

21-101CP Marketplace Operation [CP Proposed - Lapsed]

COMPANION POLICY 21-101CP TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

PART 1 INTRODUCTION

1.1 Introduction - Traditionally, the Canadian securities regulatory authorities have regulated securities markets by regulating dealers, exchanges and, in some jurisdictions, quotation and trade reporting systems. In recent years, particularly in the United States, new types of markets have emerged that take different forms and trade securities in a different manner than on those markets. These entities are referred to as alternative trading systems ("ATS"). While the existing regulatory system will generally apply to the activities of these markets, there are instances where the existing regulatory system needs to be supplemented. Accordingly, the Canadian securities regulatory authorities have adopted National Instrument 21-101 Marketplace Operation (the "Instrument") to create an appropriate regulatory regime to deal with these new types of markets and to supplement the regime applicable to exchanges and quotation and trade reporting systems.

The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to the Instrument including

- (a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and
- (b) the interpretation of various terms and provisions in the Instrument.

PART 2 MARKETPLACE

2.1 Marketplace

- (1) The Instrument uses the term "marketplace" to encompass the different types of trading systems that match trades.
- (2) Two of the characteristics of a "marketplace" are
 - (a) that it brings together orders for securities of multiple buyers and sellers; and
 - (b) that it uses established, non-discretionary methods under which the orders interact with each other.
- (3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it
 - (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or

(b) receives orders centrally for processing and execution (regardless of the level of automation used).

(4) The Canadian securities regulatory authorities are of the view that "established, non-discretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."

(5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:

1. A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.
2. A system that merely routes orders for execution to a facility where the orders are executed.
3. A system that merely provides information to marketplace participants about other marketplace participants' trading interests, without facilities for execution.

In the first two cases, the criteria of multiple buyers and sellers would not be met. In addition, in the last two cases, routing systems and bulletin boards do not establish non-discretionary methods under which parties entering orders interact with each other.

(6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is trading for the purposes of securities legislation and is required to be registered under securities legislation.

(7) The Canadian securities regulatory authorities are of the view that a dealer that does not provide direct or indirect access to a marketplace for exchange-traded securities should be considered to be a marketplace. In respect of the definition of "marketplace" in the Instrument, a dealer that is not a marketplace participant that uses internal systems to trade and manage orders for exchange-traded securities, either by using discretionary methods or by using established non-discretionary methods, would be considered to be a marketplace.

(8) The Canadian securities regulatory authorities have excluded inter-dealer bond brokers from the definition of marketplace. Inter-dealer bond brokers are expected to comply with Part 8 of the Instrument dealing with information transparency requirements.

PART 3 CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSS

3.1 Exchange

(1) Canadian securities legislation prohibits a person or company from carrying on business as an exchange unless recognized by the securities regulatory authority. Canadian securities legislation of most jurisdictions does not define the term "exchange".

(2) The Canadian securities regulatory authorities generally consider a marketplace to be an exchange for purposes of securities legislation, if the marketplace

- (a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, *i.e.*, the marketplace provides a listing function;

- (b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a reasonably continuous basis, *i.e.*, the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a reasonably continuous basis. This type of liquidity guarantee has historically been carried out on exchanges through traders, acting as principals such as registered traders, specialists or market makers;

- (c) sets requirements governing the conduct of marketplace participants, in addition to conduct in respect of the trading by those marketplace participants on the system (see subsection (3)); or

- (d) disciplines marketplace participants, in addition to discipline by exclusion from trading, *i.e.*, the marketplace can levy fines or take enforcement actions.

(3) In respect of paragraph (c) of subsection (2), the Canadian securities regulatory authorities would consider a marketplace to be setting requirements governing the conduct of marketplace participants if it imposes, as a condition of participation in the marketplace, any requirements for which the marketplace has to examine marketplace participants for compliance. This includes anti-manipulation requirements or requirements related to surveillance and enforcement. In addition, if a marketplace imposes as a condition of participation, directly or indirectly, restrictions on a marketplace participant's activities outside of the marketplace, the Canadian securities regulatory authorities are of the view that the marketplace sets requirements governing the conduct of marketplace participants. This limitation would not preclude a marketplace from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

Paragraph (c) of subsection (2) provides an exclusion for conduct in respect of trading by marketplace participants on the system. This is a reference to a marketplace having in place trading algorithms that provide that a trade takes place if certain events occur. This exclusion is necessary as those algorithms

could otherwise be considered to be conduct in respect of the trading by the marketplace participants on the system.

