

APPENDIX B

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

1. *National Instrument 21-101 Marketplace Operation is amended by this Instrument.*

2. *Part 1 is amended by:*

(a) *adding the following definitions in alphabetical order in section 1.1:*

““accounting principles” means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“private enterprise” means a private enterprise as defined in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“publicly accountable enterprise” means a publicly accountable enterprise as defined in Part 3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.”;

(b) *adding “or municipal body” after “municipal corporation” in paragraph (b) of the definition of “government debt security”;*

(c) *replacing paragraph (c) of the definition of “government debt security” in section 1.1 with the following:*

“(c) a debt security issued or guaranteed by a crown corporation or public body,”;

(d) *adding the following after section 1.4:*

“1.5 Interpretation – NI 23-101 – Terms defined or interpreted in NI 23-101 and used in this Instrument have the respective meanings ascribed to them in NI 23-101.”.

3. *Part 3 is replaced with the following:*

“PART 3 MARKETPLACE INFORMATION

3.1 Initial Filing of Information

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system Form 21-101F1.
- (2) A person or company must not carry on business as an ATS unless it has filed Form 21-101F2 at least 45 days before the ATS begins to carry on business as an ATS.

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.

3.3 Reporting Requirements

A marketplace must file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the marketplace has carried on business.

3.4 Ceasing to Carry on Business as an ATS

- (1) An ATS that intends to cease carrying on business as an ATS must file a report on Form 21-101F4 at least 30 days before ceasing to carry on that business.
- (2) An ATS that involuntarily ceases to carry on business as an ATS must file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.

3.5 Forms Filed in Electronic Form

A person or company that is required to file a form or exhibit under this Instrument must file that form or exhibit in electronic form.”.

4. *Part 4 is replaced with the following:*

“PART 4 MARKETPLACE FILING OF AUDITED FINANCIAL STATEMENTS

4.1 Filing of Initial Audited Financial Statements

- (1) A person or company must file as part of its application for recognition as an exchange or a quotation and trade reporting system, together with Form 21-101F1, audited financial statements for its latest financial year that
 - (a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or IFRS,
 - (b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and
 - (c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor’s report.
- (2) A person or company must not carry on business as an ATS unless it has filed, together with Form 21-101F2, audited financial statements for its latest financial year.

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.”.

5. *Part 5 is amended by:*

- (a) *replacing the portion before section 5.2 with the following:*

“PART 5 MARKETPLACE REQUIREMENTS

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.
- (2) A marketplace must

- (a) establish written standards for granting access to each of its services; and
 - (b) keep records of
 - (i) each grant of access including the reasons for granting access to an applicant, and
 - (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.
- (3) A marketplace must not
- (a) permit unreasonable discrimination among clients, issuers and marketplace participants; or
 - (b) impose any burden on competition that is not reasonably necessary and appropriate.”;
- (b) replacing “recognized exchange or recognized quotation and trade reporting system” in section 5.2 with “marketplace”;*
- (c) replacing “member or user” in section 5.2 with “marketplace participant”;*
- (d) repealing subsection 5.3(2);*
- (e) repealing section 5.6;*
- (f) adding the following after section 5.6:*

“ 5.7 Fair and Orderly Markets

A marketplace must not engage in any activity that interferes with fair and orderly markets.

5.8 Discriminatory Terms

A marketplace must not impose terms that have the effect of discriminating between orders that are routed to the marketplace and orders that are entered on that marketplace for execution.

5.9 Risk Disclosure for Trades in 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 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).

5.10 Confidential Treatment of Trading Information

- (1) A marketplace must not release a marketplace participant’s order or trade information to a person or company other than the marketplace participant, a securities regulatory authority or a regulation services provider unless
 - (a) the marketplace participant has consented in writing to the release of the information;
 - (b) the release of the information is required by this Instrument or under applicable law; or
 - (c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.
- (2) A marketplace must not carry on business unless it has implemented reasonable safeguards and procedures to protect a marketplace participant’s order or trade information, including
 - (a) limiting access to order or trade information of marketplace participants to
 - (i) employees of the marketplace, or
 - (ii) persons or companies retained by the marketplace to operate the system or to be responsible for compliance by the marketplace with securities legislation; and
 - (b) implementing standards controlling trading by employees of the marketplace for their own accounts.

- (3) A marketplace must not carry on business as a marketplace unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

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.

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 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.”

7. Part 6 is amended by:

- (a) *repealing sections 6.4 to 6.6;*
- (b) *replacing section 6.7 with the following:*

“ 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.
- (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.”;

- (c) *repealing sections 6.8, 6.10, 6.12, and 6.13.*

8. Part 7 is amended by:

- (a) *replacing “displayed on” with “displayed by” in subsection 7.1(1);*
- (b) *replacing “of the marketplace” with “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” in subsection 7.1(2);*
- (c) *replacing “displayed on” with “displayed by” in subsection 7.3(1);*

- (d) *replacing* “of the marketplace” *with* “of the marketplace and if the orders posted on the marketplace meet the size threshold set by a regulation services provider” *in subsection 7.3(2)*;
- (e) *replacing* “A marketplace” *with* “A marketplace that is subject to this Part” *in section 7.6*.

9. *Part 8 is amended by:*

- (a) *replacing* “displayed on” *with* “displayed by” *in subsection 8.1(1)*;
- (b) *replacing* “displayed on” with “displayed by” *in subsection 8.2(1)*;
- (c) *repealing subsection 8.5*;
- (d) *replacing* “2012” *with* “2015” *in section 8.6*.

