APPENDIX A

Summary of Comments on Proposed Amendments to NI 21-101 and 23-101

Commenters:

CanDeal.ca
Investment Industry Association of Canada
Liquidnet Canada Inc.
CNSX Markets Inc.
TMX Group Inc.
TriAct Canada Marketplace LP
TD Securities
Chi-X Canada ATS Limited
TD Asset Management Inc.
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Alpha ATS LP

Text of Proposed Amendments	Summary of Comments	CSA response and additional CSA commentary
3.2 — Change in Information (1) Subject to subsection (2), a marketplace must not implement a significant change to a matter set out in Form 21-101F1 or in Form 21-101F2 unless the marketplace has filed an amendment to the information provided in Form 21-101F1 or in Form 21-101F2 in the manner set out in the Form at least 45 days before implementing the change. (2) A marketplace must file an amendment to the information provided in Exhibit L – Fees of Form 21-101F1 or Exhibit L – Fees of Form 21-101F2, as applicable, at least seven business days before implementing a change to the information provided in Exhibit L – Fees. (3) Immediately before implementing a change to a matter set out in Form 21-101 F1 or Form 21-101F2 other than a change referred to in subsection (1) or (2), a marketplace must file an amendment to the information provided in the Form.	***General***	
	One commenter agreed with the commentary that a new type of security or a new category of participant is a significant change requiring 45 days advance notice, but thought the language was too broad and could require an amendment to be filed each time a new security is listed or a new participant is added. The commenter suggested changing 21-101CP 6.1(4)(e) and (h) to read "changes to *types of* securities (marketplace participants) or new types of securities (marketplace participants)…".	*We agree and have made the suggested change.*
	One commenter indicated that 21-101CP should include a discussion on the appropriate use of discretion in determining whether a change is significant.	*21-101CP lists items the regulators will generally consider "significant." Since the Companion Policy provides guidance only, we do not think additional discussion on the appropriate use of discretion by a marketplace is necessary.*
	A number of commenters thought that the requirement to file non-significant changes in advance of implementation is burdensome and may not be possible in some circumstances. One commenter suggested a requirement that non-significant changes be filed within 10 days from the end of the month in which the change is made.	*We agree and have made the proposed change. Subsection 3.2(3) of NI 21-101 was revised to require that marketplaces file amendments related to changes that are not significant by the close of business on the 10th day after the end of the month in which the change was made. If a marketplace chooses to publicly announce a non-significant change or is required to make details public under section 10.1 of NI 21-101, notice must be given no later than the time of the public announcement.*

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	One commenter was of the view that significant changes are material changes to market structure, types of participants, market surveillance and enforcement. All other changes should be reported quarterly, with a marketplace sanctioned or forced to withdraw a change if it mischaracterizes it.	*The items listed as "significant changes" are ones the regulators consider necessary to understand the marketplace's business and may include changes other than those listed by the commenter. For example, new or changes in fees, access requirements or corporate governance are relevant and necessary to understand the marketplace's business. The marketplace will not necessarily be required to publish details of a proposed change for comment.*
	One commenter supported reducing the notification period for non-significant changes, but indicated that the regulators should be able to impose a delay if on review they determine a change to be significant.	*As indicated in subsection 6.1(7) of 21-101CP, the Canadian securities regulatory authorities may review filings for changes other than significant changes to ascertain the appropriateness of categorization of such filings and notify the marketplace of any disagreement. If the change is deemed to be significant, it would follow the applicable filing and review process.*
	One commenter thought flexibility was needed to determine what is a significant change on a case-by-case basis, by looking at substance, not form. A marketplace extending its trading hours to match another's would probably not be a significant change, while a proposal to begin trading before any other market is open probably is.	*We note that if the subject matter of the change is one that is generally considered "significant," the Canadian securities regulatory authorities consider it to be significant even if the change is made to conform to the practice of another marketplace.*
	Two commenters indicated that the proposed requirement to report changes in affiliates could be unworkable for international marketplaces with tens or hundreds of affiliates if changes to affiliates are included. The reporting should be limited to the domestic affiliates of a marketplace.	*We agree that not all affiliates need to be included, and have made a change to require reporting for affiliates (domestic and foreign) that provide services for the marketplace.*

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	One commenter noted that the wording in 21-101CP should be narrower than the rule to provide guidance, but is broader. The list in subsection 6.1(4) of 21-101CP does not map to Forms 21-101F1 and 21-101F2, and should indicate the applicable exhibit.	*We do not agree with this comment. NI 21-101 sets out the filing requirements for significant changes, while 21-101CP gives guidance and clarity on what would be considered significant changes by the Canadian securities regulatory authorities. It is not necessary that subsection 6.1(4) of 21-101CP map to the exhibits in Forms 21-101F1 and 21-101F2, nor that these exhibits are identified in 21-101CP. It is the responsibility of a marketplace to identify where the relevant information is contained in the Forms and which particular exhibits should be revised in the event of a significant change.*
	Fees	
	Regarding the proposed requirement to shorten the notification period for marketplace fees to at least seven business days before implementing a change to the information provided in Exhibit L – Fees, three commenters supported the shorter notification period. Another commenter thought marketplaces should be able to implement fee decreases immediately, and the regulator should confirm that it is a true fee decrease in the following seven days.	*We do not believe that a seven business day notification period is unduly onerous, and it should be considered by the marketplace in the fee changing process, whether the change relates to an increase or decrease of the fee.*
	Another commenter noted that marketplace fees are complex, and seven business days is not sufficient time to ascertain the impact and make changes to trading strategies. The proposed notification period should only be applicable to clear fee decreases.	*As we indicated in subsection 6.1(8) of 21-101CP, while the Canadian securities regulatory authorities will make best efforts to review amendments, including amendments to Exhibit L – Fees, to Forms 21-101F1 and 21-101F2 within the timelines specified in subsections 3.2(1) and (2) of NI 21-101, the review period may exceed these timeframes in circumstances where the information filed needs to be more extensively reviewed.*