(4) The criteria in subsection (2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

(5) Subsection 6.5(1) of the Instrument requires an ATS to notify the securities regulatory authority if the average daily dollar value of the trading volume on the ATS for any three of the ATS's previous four calendar quarters meet or exceed a certain volume threshold.

(6) Upon being informed of the volume threshold referred to in subsection (5) being met or exceeded, the securities regulatory authority intends to review the ATS, 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. The securities regulatory authority intends to conduct this review because the volume threshold may be indicative of an ATS having market dominance over a type of security, such that it would be more appropriate that that marketplace 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.

(7) The volume thresholds referred to in subsection 6.5(1) and section 12.2 of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, preferred shares, debt securities or options.

3.2 Quotation and Trade Reporting System

(1) Canadian securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under Canadian securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data would not normally be considered to be a quotation and trade reporting system.

(2) A person or company cannot carry on business as a quotation and trade reporting system in those jurisdictions unless it is recognized appropriately in the local jurisdiction, or it is an ATS that is in compliance with the Instrument.

3.3 ATS

(1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as

- (a) requiring listing agreements,
- (b) having market makers,
- (c) setting rules governing the conduct of subscribers, and

(d) disciplining subscribers.

A marketplace, other than a quotation and trade reporting system, that engages in any of these activities or meets these criteria would, in the view of the Canadian securities regulatory authorities, be an exchange and would have to be recognized as such in order to carry on business.

(2) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

(3) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of an exchange. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.

(4) If the ATS is a member of an exchange, the by-laws, rules, policies and other similar instruments of the exchange apply to the ATS.

(5) Under subsection (a) of section 6.1 of the Instrument, an ATS that is not a member of a recognized exchange must register as a dealer if it wishes to carry on business. The requirements imposed by the Instrument are in addition to any requirements applicable to dealers registered under Canadian securities legislation.

(6) Subsection (b) of section 6.1 of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the Investment Dealers Association of Canada is the only entity that would come within the definition.

(7) Section 6.8 of the Instrument requires that an ATS that is trading non-exchange-traded securities provide its subscribers with disclosure as set out in that section and must obtain an acknowledgement from each subscriber that the subscriber has received the disclosure before any order for a non-exchange-traded security is entered onto the ATS by that subscriber. The acknowledgement may be obtained in a number of ways, including requesting the subscriber's signature or requesting that the subscriber initial an initial box or check a check-off box. The acknowledgement must be specific to the information required to be disclosed under section 6.8 and must confirm that the subscriber has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the ATS to ensure that an acknowledgement is obtained from the subscriber in a timely manner.

PART 4 DATA CONSOLIDATOR AND MARKET INTEGRATOR

4.1 Data Consolidator and Market Integrator - Each of the data consolidator and market integrator under the Instrument will have entered into an agreement with one or

more of the Canadian securities regulatory authorities to perform the functions set out in Parts 7 and 9 or the Instrument, respectively.

PART 5 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

5.1 Recognition as an Exchange or Quotation and Trade Reporting System

- (1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.
- (2) In exercising this discretion, the Canadian securities regulatory authorities will look at a number of factors, including
 - (a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;
 - (b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;
 - (c) whether the exchange or quotation and trade reporting has sufficient financial resources for the proper performance of its functions; and
 - (d) whether the by-laws, rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors.

PART 6 ORDERS

6.1 Ask and Bid Prices - The terms "ask price" and "bid price" are defined in section 1.1 of the Instrument as the price of an order to sell or to buy a particular security. The term "order" is discussed in section 6.2.

6.2 Order

- (1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders".
- (2) The label put on a transaction is not determinative of whether the transaction constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further agreement of the person or company entering the indication. Even if the person or company must give its subsequent agreement

to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated price, based on understandings or past dealings, will be viewed as an order.

(3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. The Canadian securities regulatory authorities do not consider special terms orders such as all or none, minimum fill or cash or delay delivery to be firm indications.

(4) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

PART 7 FORMS FILED BY MARKETPLACES

7.1 Forms Filed by Marketplaces

(1) Subsection 3.1(1) of the Instrument requires an applicant for recognition as an exchange to file Form 21-101F1. This subsection does not apply to an exchange that was recognized before the Instrument came into force.

(2) The forms filed by a marketplace under the Instrument will be open for public inspection unless the person or company filing the form applies to the securities regulatory authority to keep the form confidential and the securities regulatory authority agrees to do so. In determining whether to keep a form confidential, the securities regulatory authority will look at the type of information on the form and determine whether the desirability of avoiding disclosure outweighs the desirability of public disclosure.

(3) Under section 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change involving a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to Form 21-101F1, in the manner set out in Form 21-101F1. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, C, D, E, G and J of Form 21-101F1. This is also applicable to recognized quotation and trade reporting systems under subsection 4.2(1) of the Instrument.