10. *Part 10 is amended by:*

- (a) *replacing the portion before section 10.2 with the following:*

“PART 10 TRANSPARENCY OF MARKETPLACE OPERATIONS

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 of interest arising from the operation of the marketplace or the services it provides;
- (f) any referral arrangements between the marketplace and service providers;

- (g) where routing is offered, how routing decisions are made; and
- (h) when indications of interest are disseminated, the information disseminated and the types of recipients of such indications of interest.”;

(b) *repealing section 10.3.*

11. *Part 11 is amended by the following:*

(a) *replacing subparagraph 11.2(1)(c) with the following:*

- “ (c) a record of each order which must include
- (i) the order identifier assigned to the order by the marketplace,
 - (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
 - (iii) the identifier assigned to the marketplace where the order is received or originated,
 - (iv) each unique client identifier assigned to a client accessing the marketplace using direct electronic access,
 - (v) the type, issuer, class, series and symbol of the security,
 - (vi) the number of securities to which the order applies,
 - (vii) the strike date and strike price, if applicable,
 - (viii) whether the order is a buy or sell order,
 - (ix) whether the order is a short sale order, if applicable,
 - (x) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
 - (xi) the date and time the order is first originated or received by the marketplace,
 - (xii) whether the account is a retail, wholesale, employee, proprietary or any other type of account,

- (xiii) the date and time the order expires,
- (xiv) whether the order is an intentional cross,
- (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
- (xvi) the currency of the order,
- (xvii) whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order was routed,
- (xviii) whether the order is a directed-action order, and
- (xix) whether the marketplace or a marketplace participant has marked the order as a directed-action order, and”;

(b) replacing “transaction” with “trading” in subparagraph 11.2(1)(d)(ix);

(c) replacing “.” with “, and” at the end of subparagraph 11.2(1)(d)(ix);

(d) adding “(x) each unique client identifier assigned to a client accessing the marketplace using direct electronic access.” after subparagraph 11.2(1)(d)(ix);

(e) deleting “or 6.13” in subparagraph 11.3(1)(b);

(f) adding “and 12.4” after “12.1” in subparagraph 11.3(1)(c);

(g) replacing “6.10(2)” with “5.9(2)” in subparagraph 11.3(1)(e);

(h) replacing subparagraphs 11.3(2)(b), 11.3(2)(c) and 11.3(2)(d) with the following:

“(b) copies of all forms filed under Part 3; and

(c) in the case of an ATS, copies of all notices given under section 6.7.”

(i) repealing section 11.4.

12. Part 12 is amended as follows:

(a) replacing the title with “PART 12 MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING”;

(b) replacing subsection 12.1(a) with the following:

“(a) develop and maintain

- (i) an adequate system of internal control over those systems; and
- (ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;”;

(c) *replacing subsection 12.1(b) with the following:*

“(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

- (i) make reasonable current and future capacity estimates;
- (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and”;

(d) *replacing “paragraph 12.1(a)” with “paragraph 12.1(a) and section 12.4” in subsection 12.2(1);*

(e) *adding the following after section 12.3:*

“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.”.

13. Part 13 is amended by:

(a) *replacing the title with “PART 13 MARKETPLACE CLEARING AND SETTLEMENT”;*

(b) *replacing “through an ATS” with “on a marketplace” in subsection 13.1(1);*

(c) *replacing “reported” with “reported to” in subsection 13.1(1).*

14. Part 14 is amended by:

(a) repealing subsection 14.1(2);

(b) replacing “interdealer” with “inter-dealer” in subsection 14.4(1);

(c) adding the following after subsection 14.4(5):

“(6) An information processor must file annual audited financial statements within 90 days after the end of its financial year that

(a) are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or IFRS,

(b) include notes to the financial statements that identify the accounting principles used to prepare the financial statements, and

(c) are audited in accordance with Canadian GAAS or International Standards on Auditing and are accompanied by an auditor’s report.

(7) An information processor must file its financial budget within 30 days after the start of a financial year.

(8) An information processor must file, within 30 days after the end of each calendar quarter, the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.

(9) An information processor must file, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information required by the Instrument, including where the list of designated securities can be found.”;

(d) replacing subsection 14.5(a) with the following:

“(a) develop and maintain

(i) an adequate system of internal controls over its critical systems; and

(ii) adequate information technology general controls, including, without limitation, controls relating to information systems

operations, information security, change management, problem management, network support, and system software support;”;

- (e) *replacing “;” with “; and” at the end of subparagraph 14.5(b)(i);*
- (f) *replacing “; and” with “;” at the end of subparagraph 14.5(b)(ii);*
- (g) *deleting paragraph 14.5.(b)(iii);*
- (h) *adding “and section 14.6” after “paragraph (a)” in subsection 14.5(c);*
- (i) *adding the following after section 14.5:*

“14.6 Business Continuity Planning

- (1) An information processor must develop and maintain reasonable business continuity plans, including disaster recovery plans.
- (2) An information processor must test its business continuity plans, including disaster recovery plans, on a reasonably frequent basis and, in any event, at least annually.

14.7 Confidential Treatment of Trading Information

An information processor must not release order and trade information to a person or company other than the marketplace, inter-dealer bond broker or dealer that provided this information in accordance with this Instrument, or other than a securities regulatory authority, unless:

- (a) the release of that information is required by this Instrument or under applicable law; or
- (b) the information processor received prior approval from the securities regulatory authority.

14.8 Transparency of Operations of an Information Processor

An information processor must publicly disclose on its website information reasonably necessary to enable a person or company to understand the information processor’s operations or services it provides including, but not limited to:

- (a) all fees charged by the information processor for the consolidated data;

- (b) a description of the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities;
- (c) access requirements; and
- (d) the policies and procedures to manage conflicts of interest that may arise in the operation of the information processor.”

15. *This Instrument comes into force on* •