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	One commenter requested clarification regarding the fees that would be covered. Would they include fees for smart order routers or market data offered by a related party?	*The fees covered are the fees related to marketplace services, including data, whether charged directly by the marketplace or by a third party on its behalf. Subsection 12.1(2) of 21-101CP provides guidance regarding the fees that would be included.*
	Changes to marketplace technology	
	A number of commenters requested clarification of what constitutes a "significant" change. Two commenters suggested that fixes to address problematic issues or bugs are not significant, and nor are hardware upgrades. One commenter recommended that the focus should be on those changes that would require dealers and participants to adjust their own systems. Another commenter thought that changes to accommodate new order types are not significant, and they are disclosed to participants in any event.	*In paragraph 6.1(4)(h) of 21-101CP, we indicated that changes to the systems and technology used by a marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and market surveillance, if applicable, including those affecting capacity, would be considered significant. For clarity, these would be changes to the systems or technology related information, as documented in the relevant exhibits of 21-101F1 or 21-101F2, as applicable. Paragraph 6.1(5)(b)(v) indicates that minor system or technology changes that would not significantly impact the system or capacity of the marketplace would not be included.*
	One commenter noted that major system changes introduce risk, and their frequency and complexity is accelerating. Protected marketplaces should be required to batch updates, upgrades, bug fixes and new functionality into regularly scheduled drops. Protected marketplaces should also provide full-scale test environments for performance and functional testing.	*We agree that this is a good business practice. The securities regulatory authorities plan to review the requirements related to marketplace systems, technology and contingency planning included in the Marketplace Rules. The purpose of the review will be to assess what, if any, amendments are needed to the Marketplace Rules to reflect issues related to marketplaces' systems.*

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4.2 — Filing of Annual Audited Financial Statements (1) A recognized exchange and a recognized quotation and trade reporting system must file annual audited financial statements within 90 days after the end of its financial year in accordance with the requirements outlined in subsection 4.1(1). (2) An ATS must file annual audited financial statements.	Two commenters supported the proposed changes.	*We acknowledge these comments.*
	One commenter thought that all marketplaces should be required to publish annual financials so market participants can assess their viability.	*We do not agree with this suggestion. The intent of the requirement is to enable the securities regulatory authorities to assess financial viability of marketplaces, as part of their oversight responsibility.*
	The same commenter indicated that the capital requirements for ATSs should be higher than IIROC minimums. ATSs should have the same financial viability requirements as exchanges have in their recognition orders.	*We do not agree with this comment. There is much less impact to the market and investors if an ATS ceases operations. If an ATS gains significant market share, the applicable securities regulatory authority can require it to be recognized as an exchange or impose additional terms and conditions on the entity's registration. These may include additional capital requirements. Furthermore, ATSs are subject to the capital requirements established by IIROC. IIROC monitors their viability in a number of ways, including through reviews of the ATSs' monthly and annual financial reports.*
5.1 — Access Requirements (1) A marketplace must not unreasonably prohibit, condition or limit access by a person or company to services offered by it.	Two commenters indicated that the Canadian securities regulatory authorities need to address how the requirement applies to marketplaces that restrict access to certain dealers or the buy side. Will existing marketplaces be grandfathered?	*We note that we are not proposing a change from the current rule, which allows a marketplace to give access to certain classes of market participants but requires it to be reasonable when determining access.*
	Indications of Interest (IOI)	
	Regarding the proposed clarification in subsection 7.1(4) of 21-101CP that marketplaces that send IOI information to a selected smart order router (SOR) should consider the extent to which this	*We agree with the comment that details regarding an IOI should be available to all SORs if made available to a specific SOR. We have amended subsection 7.1(4) of 21-101CP to clarify that this is*

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	information should be sent to similarly situated SORs, a number of commenters indicated that IOI information should be provided to all SORs. One commenter noted that a marketplace SOR should be able to take into account dark liquidity on its own book without triggering pre-trade transparency.	*our expectation.*
	One commenter inquired whether the information that would be made available to all SORs is intended to be limited to displayed orders or to dark orders, flash or co-location orders as well.	*As indicated above, it is our expectation that IOI information sent to an SOR is made available to all other SORs. If an IOI is considered to be an order, it would be subject to the pre-trade transparency requirements of NI 21-101. That is, if the order is displayed by the marketplace to external individuals or entities, including an SOR, it would have to be transparent and available to all SORs.*
5.7 — Fair and Orderly Markets A marketplace must not engage in or promote any activity that interferes with fair and orderly markets.	One commenter noted that this is a potentially very broad requirement, especially for ATSs. The Canadian securities regulatory authorities should clarify the requirement to indicate this is not imposing an oversight role but is intended to prevent the introduction or promotion by the marketplace of anything contrary to the public interest. Another commenter agreed with the principle, but noted that marketplaces do not have the tools to accomplish this. For example, the regulators took the position that a marketplace cannot cancel trades. The marketplaces should be given the means to achieve the objective.	*We acknowledge the concerns and have amended 21-101CP to indicate that the requirement for fair and orderly markets does not impose a responsibility on a marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or QTRS that has assumed responsibility for monitoring the conduct of its marketplace participants directly, rather than through a regulation services provider. We indicated, however, that marketplaces are expected to monitor activity on their markets for compliance with their own operational policies and procedures and to report any concerns about order entry or trading to IIROC.* *We have also revised section 5.7 of NI 21-101 to specify that the requirement is that a marketplace*