(4) A recognized exchange or recognized quotation and trade reporting system that files amendments to Form 21-101F1 should number each amendment consecutively.

(5) Securities legislation in a number of jurisdictions requires that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority. The Canadian securities regulatory authorities consider a voluntary surrender to be a change to information described on Form 21-101F1 that is significant requiring the filing of an amendment to Form 21-101F1.

(6) Under subsection 6.2(2) of the Instrument, an ATS is required to file an amendment to Form 21-101F2 at least 45 days before implementing a significant change to its operations. The Canadian securities regulatory authorities consider that a significant change to the operations of an ATS includes any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers.

(7) Subsection 6.2(4) of the Instrument requires an ATS to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).

PART 8 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS

8.1 Access Requirements - Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not, however, restrict the authority of an exchange or quotation and trade reporting system to maintain reasonable standards for access.

8.2 Discipline Rules - Section 5.4 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to have appropriate disciplinary procedures to deal with violations of by-laws, rules, policies or other similar instruments of the exchange or quotation and trade reporting system. This section does not preclude enforcement action by any other person or company, including the Canadian securities regulatory authorities.

8.3 By-law Review - Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file with the securities regulatory authority all by-laws, rules, policies and other similar instruments and amendments when adopted by the exchange and quotation and trade reporting system. The securities regulatory authority will determine which of these instruments to review. Initially, all by-laws, rules, policies and other similar instruments should be filed before implementation. By agreement, this may be varied by a securities regulatory authority.

PART 9 CONFIDENTIAL TREATMENT OF TRADING INFORMATION BY ATSS

9.1 Confidential Treatment of Trading Information by ATSS

(1) Subsection 6.6(2) of the Instrument provides that an ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information. These include

- (a) limiting access to the trading information of subscribers, such as the identity of subscribers and their orders, to those employees of, or persons or companies retained by, the ATS to operate the system or to be responsible for its compliance with Canadian securities legislation; and

- (b) having in place procedures to ensure that employees of the ATS cannot use such information for trading in their own accounts.
- (2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ATS, whether or not they have direct responsibility for the operation of the ATS.
- (3) Subsection 6.6(4) of the Instrument provides that nothing in that section shall prohibit an ATS from complying with National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer. This subsection is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Instrument 54-101 and required to disclose information under that Instrument.

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES AND OPTIONS

10.1 Information Transparency Requirements for Marketplaces Dealing in Equity Securities, Preferred Securities and Options

- (1) Subsections 7.1(1) and 7.2(1) of the Instrument require a marketplace that displays orders of equity or preferred securities or orders of put and call options to any person or company to provide to the data consolidator information as required by the data consolidator. Initially, the data consolidator will receive information regarding the total disclosed volume at each of the five best bid price and ask price levels for each equity or preferred security traded on the marketplace. In addition, the data consolidator will receive information regarding the total disclosed volume at each of the best bid and ask price levels for every series of option traded on the marketplace. The term "total disclosed volume" refers to the amount of the orders that is displayed in the marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not required to be displayed. The data consolidator may determine that additional or different information should be received and displayed.
- (2) The Canadian securities regulatory authorities expect that information required to be provided to the data consolidator under the Instrument will be provided in real time or as close to real time as possible.
- (3) Section 7.5 of the Instrument requires the data consolidator to produce a consolidated feed showing the information provided to the data consolidator. For pre-trade information, the data consolidator will initially disseminate the total volume bid or offered at each of the best five price levels for each security.

PART 11 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS

11.1 Information Transparency Requirements for Marketplaces Dealing in Debt Securities and Inter-Dealer Bond Brokers

(1) Subsection 8.1(1) of the Instrument requires inter-dealer bond brokers or marketplaces that display orders of debt securities to provide to an information processor information as required by the information processor. Initially, the information processor will require the inter-dealer bond broker or marketplace to provide the total disclosed volume at the best bid and best offer for each debt security traded by that inter-dealer bond broker or marketplace. The Canadian securities regulatory authorities recognize that the number of issues for which information will be made available will vary according to each inter-dealer bond broker or marketplace. The term "total disclosed volume" refers to the amount of the orders that is displayed in the marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not required to be displayed. The information processor may determine that additional or different information should be received and displayed.

(2) The Canadian securities regulatory authorities expect that information required to be provided to an information processor under Part 8 of the Instrument will be provided in real time or as close to real time as possible.

