received and therefore obtain insight into proprietary trading strategies, even if the information were masked.</p> <p>Commenters also expressed concern that marketplaces are not incented or equipped to effectively monitor recipients' use of the order and trade information once disclosed, leaving the risks associated with disclosure unmitigated. Lastly, commenters expressed concern that the proposed requirements in the Instrument may not apply to ultimate recipients of the information in the event a recipient further discloses the information to a research assistant or a third party for purposes of verification.</p>	<p>We acknowledge the comments received and thank commenters for their thoughtful reaction to the proposed amendments.</p> <p>The CSA's view is that it is in the public interest for capital markets research to be conducted. Since marketplace participants' order and trade information may be needed to conduct this research, subsection 5.10(1.1) of the Instrument allows a marketplace to release a marketplace participant's order or trade information without obtaining its written consent, provided this information is used for capital markets research and only if certain terms and conditions are met.</p> <p>We note that 5.10(1.1) was modified so as to clarify that a marketplace may release a marketplace participant's order or trade information if it reasonably believes that information will be used solely for the purpose of capital markets research and that that information is required for the purpose of the capital markets research. Moreover, the CSA has made clear that the research is not intended for the</p>

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	<p>A number of commenters suggested the creation of a process by which marketplace participants would be notified in the event that a marketplace proposed to disclose their order and trade information, including being given an opportunity to comment on the proposed disclosure.</p>	<p>purpose identifying a particular marketplace participant or identifying transactions, trading strategies or market positions of a particular marketplace participant.</p> <p>In addition, we have refined the provisions for disclosure of order or trade information used in connection with research submitted to a publication.</p>
<p><b>Co-location and other access arrangements with a service provider.</b></p>	<p>Three commenters questioned whether a marketplace can ensure that a third-party operator would provide a form of access that complies with the marketplace’s criteria for fair access. Another commenter suggests that proper due diligence should be the expectation placed on a marketplace for ensuring that a third party provider follows its fair access policies.</p> <p>One commenter submitted that the proposed requirement in Section 5.13 and 10.1(i) of NI21-101 is very broad and the drafting should be clarified. The commenter expressed concerns that these sections could be interpreted to apply to access services provided in the normal course by a third party access vendor, and absent any commercial agreement or arrangement between the marketplace and “third party service provider” under which the access services are being performed or facilitated for or on behalf of the marketplace.</p>	<p>In our view, hosting services can be provided by the marketplace or by a third party provider. In the case of the latter, it is the CSA’s view that it is appropriate for the marketplace to require, as part of its agreement with the third party provider, that the third party provider provide access in a way that complies with the fair access requirements of the Instrument.</p> <p>We confirm that the proposed amendment is intended to apply to key marketplace access services, including co-location services, rather than access services provided in the normal course absent any agreement with the marketplace, such as services provided by a third party access vendor.</p>
<p><b>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</b></p>	<p>One commenter expressed concern that the extended approval process puts Canadian marketplaces at a competitive disadvantage relative to competing marketplaces in the US and other jurisdictions. The commenter</p>	<p>In the CSA’s view, regardless of whether a change should be published for comment or not, all significant changes require the benefit of at least 45 days</p>