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		take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets. In subsection 7.6(3) of 21-101CP, we indicated that our expectation is that, as part of these reasonable steps, the marketplace should ensure that its operations support compliance with regulatory requirements, including UMIR. While this does not mean that the marketplace must system-enforce all regulatory requirements, it means that it should not operate in a manner that would cause its marketplace participants to breach regulatory requirements when trading on that marketplace.
5.9 — Risk Disclosure for Foreign Exchange-Traded Securities (1) When opening an account for a marketplace participant, a marketplace that is trading foreign exchange-traded securities must provide that marketplace participant with disclosure in substantially the following words: "The securities traded by or through the marketplace are not listed on an exchange in Canada and may not be securities of a reporting issuer in Canada. As a result, there is no assurance that information concerning the issuer is available or, if the information is available, that it meets Canadian disclosure requirements." (2) Before the first order for a foreign	One commenter questioned the relevancy of this requirement given that listed issuers are reporting issuers. If the requirement is meant to cover unlisted securities traded on an exchange, it is not clear how the exchange will comply. Must it get acknowledgement from all participants or from participants accessing the market indirectly?	*The requirement in NI 21-101 covers foreign issuers that are traded on an "unlisted trading" basis. An exchange or QTRS must get the acknowledgement from its participants, not from the participants' clients. We have clarified the wording of the provision.*

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exchange-traded security is entered onto the marketplace by a marketplace participant, the marketplace must obtain an acknowledgement from the marketplace participant that the marketplace participant has received the disclosure required in subsection (1).		
5.11 Management of Conflicts of Interest A marketplace must establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides.	Three commenters agreed with the proposal.	*We acknowledge these comments.*
	One commenter indicated that a marketplace's conflicts policy should balance the commercial interests of all parties, including the marketplace.	*The provision sets out the requirement to have policies to identify and manage conflicts of interest as a principle. It does not prescribe the contents of each marketplace's policy. However, section 7.8 of 21-101CP gives guidance regarding the conflicts of interest that a marketplace may face, and these include conflicts, actual or perceived, related to the commercial interest of the marketplace, the interests of its owners or operators, and the responsibilities and sound functioning of the marketplace.*
	Referral arrangements create a possibility of conflict and should be disclosed.	*We agree and note that paragraph 10.1(f) of NI 21-101 requires the disclosure of referral arrangements between the marketplace and service providers. We have amended subsection 7.8(1) of 21-101CP to clarify that conflicts of interest may include those arising as a result of a marketplace's referral arrangements.* *We have further amended 21-101CP by adding subsection 7.8(2) to clarify our expectation that, given that dealers who are owners of marketplaces may have a conflict of interest with respect to their*

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		clients, a marketplace's policies should also take into account conflicts related to owners that are marketplace participants. Also, it is our expectation that the marketplace would include in its marketplace participant agreements a requirement that marketplace participants disclose their ownership to their clients in compliance with the dealers' obligations under National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. We have indicated this in subsection 12.1(4) of 21-101CP.
5.12 Outsourcing If a marketplace outsources any of its key services or systems to a service provider, which includes affiliates or associates of the marketplace, the marketplace must: (a) establish and maintain 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, (b) identify any conflicts of interest between the marketplace and the service provider to which key services and systems are outsourced, and establish and maintain policies and procedures to mitigate and manage such conflicts of interest, (c) enter into a contract with the service provider to which key services and	Commenters agreed with the proposal. One commenter indicated that the rule should be principles-based.	*The proposed requirement is consistent with principles outlined in the report of the Technical Committee of the International Organization of Securities Commission (IOSCO) on outsourcing. We have also clarified that the marketplace's policies and procedures should include an assessment of the marketplace's ability to continue to comply with securities legislation in the event of bankruptcy or insolvency of its service provider.*

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systems are outsourced that is appropriate for the materiality and nature of the outsourced activities and that provides for adequate termination procedures, (d) maintain access to the books and records of the service providers relating to the outsourced activities, (e) ensure that the securities regulatory authorities have access to all data, information and systems maintained by the service provider on behalf of the marketplace, for the purposes of determining the marketplace's compliance with securities legislation, (f) take appropriate measures to determine that service providers to which key services or systems are outsourced establish, maintain and periodically test an appropriate business continuity plan, including a disaster recovery plan, (g) take appropriate measures to ensure that the service providers protect the marketplace participants' proprietary, order, trade or any other confidential information, and (h) establish processes and procedures to regularly review the performance of the service provider under any such outsourcing arrangement.		

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6.7 — Notification of Threshold (1) An ATS must notify the securities regulatory authority in writing if, (a) during at least two of the preceding three months of operation, the total dollar value of the trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total dollar value of the trading volume for the month in that type of security on all marketplaces in Canada; (b) during at least two of the preceding three months of operation, the total trading volume on the ATS for a month in any type of security is equal to or greater than 10 percent of the total trading volume for the month in that type of security on all marketplaces in Canada; or (c) during at least two of the preceding three months of operation, the number of trades on the ATS for a month in any type of security is equal to or greater than 10 percent of the number of trades for the month in that type of security on all marketplaces in Canada.	A number of commenters agreed with the proposal.	*We acknowledge these comments.*
	One commenter thought there was no policy rationale for forcing an ATS to be recognized as an exchange given the harmonization of the requirements, unless the ATS wants to list securities or perform a regulatory function itself. Another noted that no rationale was given for a change that would impose a burden on ATSs without any clear benefit.	*We disagree that the provision imposes a burden as it does not require the ATS to become an exchange automatically when certain thresholds are met, but rather, it requires the ATS to notify the securities regulatory authority if it has achieved a certain threshold. As we indicated in subsection 3.4(7) of the Companion Policy, the securities regulatory authority will review the ATS to consider if it should be an exchange or if additional terms and conditions on its registration are needed. As an ATS's market share grows, it has greater market impact and may need greater oversight.*
	Two commenters thought this requirement was unnecessary as the information is already reported by ATSs to IIROC, which provides the data to the CSA and to the marketplaces.	*While we agree that ATSs send volume and value information to IIROC and IIROC produces market share reports to facilitate the marketplaces' compliance with this section of NI 21-101, the ATSs are ultimately responsible for monitoring the size and dollar value of their trading volume.*
	One commenter noted that fixed income marketplaces would not be able to comply as there are no monthly industry statistics for the securities they trade.	*We note that the requirement to monitor the size of an ATS's trading volume and value of trading volume is an existing requirement in NI 21-101. However, we acknowledge the challenges that fixed income marketplaces have in complying with these requirements and encourage them to discuss with the securities regulatory authority about how to meet these requirements.*