(3) Section 8.3 of the Instrument requires the information processor to produce a consolidated feed showing the information provided to the information processor. For pre-trade information for the government debt market and the corporate debt market, it is expected that initially, the information processor will disseminate the total volume bid or offered at each of the best five price levels for each security. The Canadian securities regulatory authorities note that, in cases where this level of information is not available, the information processor will disseminate less than five levels of pre-trade information.

PART 12 MARKET INTEGRATION FUNCTION FOR MARKETPLACES

12.1 Execution of Orders - Subsection 9.1(2) of the Instrument requires a marketplace, when receiving an order from another marketplace, to apply its own rules to the execution of that order. This requires a marketplace that displays orders through the data consolidator to provide access to its passive booked orders. When an active order is routed to the system in which the passive order is booked, then execution will be completed according to the rules of the system in which the passive order is booked. A passive order is an order that has been placed in the order book because it was not executable at time of entry and is now waiting to be executed. An active order is an order that comes into the market seeking a counterparty that is either a market order or an executable limit order (a buy order with a limit at or above present ask price or a sell order with a limit at or below the present bid price).

12.2 Equivalent Access

(1) The Canadian securities regulatory authorities believe that a marketplace participant should be able to execute against another marketplace orders that are provided to the data consolidator to the same extent as if that order had been reflected in the marketplace in which the marketplace participant is a member, a user or a subscriber. Accordingly, subsection 9.1(3) of the Instrument requires a marketplace to be able to receive from or send orders to other marketplaces to which it is linked.

(2) Examples of where the Canadian securities regulatory authorities would consider a marketplace not to be in compliance with subsection 9.1(3) of the Instrument include

- (a) the marketplace responding to orders entered by a person or company that is not a marketplace participant in that marketplace more slowly than it responds to orders by a marketplace participant in that marketplace;
- (b) the marketplace using different technology to execute orders entered by a person or company that is not a marketplace participant in that marketplace, if that technology would not provide an equivalent service to orders entered by a marketplace participant in that marketplace; or
- (c) the marketplace charging fees that have the effect of creating barriers to access for a person or company that is not a marketplace participant in that marketplace.

(3) The Canadian securities regulatory authorities will not consider a marketplace to be in breach of subsection 9.1(3) of the Instrument merely because it has a different fee structure for persons or companies that are not marketplace participants in the marketplace. Instead the Canadian securities regulatory authorities will look at whether the different fee structure can be justified or whether it has only been implemented in order to create a barrier to access for those persons or companies.

12.3 Phased Implementation

(1) As market integration is a complex task and raises some significant technology challenges, the Canadian securities regulatory authorities believe that a phased approach to market integration is preferable. Accordingly, section 9.2 provides requirements for the first phase of market integration ("Phase 1 Integration") that will be in place until any requirements are established by the market integrator ("Phase 2 Integration").

(2) Phase 1 Integration will require any ATS who wishes to operate in Canada to establish a connection to the principal market for the securities being traded on its system. ATSs will be permitted to begin operations when they have established this connection to the principal market. The Canadian securities regulatory authorities consider that, for exchange-traded securities, the principal market will be any of the exchanges on which the security is listed. If a security is listed on more than one exchange in Canada, the principal market will be the exchange that has the largest trading volume for that security in Canada. For non-exchange-

traded securities, the principal market will be considered to be the market which has the largest trading volume for that security in Canada. In Phase 1 Integration, each ATS must satisfy any better priced bids or offers on the principal market before execution of a match in its system. In addition, the principal market will also be required to satisfy a better priced bid or offer on any ATS. The Canadian securities regulatory authorities note that, during Phase 1 Integration, integration will only be required between ATSs and the principal markets; ATSs will not be required to satisfy better bids and offers on other ATSs.

(3) Section 9.2 of the Instrument requires that an ATS establish a connection to the principal market for securities traded on its system. The data consolidator will determine within 10 days of the end of the calendar year which market is the principal market for equity securities, preferred securities and options. The information processor will determine within 10 days of the end of the calendar year which market is the principal market for government debt and corporate debt securities. The ATS then has thirty days from the date the determination is made to establish a connection to the appropriate principal market, as determined by the data consolidator or information processor.

(4) Phase 2 Integration will establish more complete market integration and order routing between all marketplaces in order to ensure that there will be price protection for all orders between all competing marketplaces. Each marketplace will have the responsibility to monitor the orders in all other marketplaces and will send their orders to other systems by way of a direct connection or through a market integrator. Each system will maintain control over its own orders and will have responsibility for managing order execution.

PART 13 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES

13.1 Disclosure of Transaction Fees for Marketplaces - Section 10.1 of the Instrument requires that each marketplace disclose the schedule of transaction fees to the data consolidator. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed to the data consolidator. Each marketplace is required to publicly post with the data consolidator a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through the data consolidator.