Topic	Summary of Comments	CSA Response
<p><b>(a) Guidance Regarding Significant Changes to Form 21-101F1 and Form 21-101F2</b></p>	<p>suggests that public comment on a proposed marketplace rule change would be appropriate when the rule change would have a significant impact on market participants that are not participants of the specific marketplace. However, if a change would only have a significant impact on those participants who are subscribers of the specific marketplace, the commenter believes that a 20-day notice period to the regulator would be appropriate, but it would not seem appropriate to require publication of the proposed change for public comment.</p> <p>One commenter believes that permitting marketplaces discretion when determining whether or not certain changes are significant will help operations be more fluid and remedy some unnecessary delays. Two commenters suggest that this section be revised to include a materiality threshold to ensure resources are allocated effectively and efficiently, and to ensure the process treats all marketplaces fairly when managing marketplace changes and their associated filings.</p> <p>One commenter requests confirmation that the Rule Protocol will be amended in tandem with the Proposed Amendments or that another solution will be made so that fee changes are not considered a “significant change subject to public comment”.</p>	<p>prior notice to allow for a full consideration of the change by staff. The CSA notes that the 45 days prior notice for significant changes is also in accordance with rules in other jurisdictions, including the U.S.</p> <p>In Staff’s view, the new guidance around significant impact in the CP is expected to assist marketplaces in having the flexibility to determine what changes are considered significant relative to the impact the change is expected to have on the marketplace. In our view, by assessing the significance of the change relative to its expected impact on the marketplace, there is an appropriate amount of discretion to allow for the appropriate treatment of proposed changes.</p> <p>Lastly, we acknowledge the need to amend, in Ontario, the protocols for the review and approval of rule changes and significant changes for marketplaces to ensure continuity with the guidance in the CP.</p>
<p><b>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</b></p> <p><b>(c) Annual Certification</b></p>	<p>Two commenters do not see the need for a complete and new consolidated form being submitted each year at the same time. One commenter submits that the proposed annual filing and certification under Section 3.2(4) of NI21-101 is duplicative and places an undue regulatory burden on marketplaces without added benefit.</p>	<p>The requirement to file complete and accurate information with respect to Form 21-101F1 and Form 21-101F2 ensures that each marketplace reviews its F1/F2 to ensure descriptions match any significant changes made</p>

Topic	Summary of Comments	CSA Response
<p><b>of Form 21-101F1 and Form 21-101F2 Information</b></p>		<p>during the year and that the changes made are still in effect and that the form is complete and up to date.</p>
<p><b>Information in Forms: 21-101F1, 21-101F2, and 21-101F3.</b></p> <p><b>(e) Changes to Form 21-101F3</b></p>	<p>The commenter submits that the proposal to receive information in Form 21-101F3 regarding significant systems and technology changes during the quarter is duplicative of filings made under the Rule Protocol, the 21-101F1 and 21-101F2 filing process and the Automation Review Program for Market Infrastructure Entities in the Canadian Capital Markets.</p>	<p>We acknowledge the concern that the proposal to receive information is duplicative. With respect to the reporting of systems changes in the F3, we anticipate that this reporting would replace similar reporting required by the ARP and SRP and consolidate these requirements in the Instrument.</p>
<p><b>Provision of data to information processors.</b></p>	<p>One commenter suggested that the proposed amendments to subsections 7.1(3) and 7.2(2) do not meet the CSA’s stated objectives to ensure that information made available by marketplaces to the IP is timely, as the ‘made available’ test of timeliness does not go far enough. The commenter put forward that the only fair and monitorable system would require centralized dissemination of trade data and market data (i.e. the IP releases the data to participants rather than acting like a participant.) Another commenter suggested that the proposal should focus on when marketplace participants receive the data.</p> <p>One commenter suggests that the demarcation point for delivery of the data to the TMX IP is considerably upstream from the point that the same data is made available to other consumers and questions whether the intent this provision is to require the contributing marketplaces to</p>	<p>We note that the centralization of data distribution through the IP represents a fundamental change to the existing model of data distribution that is beyond the scope of the proposed amendments. The purpose of the proposed changes to section 7.1(3) and 7.2(2) is to codify current expectations around the timely distribution of market data within the current model for data distribution by marketplaces.</p> <p>While acknowledging that there may be differences in the time in which marketplace participants receive order and trade information from the IP relative to those that receive it directly from a marketplace, we have revised the CP to clarify the CSA’s expectation</p>

