

## ANNEX C

### Summary of Comments on Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and related Companion Policy 21-101CP and CSA Responses

Topic/Reference	Summary of Comments	CSA Response
<b>General Comments</b>		
<b>Exemption framework for foreign ATs</b>	One commenter recommended introducing an exemption framework for foreign ATs that trade foreign listed securities and/or foreign traded securities. The commenter indicated that the requirements for foreign fixed income ATs considered to be carrying on business in Canada are burdensome and duplicative and that the CSA should place greater reliance on the foreign marketplace's home jurisdiction for regulatory oversight.	We acknowledge the comment and note that CSA Staff is separately considering an exemption framework for foreign-based ATs trading fixed-income securities.
<b>Streamlining Reporting Requirements</b>		
<b>Annual consolidated Form 21-101F1 and Form 21-101F2</b>	<p>Several commenters indicated that the requirement to file an annual consolidated Form F1 or F2 is burdensome and does not provide any information that is not already provided during the periodic filings. The commenters suggested that this requirement should be removed from the Instrument.</p> <p>In the event that the requirement at subsection 3.2(5) of the Instrument is removed, one commenter indicated that it would no longer be necessary to include proposed new subsection 3.2(6) in the Instrument.</p>	We have retained the requirement for marketplaces to file an annual consolidated F1 or F2. In our view, the requirement to prepare and file an annual consolidation assists both marketplaces and CSA staff in keeping the information in the forms accurate and up-to-date. The inclusion of subsection 3.2(6) in the Instrument will allow marketplaces to streamline their annual consolidation and avoid the burden associated with

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		duplicating information already filed with the CSA.
<b>Housekeeping changes to Form 21-101F1 and Form 21-101F2</b>	Commenters generally supported the proposed revision of subsection 3.2(3) of the Instrument to provide for the quarterly filing of housekeeping changes to the F1 and F2. However, one commenter indicated that changing the reporting timeframe for non-significant changes to quarterly may result in unintended duplication with the contents of the F3, as both reports will cover the same filing period.	We have removed the requirements in the F3 for marketplaces to provide information on the implementation status of changes previously filed. We think this will address the risk of unintended duplication raised by the commenter.
<b>Form 21-101F1 and Form 21-101F2 - Exhibits</b>	<p>Commenters generally supported the proposed revisions to the information in the Exhibits to the F1 and F2. However, commenters identified numerous other data points in the Exhibits that, in their view, represented burdensome or duplicative information requirements that should be streamlined or eliminated.</p> <p>Specific examples identified by the commenters include:</p> <ul style="list-style-type: none"> <li>▪ The current 5% threshold in Exhibit B for identifying significant shareholders of a marketplace is too low and, for a marketplace that is a reporting issuer, may be impractical in any event. The CSA should consider raising the disclosure threshold to 10%, which is already an established securities law threshold.</li> <li>▪ Exhibits C and D may be streamlined to eliminate duplicative information about directors' occupations and principal business activities.</li> <li>▪ Exhibit E may be streamlined to eliminate overlapping and duplicative information about a marketplace's operations.</li> <li>▪ The CSA should reconsider the need to require the updating of Exhibits J and L where the rules and fees of</li> </ul>	<p>We have streamlined the data points in the Exhibits to the F1 and F2 to address many of the comments raised. In particular, the threshold for reporting significant shareholders in Exhibit B has been raised from 5% to 10% and marketplaces that are also reporting issuers have been carved out of this requirement. Exhibits C, D, and E have also been streamlined as suggested in the comments received.</p> <p>We have also removed the requirement in the F1 and F2 to file a clean version of the revised form.</p>

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	<p>an exchange are publicly available on the exchange's website.</p> <p>One commenter also recommended that for amended F1s and F2s, only the blacklined versions of the forms should be filed, as simultaneous filing of clean versions of the forms causes burden and continuity issues.</p>	
<b>Form 21-101F3 – Part A</b>	<p>Several commenters indicated that the information in Items 4-7 of Part A of the F3 duplicates information marketplaces already file with the CSA or does not materially contribute to the CSA's oversight of marketplaces. Commenters indicated that Items 4-7 of Part A should be eliminated from the F3.</p>	<p>We have removed Items 4-7 of Part A of the F3.</p>
<b>Form 21-101F3 – Part B</b>	<p>Several commenters also indicated that much of the information required by the charts in Section 1 of Part B of the F3 is already provided to IIROC or, in certain instances, is no longer relevant and is consequently burdensome to produce.</p> <p>One commenter noted specifically that the information in Chart 6 in respect of routing of marketplace orders is no longer relevant as marketplaces no longer route orders for purposes of order protection requirements. Commenters generally suggested that the information in the F3 relating to the activities of marketplaces trading exchange-listed securities should be eliminated from the form.</p>	<p>We have removed the reporting requirements in Section 1 of Part B relating to equity marketplaces trading exchange-listed securities.</p>
<b>Fee changes</b>	<p>Several commenters indicated that the proposed change to subsection 3.2(2) of the Instrument, increasing the filing timeline for fee changes from seven business days to 15 business days before implementation, would result in unnecessary delays, and associated burden, for</p>	<p>We have left the timing for the filing of changes to Exhibit L as proposed (15 business days). In our view, changes to fees and fee models represent an area of increasing complexity in marketplace operations</p>