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(2) An ATS must provide the notice referred to in subsection (1) within 30 days after the threshold referred to in subsection (1) is met or exceeded.		
7.1 Pre-Trade Information Transparency - Exchange-Traded Securities (1) A marketplace that displays orders of exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider.	***General***	
	One commenter supported the clarification that the requirements apply to all orders and IOIs that are displayed, including information disseminated to SORs.	*We acknowledge this comment.*
	Many commenters were of the view that there should not be a minimum size on dark orders for a number of reasons, described below.	*We acknowledge these comments and note that the Proposed Amendments do not propose a minimum size at this time. The Proposed UMIR Amendments referred to in the body of this Notice also do not propose an actual size threshold. Rather, the purpose of the Amendments and the Proposed UMIR Amendments is to facilitate the implementation of the regulatory framework for dark liquidity.*
	One commenter noted that any size that would be imposed would likely become obsolete as market structure evolves. However, other commenters noted that, if a minimum size is to be established, it should be 50 board lots.	*We agree, and note that subsection 7.1(1) of NI 21-101 does not establish an actual threshold, but rather, it refers to the size threshold set by a regulation services provider, in this case, IIROC. To retain flexibility and allow IIROC to revise any threshold that may be imposed in the future, if required, no size amount was specified in the Proposed UMIR amendments.*
	One commenter indicated that there should be industry consultation before setting a minimum	*We agree. As we indicated in the Notice that accompanied the Proposed Amendments, market*

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	size for dark orders.	*participants would be consulted in the process of setting a minimum size for dark orders. The Notice of the Proposed UMIR Amendments describes this process, which would include publication of a notice requesting public comment for a period of at least 30 days from the date of issuance of the notice.*

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	One commenter indicated that minimum size restrictions may require market makers and liquidity providers to take greater risk in the dark markets, reducing risk appetite in lit ones, and reduce opportunities for retail order flow to interact with dark orders.	*The purpose of the proposed regulatory framework for dark liquidity, which includes requiring that orders meet a minimum size to be entered without pre-trade transparency, is to protect the integrity of the price discovery process while maintaining the use of dark liquidity. That said, we acknowledge that the elements of this framework may lead to changes in the trading behaviour of market participants. While no size threshold was proposed at this time, we plan to monitor market developments.*
	One commenter believed that there should be no minimum size if a marketplace offers significant price improvement, as this would benefit investors.	*The rationale for proposing a minimum size for dark orders is to protect the price discovery process and the quality of the visible markets. We are of the view that this should be required regardless of the level of price improvement offered by a marketplace.*
	One commenter was of the view that dark orders should be restricted if it is clear that they inhibit the functioning of the markets in a material and quantifiable manner. Others, however, supported the concept of a minimum size for marketplaces. One noted that issues related to dark liquidity should be dealt with on a policy basis rather than a "wait-and-see" basis.	*Our regulatory approach for dark liquidity is proactive and was not intended to address a problem. As we indicated in the notices describing the proposed framework for dark liquidity previously published, we acknowledge that there has been no evidence that dark liquidity has had a negative impact on the Canadian capital market. However, we have established a framework that would allow the CSA and IIROC sufficient flexibility to intervene as needed in order to encourage transparency and address risks to the quality of the price discovery process.*
	One commenter noted that focusing solely on a	*The proposed regulatory framework for dark*

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	minimum size will not improve market structure.	*liquidity does not focus only on a minimum size for dark orders. As described in Joint CSA/IIROC Notice 23-311 and in the Proposed UMIR Amendments, there are other elements, specifically: that orders must receive price improvement in order to execute against dark orders, unless they exceed a certain size; that price improvement must be meaningful; and that visible orders must have priority over dark orders. We note that CSA and IIROC staff are currently reviewing other issues that impact market structure, such as broker preferencing, internalization of order flow, and marketplaces' fees models, in order to assess what, if any, regulatory response is needed.*
	One commenter noted that setting a minimum size could lead to information leakage, negatively impacting best execution and overall liquidity.	*We recognize the potential for information leakage associated with setting of a minimum size. This issue, and how to mitigate the risk of being gamed, will be considered as part of the process in determining a minimum size.*
	One commenter noted that there is risk of dark liquidity migrating to other jurisdictions if the rules are too restrictive.	*We acknowledge the potential for reduced dark liquidity in Canada, however, we believe that the framework we proposed for dark liquidity would ensure that the visible market and the price discovery process are not harmed. At the same time, we note that dealers' best execution obligations govern where and how to execute their trades, and dealers would have to justify any decisions on how they directed order flow in the context of best execution requirements.*

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	One commenter noted that the wording of the exemption in subsection 7.1(2) may not apply to marketplaces that facilitate one-to-one negotiations, and those marketplaces should be exempted from the pre-trade transparency requirements.	*We have amended 21-101CP to indicate that the securities regulatory authority may consider granting an exemption from the pre-trade transparency requirements in sections 7.1, 7.3, 8.1 and/or 8.2 of NI 21-101 to a marketplace for orders that result from a request for quotes or facility that allows negotiation between two parties in certain circumstances. These would include that order details are shown only to the negotiating parties; that no actionable IOIs are displayed by either party or by the marketplace; and that each order entered on the marketplace meets the size threshold that would be set by a regulation services provider, as provided in subsection 7.1(2) of NI 21-101.*
	One commenter noted that the residual amount of a partially-filled dark order should be eligible to continue as a dark order even if it is below any minimum size that would be established.	*We refer the commenters to the Proposed UMIR Amendments, which would allow partially filled dark orders to continue to remain dark.*
	One commenter noted that Calculated Price Orders as defined in 1.1.4 of 23-101CP and "derived mid-peg orders" should also be exempt under 7.1(2) as the price is not known at the time.	*We refer the commenters to the Proposed UMIR Amendments that would introduce a definition for Dark Orders. As defined, Dark Orders would exclude certain specialty orders, including Opening Orders.*

