

**Amendments to Companion Policy 21-101CP–
to National Instrument 21-101 Marketplace Operation**

PART 1 AMENDMENTS

1.1 Amendments

(1) This amends Companion Policy 21-101CP.

(2) Part 1 is amended by adding the following section as section 1.4:

“1.4 Definition of Regulation Services Provider – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace and does not provide these services to others.”.

(3) Subsection 2.1(7) is amended by:

(i) striking out the reference to the “IDA” and substituting “IIROC”; and

(ii) striking out “IDA By-law No. 36” and “By-law No. 36” and substituting “Rule 36”; and

(iii) striking out “IDA Regulation 2100” and “Regulation 2100” and substituting “Rule 2100”.

(4) Subsection 3.4(5) is amended by striking out the reference to the “IDA” and substituting “IIROC”.

(5) Subsection 6.1(6) is amended by striking out “any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers.” and substituting “a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.”.

(6) Section 7.1 is amended by:

(a) striking out “.” at the end of the last sentence; and

(b) adding the following at the end of the paragraph:

“and a person or company that obtains access through a member or user. The reference to “services” in paragraph (b) means all services that a marketplace provides including any services that may be offered to a member in the case of an exchange or a user in the case of a quotation and trade reporting system or anyone

accessing orders directly or indirectly on the exchange or quotation and trade reporting system for purposes of the trade-through requirements set out in Part 6 of NI 23-101. A recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a member or user directly, or (b) a person or company that is indirectly accessing the recognized exchange or recognized quotation and trade reporting system through a member or user.”.

(7) Section 8.2 is amended by:

- (a) striking out “.” at the end of the last sentence; and
- (b) adding the following at the end of the paragraph:

“and a person or company that obtains access through a subscriber that is a dealer. The reference to “services” in paragraph (b) means all services that a marketplace provides including any services that may be offered to a subscriber or anyone accessing orders directly or indirectly on the ATS for purposes of the trade-through requirements set out in Part 6 of NI 23-101. An ATS should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a subscriber directly, or (b) a person or company that is indirectly accessing the ATS through a subscriber.”.

(8) Part 9 is amended by:

- (a) striking out the first two sentences of subsection 9.1(1) and substituting the following:

“(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider.”; and

- (b) repealing and replacing subsection 9.1(2) with the following:

“(2) In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information

vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.”.

(9) Part 10 is amended by:

(a) striking out “; and” at the end of section 10.1(9); and

(b) adding the following as section 10.2:

“10.2 Availability of Information – In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.”.

(10) The following is added as section 12.2:

“12.2 Trading Fees for Trade-Through Purposes – Section 10.2 of the Instrument prohibits a marketplace from imposing fees for the purpose of complying with the trade-through requirements set out in Part 6 of NI 23-101 that (i) is equal to or greater than the minimum price increment that is described in IROC Universal Market Integrity Rule 6.1, as amended, or (ii) has the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace. This prohibition would include any fees charged to access an order on a marketplace. Paragraph 10.2(b) of the Instrument is intended to ensure that a marketplace does not charge discriminatory fees to those routing orders to meet their trade-through obligations.”.

(11) Section 13.2 is repealed and replaced with the following:

“13.2 Synchronization of Clocks – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the activities of marketplaces, and, as appropriate, inter-dealer bond brokers or dealers trading the relevant securities. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one

regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system should coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.”.

- (12) The Companion Policy is amended by adding the following Part after Part 13:

“PART 13.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES

13.1.1 Reporting of Order Execution Information by Marketplaces – (1)

Section 11.1.1 of the Instrument requires a marketplace to make available standardized, monthly reports of statistical information concerning the execution of orders. It is expected that this information would provide a starting point to promote visibility and best execution, in particular, relating to the factors of execution price and speed. It is also expected that this information would provide a tool for dealers and advisers to evaluate the quality of executions among marketplaces and aid in fulfilling their duty of best execution.

(2) Orders that are not immediately executable and orders that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery are not considered to be orders for the purposes of this Part. As well, order information regarding pre-arranged trades and intentional or internal crosses is not required. In addition, marketplaces reporting trade information should only count each share traded once.”.

- (13) Section 14.1 is repealed and replaced with the following:

“14.1 Systems Requirements – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include *‘Information Technology Control Guidelines’* from The Canadian Institute of Chartered Accountants (CICA) and *‘COBIT’* from the IT Governance Institute.

- (2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.
- (3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator, or, in Québec, the securities regulatory authority.”.
- (14) The following is added as section 14.2:
- “14.2 Availability of Technology Specifications and Testing Facilities – (1)** Subsection 12.3(1) of the Instrument requires marketplaces to publish their technology requirements regarding interfacing with or accessing the marketplace in their final form for at least three months. If there are material changes to these requirements after they are published and before operations begin, the revised requirements should be published for a new three month period prior to operations. The subsection also requires that an operating marketplace publish its technology specifications for at least three months before implementing a material change to its technology requirements.
- (2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been published. Should the marketplace publish its specifications for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities available for at least two months before implementing the material systems change.”.
- (15) Part 16 is amended by:
- (a) repealing and replacing subsection 16.1(2) with the following:
- “(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.

The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to ‘fair access’, an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.”;

(b) striking out “which are not unreasonably discriminatory” from paragraph 16.2(1)(b); and

(c) adding the following as section 16.4:

“16.4 System Requirements – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.”.