PART 14 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

14.1 Recordkeeping Requirements for Marketplaces - Part 11 of the Instrument requires a marketplace to maintain certain records. Generally, under provisions of Canadian securities legislation, the Canadian securities regulatory authorities can require a marketplace to deliver to them any of the records required to be kept by them under securities legislation, including the records required to be maintained under Part 11.

PART 15 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

15.1 Capacity, Integrity and Security of Marketplace Systems

- (1) Subsections (a) to (e) of section 12.1 of the Instrument require an ATS, a recognized exchange and a recognized quotation and trade reporting system to meet certain systems, capacity, integrity and security standards. Subsections (f) and (g) of section 12.1 of the Instrument require an ATS that exceeds the threshold in section 12.2 of the Instrument, a recognized exchange and a recognized quotation and trade reporting system to meet certain additional systems, capacity, integrity and security standards.
- (2) The activities in subsections (a) to (e) of section 12.1 of the Instrument must be carried out at least once a year. The Canadian securities regulatory authorities would expect these activities to be carried out even more frequently if there is a change to the marketplace that is material either in terms of structure or volume of trading that necessitates that these functions be carried out more frequently in order to ensure that the marketplace can appropriately service its marketplace participants.
- (3) The independent review contemplated by subsection (f) of section 12.1 of the Instrument should be performed by competent, independent audit personnel following established audit procedures and standards.
- (4) An ATS becomes subject to subsections (f) and (g) of section 12.1 of the Instrument after it first satisfies the volume test in section 12.2 of the Instrument. It remains subject to subsections (f) and (g) of section 12.1 even if, thereafter, it no longer satisfies the volume test, unless it is successful in obtaining relief under section 16.1 of the Instrument.

PART 16 CLEARING AND SETTLEMENT

16.1 Clearing and Settlement

- (1) Section 13.1 of the Instrument requires that all trades made through or by an ATS be reported, confirmed and settled through a clearing agency listed in Appendix B. At this time, the Canadian Depository for Securities and the Canadian Derivatives Clearing Corporation are the only entities under the Instrument that are specified for this purpose. If a marketplace wished to perform its own clearing and settlement, it would have to apply to the Canadian securities regulatory authorities for recognition to perform these functions or for an exemption from the requirements of the Instrument.
- (2) The Canadian securities regulatory authorities are of the view that direct reporting of executed trades to a clearing agency may be done either by an ATS or by a subscriber where the subscriber has a settlement account with a clearing agency.

PART 17 JURISDICTION

17.1 Domestic Jurisdiction - An ATS would be carrying on business in a local jurisdiction if it provides access to subscribers located in that jurisdiction. Section 14.1 of the Instrument provides an exemption from registration as a dealer in the local jurisdiction to those ATSs that are already registered in a jurisdiction in Canada and provide access to only registered dealers located in the local jurisdiction.

17.2 Foreign Jurisdiction - A foreign ATS is required to register in one jurisdiction in Canada whether it is dealing with investors or registered dealers in Canada. Once registered in a Canadian jurisdiction, section 14.1 of the Instrument would apply.

PART 18 INFORMATION PROCESSOR

18.1 Purpose of the Information Processor

- (1) The Instrument uses the term " information processor " to refer to a person or company that collects and disseminates order and trade information. This term does not include the data consolidator.
- (2) The Canadian securities regulatory authorities believe that it is critical for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (*i.e.*, last sale reports) and the prices at which others have expressed their willingness to buy or sell (*i.e.*, orders).
- (3) The purpose of an information processor is to ensure the availability of prompt and accurate order and trade information and to guarantee fair access to the information.

18.2 Change to Information - Under subsection 15.2(1) of the Instrument, an information processor is required to file an amendment to Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, E, G, H, O, P, Q and Item 10 of Form 21-101F5.

18.3 Selection of the Information Processor

- (1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,
 - (a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;
 - (b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms which are not unreasonably discriminatory;
 - (c) personnel qualifications; and

(d) whether the information processor has sufficient financial resources for the proper performance of its functions.

(2) At the current time, it is expected that, for purposes of data consolidation, there will only be one consolidator of information for each type of security. For equity securities and options, it is contemplated that the data consolidator selected by the Canadian securities regulatory authorities will collect and disseminate order and trade information. It is contemplated that there will be an information processor to collect and disseminate order and trade information for the debt market. At the current time, it appears that the only potential information processor for the debt market is the CanPX Transparency System ("CanPX"). If no information processor files Form 21-101F5, it is contemplated that the data consolidator would collect and disseminate information for the debt market.