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8.6 **Exemption for Government Debt Securities -** Section 8.1 [requiring transparency of orders for government debt securities] does not apply until January 1, 2015.	One commenter supported not requiring pre-trade transparency for unlisted debt.	*We acknowledge this comment. We note that the CSA has implemented this provision through blanket orders and, in Ontario, through OSC Rule 21-501 – Deferral of Information Transparency Requirements for Government Debt Securities in National Instrument 21-101 – Marketplace Operation, which came in force on December 31, 2011.*
10.1 **Disclosure by Marketplaces -** A marketplace must publicly disclose on its website information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including but not limited to information related to: (a) all fees, including any listing fees, trading fees, data fees, and routing fees charged by the marketplace, an affiliate or by a third party to which services have been outsourced; (b) how orders are entered, interact and execute; (c) all order types; (d) access requirements; (e) the policies and procedures that identify and manage any conflicts	One commenter noted that marketplaces are not currently required to disclose individual fee agreements with dealers and other participants that can result in a substantial variance in the actual fees paid. They should be required to clarify if fees are negotiable and the CSA should determine whether and how these agreements should be disclosed. One commenter requested clarification regarding the fees that would be covered by this provision. The commenter asked if the fees would include fees for smart order routers or market data offered by a related party. Another commenter requested clarification regarding the treatment of co-location fees. The same commenter believed co-location is not a key or core marketplace service. If the provision does apply, it should cover arrangements where third parties host marketplace servers and user servers.	*We are of the view that all the fee schedules charged by a marketplace to any and all users of services should be disclosed, and have clarified this in subsection 12.1(2) of 21-101CP.* *The provision would cover all fees for marketplace services, whether offered directly by the marketplace or through a third party. It does not cover non-marketplace services that unregulated third parties can provide.* *We disagree with this comment. Co-location is a core service and subject to the fair access requirements of NI 21-101. A marketplace should have a policy for determining which entities may co-locate and the cost. We have amended NI 21-101 accordingly, and paragraph 10.1(a) indicates that co-location fees are included in the fees that are required to be disclosed.*

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of interest arising from the operation of the marketplace or the services it provides; (f) any referral arrangements	A number of commenters supported the proposal, and one noted that the information that would be disclosed would help educate a marketplace's clients.	*We acknowledge these comments.*

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	One commenter thought there should be a provision allowing marketplaces to designate certain information as confidential to protect intellectual property rights.	*We do not believe that NI 21-101 requires disclosure at a level of detail where confidentiality would be a concern.*
	One commenter noted that much of the information is generally available today. The CSA should clarify the amount of detail that should be disclosed on a marketplace's website as the information (especially for fees) varies widely. Another commenter noted that current public disclosure by ATSs is inconsistent and inadequate. The CSA should include a public comment requirement for both exchanges and ATSs. The commenter noted that all trading requirements of ATSs, whether in policies, subscriber agreements, or otherwise, should be publicly available.	*As we indicated in section 10.1 of NI 21-101, a marketplace, ATS or exchange, should publicly disclose on its website information that is reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides. While we included a description of the information that should be disclosed, we believe that a marketplace should have the flexibility to determine what other information it needs to disclose. To this extent, in subsection 12.1(1) of 21-101CP, we indicated that these are the minimum disclosure requirements, and a marketplace may make other information publicly available if it considers this to be appropriate.*
	One commenter noted that outsourced marketplace services should be disclosed, whether by an affiliate or third party.	*We agree with the comment and have changed paragraph 10.1(a) of NI 21-101 to indicate that fees charged by an affiliate or third party to which services have been outsourced or which provides those services should also be disclosed.*
	One commenter noted that all marketplaces should annually publish corporate governance practices, including disclosure of whether directors are independent.	*We do not agree with this comment. While exchanges, which have a public interest mandate and carry out certain regulatory functions, are held to higher governance and disclosure standards than ATSs, disclosure of corporate governance practices, including whether directors are independent, has not been mandated. We acknowledge that an exchange may follow the governance and disclosure*

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		practices for public issuers, if applicable, but these are not applicable to all marketplaces. That said, a marketplace may publish its governance practices if it wishes.
	One commenter supported the disclosure of a general description of how marketplace routing decisions are made, but not the technical specifications. The commenter noted that the disclosure should apply to third party routers used by a marketplace.	*We agree with the comment and note that paragraph 10.1(g) of NI 21-101 requires disclosure of how routing decisions are made. This would include third-party routers used by a marketplace. We did not require that the technical specifications be disclosed.*
11.2 — Other Records (1) As part of the records required to be maintained under section 11.1, a marketplace shall include the following information in electronic form: . . . (c) a record of each order which must include . . . (xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account … (xix) whether the marketplace or a marketplace participant has marked the order as a directed-action order, and … (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders,	One commenter noted that proposed clause 11.2(c)(xii) of NI 21-101, which is currently in clause 11.2(c)(xi) of NI 21-101, would require orders to be marked with information (retail, wholesale, employee) that is not currently provided to a marketplace by its participants. The order should identify whether the account is a client, inventory or non-client account.	*As the commenter noted, this is not a change from current requirements. The order information to be kept by marketplaces is consistent with the information that must be recorded by dealers in accordance with the requirements of NI 23-101. The account number will normally indicate whether the account is for inventory, or a retail or institutional customer.*
	Two commenters agreed with the requirement to mark directed-action orders (DAO), but did not believe it would provide useful information as marketplaces mark all orders from certain users as DAO based on the users' preference. One commenter suggested changing the marker to reflect the concept of initiator or decision maker rather than where the marking occurs.	*NI 23-101 currently requires DAOs to be marked (see paragraph 11.2(1)(u) of NI 23-101). The requirement in NI 21-101 is to retain the marker in the record of the order, whether the marker was applied by the originating dealer or by the marketplace.*
	One commenter thought the requirement to maintain records of DAO orders is duplicative, as both dealers and marketplaces would have to retain the records.	*Both the marketplace participants and the marketplace must retain the record to show compliance with their respective obligations.*