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	<p>marketplaces needing to make fee changes on tight timing for competitive reasons.</p> <p>Commenters indicated that for non-controversial fee changes that replicated existing models or resulted in simple fee decreases, marketplaces should have a mechanism for an accelerated implementation timeline.</p> <p>One commenter recommended a review framework for proposed fee changes whereby, within 15 business days of filing, there would be a decision to approve the change for immediate implementation, put the fee change out for public comment, or require the marketplace to resubmit a revised fee change proposal for a further 15-business day review.</p>	<p>that warrants a reasonable period of time for the CSA to consider new and complex proposals. We do not think that the extra time allowed for considering fee changes unfairly disadvantages marketplaces in making changes quickly in a competitive environment.</p>
<b>Financial reporting</b>	<p>Several commenters indicated that the proposed requirement for recognized exchanges to file interim financial reports within 45 days of the end of the interim period is too short a time period and presents difficulties in efficiently scheduling board meetings to review financial reporting. The commenters indicated that for recognized exchanges that are not reporting issuers, the filing deadline should be extended to 60 days.</p> <p>One commenter also indicated that for recognized exchanges that are not reporting issuers, the time period for filing annual audited financial statements at subsection 4.2(1) should be extended from 90 days to 120 days.</p> <p>Finally, one commenter indicated that the disclosure of accounting principles and statement of compliance with IFRS will result in considerable work for recognized exchanges that are not reporting issuers and may not be</p>	<p>We have changed new section 4.3 of the Instrument to require recognized exchanges to file interim financial reports within 60 days after the end of each interim period.</p> <p>However, we do not think it is appropriate to extend the timeline to file annual audited financial statements to 120 days for recognized exchanges that are not reporting issuers. In our view, it is important that recognized exchanges submit annual financial statements on a timely basis in order for Staff to review the exchanges' financial condition. Consequently, we have not changed the timeframe for annual</p>

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	consistent with similar requirements in the terms and conditions of the exchange recognition orders.	financial reporting for recognized exchanges.
<b>CEO certification</b>	One commenter indicated that the form of certification required at subsection 3.2(4) of the Instrument duplicates the form of certification already required by the F1 and F2 and should be eliminated.	We acknowledge the comment but have not made any changes to the form of certification at subsection 3.2(4) and in the Forms. We note that the subsection 3.2(4) requires certification regarding the completeness of the form and that the marketplace is operating as designed. We think that the additional components of this certification are important to retain as part of an annual certification requirement.
<b>Systems-related Requirements</b>		
<b>Cyber resilience</b>	While commenters generally supported the inclusion of the concept of cyber resilience in the systems requirements for marketplaces in Part 12 of the Instrument, one commenter noted that the term “cyber resilience” is not clearly defined in the Instrument and does not otherwise have an accepted or commonly understood definition. The commenter suggested that a clear and measurable definition of cyber resilience be included in the Instrument.	We note that the additional guidance in subsection 14.1(1) of the Companion Policy refers to sources of guidance for marketplaces as to what constitutes adequate IT controls, including controls in relation to cyber resilience. We felt that it was more appropriate to rely on industry guidance for the design of an optimal control environment rather than attempt to precisely define the concept of cyber resilience.
<b>Security incidents – record-keeping and reporting</b>	Commenters expressed concerns with the proposed revisions to Part 12 of the Instrument that would require marketplaces to keep records of and report to regulators in	We have addressed the concerns with the over-reporting of systems-related

