ANNEX E

PROPOSED CHANGES TO
COMPANION POLICY 21-101 *MARKETPLACE OPERATION*

1. Companion Policy 21-101 Marketplace Operation is changed by this Document.

2. Subsection 3.1(4) is changed by adding the following at the end of the paragraph:

For example, if an ATS meets or exceeds 10% market share in trading volume, value or number of trades in a particular security on all marketplaces in Canada, the securities regulatory authority intends to review the ATS and its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation or if additional terms and conditions should be placed on the registration of the ATS. The securities regulatory authority intends to conduct this review because these thresholds may be indicative of an ATS having significant market presence in a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review.

3. Section 3.4 is changed by deleting subsections (7) and (8).

4. Section 5.1 is changed by adding the following subsection:

(4.1) The securities regulatory authority may also consider granting an exemption from the pre-trade transparency requirements in sections 7.1 or 7.3 of the Instrument to a marketplace for the display of dark orders, other than orders that result from a request for quotes or facility that allows negotiation between two parties provided that:

(a) each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) or 7.3(2) of the Instrument,

(b) affirmative actions are taken by the party entering the dark order that confirms their agreement to the display of their order information,

(c) as provided in subsection 5.1(2), the display of order information will be limited to the symbol of the security and side (buy or sell); information about the order price and size should not be conveyed; however, price and size may be inferable without precision, and

(d) the display of order information should not enable the recipient of the information to determine if a displayed order is a firm indication of a willingness to buy or sell a security or a non-firm indication of interest.

5. Section 7.9 is changed

a) by replacing the text with the following:

Section 5.12 of the Instrument sets out the requirements for marketplaces that outsource any of their key services or systems. Key services and systems are services and systems that are necessary for a marketplace to operate effectively and in compliance with regulatory requirements and appropriate standards. These may include, for example, a marketplace's audit function.[1] To promote a harmonized approach to the regulation of outsourcing, section 5.12 incorporates by reference the outsourcing requirements set out in section 21 of National Instrument 26-101 *Information Technology System Integrity*.

Generally, marketplaces are required to establish policies and procedures to evaluate and approve these outsourcing agreements. Such policies and procedures would include assessing the suitability of potential service providers and the ability of the marketplace to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. Marketplaces are also required to monitor the ongoing performance of the service provider to which they outsourced key services, systems or facilities. The requirements under section 5.12 of the Instrument apply regardless of whether the outsourcing arrangements are with third party service providers, or with affiliates or associates of the marketplaces.

b) by adding a footnote after the words "audit function."***:***

Critical services and systems, a subset of key systems and services, are separately regulated by National Instrument 26-101 *Information Technology System Integrity*.

6. Part 14 is deleted.

7. Paragraph (f) of subsection 16.2(1) is replaced with the following:

the systems report referred to in section 23 of National Instrument 26-101 *Information Technology System Integrity.*

8. Section 16.4 is deleted.

Effective Date

9. These changes become effective on •.