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including … (x) each client identifier assigned to a client accessing the marketplace using direct electronic access.		
	The requirement that the marketplace keep records of whether the marketplace or a marketplace participant has marked the order as a DAO could be determined on an order record sampling basis if required by the regulator. A receiving marketplace cannot know and cannot keep records regarding which orders arrive from a marketplace's SOR versus a commercial SOR versus another order execution or routing platform.	*Revised clause 11.2(c)(xviii) clarifies that the requirement is that the marketplace keep records of orders it received as DAO and those it sent out as DAO.*
	One commenter noted that clause 11.2(1)(d)(x) requires that execution report details of orders must include each unique client identifier assigned to a client accessing the marketplace using direct electronic access (DEA). National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103) requires participants to advise marketplaces about which of the participant's trader IDs represent DEA clients, but the identity of the DEA client itself does not need to be provided to the marketplaces but rather to IIROC, where the marketplace uses IIROC as a regulation services provider. The same commenter indicated that the requirement to mark each applicable order as DEA would require systems changes across all marketplaces, vendors and dealer systems to introduce a new tag. The commenter did not believe that NI 23-103 required this level of technological change.	*We confirm that the client identifier can be the marketplace trader ID that is specifically associated with a client accessing the marketplace using direct electronic access. We note that the trading of a direct electronic access client may be associated with more than one client identifier.* *We note that the requirement would not result in the introduction of a new tag on orders. It allows the existing practices of some marketplaces to maintain records of client identifiers accessing the marketplace using DEA to continue.*

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11.3 — Record Preservation Requirements (1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep (a) all records required to be made under sections 11.1 and 11.2…	One commenter indicated that the requirement should be reconsidered as the cost of storing data is becoming significant. It is rare to get requests from IIROC for data that isn't recent and RCMP requests usually arrive within four years. Litigants typically are only interested in basic information such as order, trade and dealer information. The same commenter indicated that the requirement to retain details for seven years on whether an order is routed to another marketplace for execution, as well as the date, time and name of the marketplace to which the order is routed, is very onerous. The relevant data will be retained by the marketplace that ultimately receives the order. If the intention is to track compliance with order protection requirements, a much shorter period should suffice.	*We have reviewed the record retention requirements and do not believe a shortening of the period is advisable at this time.*

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12.1 **System Requirements -** For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall… (c) promptly notify the regulator or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.	One commenter indicated that "material system failure" should be defined. The commenter suggested that it would be a system-wide stoppage caused by trading engine failure, not a network error in which a subset of dealers or clients lose connectivity.	*We do not believe that the definition should be as narrow as suggested. We have clarified the definition in 21-101CP and that, as part of the notification of a material system failure, we expect that the marketplace will provide updates on the status of the failure, its rectification, and the results of the marketplace's own post-mortem.*
12.2 **System Reviews** (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1 (a) and section 12.4.	Commenters agreed with the proposed amendments. One commenter indicated that the regulators should either not grant exemptions, or should treat exempted marketplaces as non-protected.	*We believe the regulator needs the ability to grant limited exemptions in appropriate circumstances, such as when a marketplace intends to decommission or make significant changes to a trading system in the near term. If a marketplace suffers a system failure, other marketplaces have a "self-help" remedy from the requirements of the Order Protection Rule.*
	One commenter indicated that consideration should be given to how the requirements in NI 21-101 interact with the requirements in exchanges' recognition orders and those under automated review programs.	*We do not believe that the requirements in NI 21-101 conflict with or are inconsistent with the system requirements applicable to exchanges included in their recognition orders or the automated review programs. The purpose of the proposed amendments is to add guidance regarding the firms or individuals that are qualified to conduct system reviews of marketplaces, and when an exemption from the requirements of subsection 12.2(1) of NI 21-101 may be granted.*

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12.4 — Business Continuity Planning (1) A marketplace must develop and maintain reasonable business continuity plans, including disaster recovery plans. (2) A marketplace must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.	Commenters agreed with the proposed amendments. One commenter indicated that consideration should be given to how the proposed requirements interact with the requirements for business continuity plans in the exchanges' recognition orders and requirements under automated review programs.	*We note that the proposed requirements related to the maintenance of BCPs are broad, do not conflict with, and are not inconsistent with, the requirements for business continuity plans in the exchanges' recognition orders and under automated review programs. The BCP related requirements in NI 21-101 ensure these requirements apply to all marketplaces. In light of these factors, we do not believe that further changes are needed to either the requirements in NI 21-101 or in the exchanges' recognition orders.*
14.4 Requirements Applicable to an Information Processor (7) An information processor must file its financial budget within 30 days after the start of a financial year.	Two commenters agreed with the proposal. One commenter, however, indicated that the requirement to file a budget is new and unnecessary given the undertakings of an information processor to maintain financial viability.	*The applicable securities regulatory authority has a responsibility to assess the financial viability of market participants, including information processors, and their ability to comply with regulatory requirements. The budget is an important input in the oversight process. The regulators cannot simply rely on the information processor complying with the undertakings.*
21-101CP		
2.1 Marketplace (8) A dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and generates trade execution through the routing of both sides of a match to a marketplace as a cross, would be	While two commenters agreed with the proposed clarification of the definition of a marketplace, most expressed concerns. They included: • the need to ensure that there are no unintended consequences; for example, treating dealers like marketplaces would have the unintended consequence of exempting them from best execution requirements, as ATSs are exempt under NI 23-101;	*We acknowledge the concerns raised by market participants and are mindful of the potential unintended consequences of this interpretation of the definition of "marketplace". It was not our intention to exempt dealers from the best execution requirements by considering them marketplaces in certain circumstances.* *However, we remain of the view that a dealer using technology to match orders in a non-discretionary*