Topic	Summary of Comments	CSA Response
	<p>delay provision of the data to other consumers.</p>	<p>that in complying with the requirements of subsections 7.1(3) and 7.2(2) of the Instrument, marketplaces will release order and trade information simultaneously to both the IP and to marketplace participants that take in market data directly from the marketplace.</p> <p>We also note that marketplaces have affirmed with the OSC that they provide real time data to the IP at the same time and at the same rate of speed as provided to marketplace participants that elect to maintain direct connectivity to marketplaces.</p>
<p><b>Obligations of a recognized exchange to a regulation services provider.</b></p>	<p>The commenter contends that IIROC has not been granted the power to monitor exchange conduct. The commenter does not disagree that the interrelated nature of the operations of an exchange with the operations of its regulation services provider (RSP) may require coordination; however, this coordination does not require that the RSP monitor the conduct of the exchange. Furthermore, this provision implies an authority to the RSP that is not appropriate, desirable or necessary.</p> <p>With respect to the new provisions proposed for Section 7.1 of CP23-101, the commenter does not agree that “[t]he regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules [i.e. – UMIR].”</p> <p>The commenter submits that the RSP’s authority under Section 7.2.1(b) should be restricted to “orders or directions of its</p>	<p>We note the comments and concerns regarding obligations of a recognized exchange to a RSP and agree that the RSP does not regulate the exchange. However, it is our view that it is appropriate and necessary for the RSP to monitor the compliance and conduct of a recognized exchange with respect to those requirements applicable to the exchange and to report to the applicable securities regulatory authority only. The applicable securities regulatory authority has the authority to enforce these rules against a recognized exchange.</p> <p>The CSA mandates that a recognized exchange must transmit information <i>reasonably</i> required by an RSP. ‘<i>Reasonably</i> required by</p>

Topic	Summary of Comments	CSA Response
	<p>regulation services provider that are in connection with the conduct and trading by the recognized exchange’s members on the recognized exchange.”</p> <p>With respect to Section 7.2.1(a) of NI23-10, IROC can mandate the form and manner for delivery of data stipulated by Part 11 of NI21-101, but other data in the possession of the exchanges required by IROC for its regulation services is provided in the form possessed by the exchanges.</p>	<p>an RSP’ also applies to the <i>form</i> of the data and the <i>manner</i> of the data transmission. As submitted by the commenter, coordination between recognized exchanges and RSPs is expected. We believe that such coordination should naturally apply to arrangements for the form and manner of data transmission and it is up to the RSP to determine the best way for the data to be provided.</p>
<p><b>Clearing and settlement.</b></p>	<p>One commenter believes the proposed amendments do not adequately address the complexities of clearing agencies, including those relating to their multifaceted functions, foreign regulatory and commercial differences, and CCP interoperability.</p>	<p>We acknowledge the comment regarding the issues raised by the prospect of multiple clearing agencies. The CSA’s objective in proposing the amendments to Part 13 of the Instrument was to remove any impediments in the Instrument to prospective competition in the provision of clearing and settlement services.</p> <p>We have elected not to revise the definition of clearing agencies in 13.2(1). In the CSA’s view, with the mandatory recognition of clearing agencies, to the extent that a marketplace participant designated a clearing agency for purposes of trade reporting pursuant to subsection 13.2(1) of the Instrument, that clearing agency would be carrying on business as a clearing agency and would need to be appropriately recognized or</p>

Topic	Summary of Comments	CSA Response
		<p>exempt from recognition.</p> <p>We also acknowledge the commenter’s concerns regarding the challenges associated with the interoperability of central counterparties in a multiple clearing agency environment. Our expectation is that, in the event of competition in the provision of clearing and settlement services such that different clearing agencies could be designated for purposes of subsection 13.2(1) of the Instrument, all issues of interoperability would need to be resolved prior to the recognition, or exemption from recognition, of a competitor clearing agency.</p>
<p><b>Requirements applicable to information processors</b></p>	<p>Two commenters recommend that the proposed one hour recovery time for the Information Processor be moved to a best efforts standard while another commenter believes that it should be reduced to no more than thirty minutes.</p> <p>One commenter notes that the IP currently runs in a hot-hot environment where two sites (Primary and Secondary) are running in parallel, each operating independently of the other to ensure that if one site is down, the other can remain fully functional with minimal impact to subscribers. Should an unforeseen event occur where both production sites are affected, the IP may not be able to control the total downtime.</p>	<p>In terms of shortening the time period for the resumption of operations of key systems following the declaration of a disaster, our view is that one hour strikes the appropriate balance between having critical systems resume operations in a timely manner and allowing the IP sufficient time to diagnose and rectify systems issues in the event of disruption.</p> <p>We have revised section 14.6 of the Instrument to require an information processor to establish, implement and maintain <i>policies and procedures</i> reasonably designed to ensure system recovery within the prescribed</p>



<b>Topic</b>	<b>Summary of Comments</b>	<b>CSA Response</b>
		timeframes.