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	<p>respect of “security incidents” as opposed to “security breaches”.</p> <p>Commenters indicated that the proposed guidance on what may constitute a security incident, together with the guidance on the materiality of such incidents for reporting purposes, would result in a significant over-reporting of security incidents to the CSA, which would be burdensome and out of proportion to the value of the reporting.</p> <p>Commenters indicated that the proposed requirement at Item A6 of the F3 would create a reporting obligation for all security incidents regardless of materiality or impact on the marketplace or participants and operationalizing such reporting would be very costly.</p> <p>Commenters also indicated that the materiality standard for reporting security incidents should be based on an assessment of the impact of the incident on participants and on a marketplace’s key business processes rather than on a framework of reporting up to senior marketplace personnel.</p> <p>One commenter indicated that the CSA should consider relying on the requirement for independent systems reviews (ISRs) at section 12.2 of the Instrument for assurance that non-material security incidents are being managed appropriately by marketplaces.</p>	<p>information raised in the comments in two respects:</p> <ol style="list-style-type: none"> <li>1. We have removed the requirement in Item A6 of the F3 requiring marketplaces to make quarterly reporting of outages or other system events, material or otherwise.</li> <li>2. We have revised the record-keeping requirement at para. 12.1(d) of the Instrument to remove the requirement that marketplaces document their materiality assessments in relation to system events.</li> </ol> <p>We also note that the guidance in subsection 14.1(2.1) of the Companion Policy on materiality indicates that marketplaces may consider the impact of the systems event on participants in determining whether or not the incident is material for purposes of paragraph 12.1(c) of the Instrument.</p>
<b>Vulnerability assessments (VAs)</b>	<p>Several commenters indicated that VAs, as proposed at section 12.1.2 of the Instrument, are expensive and not necessarily undertaken absent risks or changes to technology. Several commenters suggested that the CSA consider making vulnerability assessments a bi-annual requirement or triggered by other circumstances, including at the request of the CSA. One commenter also requested</p>	<p>We acknowledge the comments but have not made changes to the requirement at section 12.1.2 of the Instrument. In our view, the requirement for annual vulnerability assessments is consistent with the need for marketplaces to design a</p>

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	<p>clarity as to what constitutes a qualified party for purposes of the assessment.</p>	<p>control environment that appropriately accounts for cyber resilience. As with the requirement for annual ISRs, the CSA would be prepared to consider exemptions from this requirement in appropriate circumstances.</p>
<p><b>Independent Systems Review</b></p>	<p>One commenter indicated that the requirement for a marketplace to engage a qualified external auditor to undertake the ISR prevents highly qualified and appropriately independent Internal Audit departments from undertaking the ISR. The commenter noted that applying for exemptions from the requirement to engage a qualified external auditor is also costly.</p> <p>Once commenter also questioned the necessity of the guidance at subsection 14.1(3) of the Companion Policy that the marketplace must discuss its choice of auditor with the CSA if the auditor engaged is required by the Instrument to be qualified. The commenter suggested that if the purpose of the guidance is for the CSA to pre-approve the marketplace’s engagement, this requirement should be in the Instrument itself.</p> <p>One commenter also indicated that the new requirement at subsection 12.2(1) that the ISR be conducted in accordance with “best industry practices” is subjective, notwithstanding the proposed guidance in the Companion Policy, and is not necessary, as the ISR must also be conducted in accordance with established audit standards.</p> <p>Several commenters also indicated that the ISR requirement should be changed to a bi-annual requirement, given its associated expense. Commenters</p>	<p>We acknowledge the comments but have not made any changes to the requirements regarding ISRs as proposed.</p> <p>In our view, the ISR is a critical tool for managing the risks associated with marketplaces’ systems in a deeply interconnected market structure. While we recognize the professional objectivity required of internal auditors, we are of the view that requiring ISRs to be conducted by a qualified external auditor both enhances and promotes confidence in the process. Consequently, we believe it remains essential for marketplaces to engage a qualified external auditor to conduct an ISR on an annual basis.</p> <p>We note, however, that the CSA may consider exemptions from the annual ISR requirement where appropriate. In reviewing the appropriateness of such exemptions, we would consider the circumstances applicable to the</p>

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	<p>suggested that the ISR could be triggered more frequently if a marketplace experiences material systems issues.</p> <p>Lastly, one commenter suggested that the CSA consider building some flexibility into to the date for delivery of the ISR report to the CSA. The deadline of no later than 60 days following the end of the calendar year means that certain reports from sub-service organizations are not received in time to incorporate into the report.</p>	<p>marketplaces, which would include the existence of an appropriately qualified an independent Internal Audit department and the functions it performs.</p> <p>Also, we note that paragraph 12.2(2)(b) has been revised to provide for delivery of the ISR report 60 days following completion of the report.</p>
<b>Implementation of material systems changes</b>	<p>One commenter felt that the OSC must take a more flexible approach in its interpretation of OSC Staff Notice 21-706, which provides guidance regarding the timing for a marketplace implementing a material change to its systems. The commenter suggested that 90 days following notification of regulatory approval of a material systems change would be appropriate for “mandatory” changes that all participants must implement but that 30 days would be an appropriate implementation period for functionality that is optional.</p>	<p>OSC Staff intends to revoke OSC Staff Notice 21-706 when the amendments to NI 21-101 take effect. Going forward, the Exchange and ATS Protocols will prohibit marketplaces carrying on business in Ontario from implementing material systems changes earlier than a “reasonable period of time” following notification that the change has been approved.</p>