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considered by the Canadian securities regulatory authorities to be operating a marketplace under paragraph (c) of the definition of "marketplace".	• the fact that dealers should be able to create efficiencies in processing orders, but dealers trying to do indirectly what they cannot do directly should be caught by the definition of a marketplace; • the fact that, with the proposed clarification, virtually all dealers would meet the definition of a marketplace as almost no order flow, retail or institutional, is handled manually; • The fact that the focus should not be on requiring dealers to file as marketplaces, but on discouraging internalization; one commenter suggested that the best way to achieve this is by eliminating payment for order flow; • The fact that the proposed clarification will stifle a dealer's ability to innovate, develop and enhance routing and trading products and services for clients; • The fact that the use of technology does not change the fundamental role of a dealer from intermediary to marketplace; and • That more substantive cost/benefit analysis needs to be done.	*fashion may, in fact, be operating a marketplace. For this reason, we have revised 21-101CP to clarify that we expect dealers who intend to operate such a system to notify the regulator to discuss the operation of the system and the appropriate regulatory regime.*
6.1 — Forms Filed by a Marketplace (3) While initial Forms 21-101F1 and 21-101F2 and amendments thereto are kept confidential, certain Canadian securities regulatory authorities may publish a summary of the information included in the forms filed by a marketplace, or information related to significant changes to the forms of a marketplace, where the	One commenter noted that the securities regulatory authorities need to consult with marketplaces and have a clear process before publishing any summary information from confidential filings.	*We agree that the marketplaces should be consulted before publishing summary information from confidential filings. In Ontario, the information published and the process for publication is currently outlined in OSC Staff Notice 21-703 Transparency of Operations of Stock Exchanges and Alternative Trading System. OSC staff are currently updating the processes for review of information in Forms 21-101F1 and 21-101F2, including the process for publication of this information.*

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Canadian securities regulatory authorities are of the view that a certain degree of transparency for certain aspects of a marketplace would allow investors and industry participants to be better informed as to how securities trade on a marketplace.		
7.1 — Access Requirements (4) Marketplaces that send indications of interest to a selected smart order router should consider the extent to which such information should be sent to other smart order routers to meet the fair access requirements of the Instrument.	One commenter indicated that the proposed guidance that stated that a marketplace should "consider" whether to send IOI information to other SORs is not sufficient and does not promote market integrity through fair access. The commenter was of the view that, if a marketplace sends any information to an SOR, it should be available to all SORs so that no investors are subject to discrimination based on the marketplace on which they are trading.	*We agree with the comment and have amended subsection 7.1(4) of 21-101CP to clarify that marketplaces that send indications of interest to a selected smart order router or system should send the information to other smart order routers or systems to meet the fair access requirements in NI 21-101.*
	Another commenter noted that it should be clarified that marketplaces need to consider fair access rule when considering whether to give an SOR access to an IOI.	*The amendment to 21-101CP referred to above addresses this comment.*
NI 23-101 Trading Rules		
6.5 — Locked or Crossed Orders – A marketplace participant or a marketplace that routes or reprices orders shall not intentionally	Two commenters agreed with extending the prohibition to marketplaces that route or reprice orders.	*We acknowledge these comments.*

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(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or (b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.	One commenter thought the prohibition should apply to all SORs, not just those operated by marketplaces.	*We note that all marketplace participants, including those using SORs that are not operated by marketplaces, are subject to the prohibition on intentionally locking or crossing markets. As a result, if the SOR does not have the necessary functionality to enable it to avoid crossing or locking a market, the marketplace participant would not be able to comply with this provision without checking whether each order entered or repriced would lock or cross the market.*
23-101CP		
6.4 – Locked and Crossed Markets (2) Section 6.5 of the Instrument prohibits a marketplace participant or a marketplace that routes or reprices orders from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. This could also occur where a marketplace system is programmed to reprice orders without checking to see if the new price would lock the market or where the marketplace routes orders to another marketplace that results in a locked market.	One commenter believed that the guidance in 23-101CP is too broad and would include unintentionally locking or crossing a market. The commenter was of the view that a marketplace or dealer should only be responsible at the time of routing the order and should not be responsible if pegged orders caused the situation because the reference price had changed. The commenter noted that the purpose of imposing a restriction against locked or crossed markets was mainly to prevent those who rely on rebate strategies to ignore other markets in order to post resting orders, but the interpretation in 23-101CP goes beyond this policy purpose.	*The purpose of this provision is to require marketplaces repricing orders to consider consolidated market information in arriving at a repricing decision, not simply orders and trades on that marketplace. A lock or cross would be considered intentional if the marketplace disregards orders on another marketplace when making a repricing decision. However, triggered on-stop orders would not be considered to intentionally lock or cross markets, because any lock or cross they may cause would be inadvertent and not caused by a marketplace repricing. We have amended 23-101CP to clarify this.*
Forms 21-101 F1 and 2		
Exhibit B — Ownership	One commenter indicated that all marketplaces should be required to disclose the identity of those with material ownership positions. The commenter	*As the commenter notes, paragraph 10.1(e) of NI 21-101 requires a marketplace to disclose the policies and procedures to identify and manage any*

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	noted that this might be covered by the requirement to disclose material conflicts of interest.	*conflicts of interest arising from the operation of the marketplace or the services it provides. In subsection 12.1(4), we clarified our expectation that for conflicts arising from ownership of a marketplace by marketplace participant, the marketplace should include in its marketplace participant agreements a requirement that marketplace participants disclose that ownership to their clients, at least quarterly.*
Exhibit C — Organization	One commenter noted that the requirement to list the length of time a position has been held is unnecessary since the start date is given.	*We agree and have made the proposed change.*
	One commenter noted that the examples given for the type of business in which each partner, officer, governor and member of the board and standing committees is primarily engaged (sales, trading, market making, etc.) assumes dealer-related activities and should be broadened.	*We agree and have made the proposed change.*
Exhibit D — Affiliates	One commenter agreed that marketplaces should only have to report for affiliates that provide key services or systems.	*We acknowledge the comment and have made the proposed change.*
Exhibit E —Operation of the Marketplace	One commenter noted that the information to be filed would duplicate the filing requirements for an exchange's rule changes. The commenter thought consideration should be given to harmonizing with the process for rule reviews and requiring rules to be on the marketplace's website.	*If a matter is filed as a rule change, a revised Form need not be filed as well. For greater clarity, we revised the filing instructions under the heading EXHIBITS to clarify that if a filer has otherwise filed the information required pursuant to section 5.5 of NI 21-101, the filer need not file the information again as an amendment to an Exhibit.*

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Exhibit G — Systems and Contingency Planning	One commenter believed that some of the information to be filed under this Exhibit is duplicative of independent system reviews and automated review programs.	*The information required in the Form will not be required to be refiled under the automated review program.*
	One commenter requested clarification that the requirement is to disclose processes and procedures regarding current and future capacity estimates. As the actual estimates can change in real time, it would be unreasonable to require reporting of changes to estimates.	*We have changed the filing requirement for non-significant changes, and the related information would generally have to be filed by the 10th business day after the end of the month in which the change was made.*
Exhibit I — Securities	One commenter inquired about the differences between the information to be filed in this Exhibit and that required on Form 21-101 F3.	*Exhibit I is a list of the types of securities listed on or eligible to trade on the marketplace. Form 21-101 F3 asks for information about trading and would not necessarily capture all eligible securities.*
Exhibit J — Access to Services	One commenter noted that some of the information requested (e.g. criteria for participation) is already in an exchange's rulebook.	*As indicated in the response to the comment on Exhibit E, where information is already included in an exchange's rulebook, it would not have to be refiled as an amendment to an Exhibit.*
Exhibit K — Marketplace Participants	Section 3 of Exhibit K [which requires filing of a description of the trading activities primarily engaged in by a marketplace participant] asks for information that an exchange does not collect. This information should be obtained from IIROC, and consideration should be given to requiring ATSs to disclose this information for subscribers that are not IIROC members.	*We agree that the marketplace may not necessarily know the activities of each individual trader, but it is our expectation that marketplaces should be aware of the trading activities engaged by firms that are marketplace participants. We have amended item K3 accordingly.*

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Exhibit L — Fees	One commenter agreed that fees charged by third parties performing exchange services should be included.	*We acknowledge this comment.*
Form 21-101 F3		
A — General Marketplace Information	Items A(6) and (7) require filing of information that was previously filed. It would be costly to comply and would provide no benefit.	*We have asked for this information to be able to track and, if necessary, follow up on changes previously filed but not implemented. We only require a brief description of the information previously filed and do not believe that this is an onerous requirement.*
B — Marketplace Activity Information	A number of commenters indicated that obtaining the data on a consolidated basis from IIROC rather than from each marketplace would be more efficient and would ensure consistency and flexibility, with custom reporting from STEP.	*We believe that it is appropriately a marketplace's responsibility to maintain information and be able to produce these reports. Marketplaces can contract with IIROC to provide the information on their behalf, should IIROC agree to provide this service.*
	Different marketplaces may interpret the requirements differently, meaning the data won't be comparable.	*Our reviews of the forms filed by the marketplaces would help detect inconsistencies and different interpretations of the filing requirements by the marketplaces. We will work with the marketplaces and give necessary guidance to ensure the reporting requirements are understood and the materials filed are comparable across marketplaces.*
	This information is highly sensitive and must be kept confidential by the CSA.	*As indicated in subsection 16.2(3) of 21-101CP, all information on any of the forms is confidential.*
	Items B1(7) and B4(6) ask for information that the marketplace does not necessarily have. Vendors, as well as participants, contract for co-location, and the market does not know the vendor's client base.	*We are of the view that co-location is a core marketplace service, and it is our expectation that a marketplace knows the entities that have been offered co-location, whether this was done by the marketplace or by a vendor.*

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D — Derivatives Marketplaces in Quebec	One commenter noted that the filing requirements should apply to any marketplace trading equity options, otherwise the Bourse de Montreal is at a disadvantage. The same commenter noted that referring to "derivative markets in Quebec" is confusing.	*The definition of "security" in Quebec for the purposes of this rule includes standardized derivatives as defined in the Derivatives Act (Quebec) and is broader than in the other jurisdictions. Other sections of the form require all marketplaces to provide information about trading in certain derivatives (e.g. options).*
	One commenter indicated that it would be simpler and clearer to report volume, number of trades and open interest by product rather than under general rubrics such as Interest Rate — Short Term.	*We agree and have made the suggested changes.*
	The same commenter made a number of suggestions for revisions to the forms.	*We acknowledge the comments and have made further revisions to the form. As noted in Form 21-101F3, the required information might not be applicable to some marketplaces at this time.* *We have made a change to **Chart 17** to require marketplaces to report information regarding the most actively-traded contracts that, in aggregate, constitute at least 75% of the total volume for each product. This information would provide the regulators with an overview of the overall trading activity. We do not agree with the suggestion that only information regarding the three contracts with the closest expiry dates should be provided.* *We have also amended **Chart 18** and will now require that, for products other than options on Exchange-Traded Funds and equity options, marketplaces should report the trading activity of the marketplace participants for at least 75% of the activity.*