

## **21-101 Marketplace Operation [NI Proposed - Lapsed]**

### **NATIONAL INSTRUMENT 21-101**

#### **MARKETPLACE OPERATION**

##### **PART 1 DEFINITIONS AND INTERPRETATION**

###### **1.1 Definitions <sup>1</sup> - In this Instrument**

1A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to one or more jurisdictions, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the National Instrument.

"alternative trading system" means a marketplace that

(a) is not a recognized quotation and trade reporting system or a recognized exchange, and

(b) does not

(i) require an issuer to enter into an agreement to have its securities traded on the marketplace,

(ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a reasonably continuous basis,

(iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and

(iv) discipline subscribers other than by exclusion from participation in the marketplace;

"approved agent" has the meaning ascribed to it in National Instrument 23-101 Trading Rules;

"ask price" means the price of an order to sell a particular security;

"ATS" means an alternative trading system;

"best bid" means the highest-priced order to buy a particular security;

"best offer" means the lowest-priced order to sell a particular security;

"bid price" means the price of an order to buy a particular security;

"corporate debt security" means a debt security issued by a company or corporation, but does not include a government debt security;

"data consolidator" means the person or company that has entered into an agreement with the securities regulatory authority to receive information from a marketplace in accordance with Part 7;

"debt security" means a corporate debt security or a government debt security;

"exchange-traded security " means a security that is listed on an exchange that is recognized under securities legislation in any jurisdiction or is quoted on quotation and trade reporting system that is recognized under securities legislation in any jurisdiction;

"exercise price" means the price specified in an option contract at which the buyer of a call option can purchase the underlying interest during the life of the option, and the price specified in an option contract at which the buyer of a put option can sell the underlying interest during the life of the option;

"government debt security" means a debt security of or guaranteed by the government of Canada or a jurisdiction or any municipal corporation or a debt security of a public board or entity;

"information processor" means a person or company that collects, processes, distributes and publishes information about orders or executed trades;

"inter-dealer bond broker" means an organization listed in Appendix A;

"market integrator" means the person or company that has entered into an agreement with the securities regulatory authority to provide access to orders in accordance with Part 9;

"marketplace" means

(a) an exchange,

(b) a quotation and trade reporting system,

(c) a person or company not included in paragraph (a) or (b) that

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,

(ii) brings together the orders for securities of multiple buyers and sellers, and

(iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or

(d) a dealer that

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of exchange-traded securities,

(ii) brings together the orders for exchange-traded securities of multiple buyers and sellers,

(iii) uses discretionary methods or established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, and

(iv) is not a marketplace participant;

and does not include an inter-dealer bond broker;

"marketplace participant" means a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS;

"member" means, for a recognized exchange,

- (a) a person or company holding at least one seat on the exchange, or
- (b) a registrant that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange;<sup>2</sup>

<sup>2</sup>Paragraph (a) of the definition deals with the current structure of an exchange. Paragraph (b) contemplates the possible structure in certain jurisdictions after demutualization.

"non-exchange-traded security" means a security that is not listed on an exchange that is recognized under securities legislation in any jurisdiction or is not quoted on a quotation and trade reporting system that is recognized under securities legislation in any jurisdiction;

"order" means a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security;

"principal market" means

(a) for types of exchange-traded securities, any recognized exchange or recognized quotation and trade reporting system on which that type of security is listed or quoted, and

(b) for types of non-exchange-traded securities, the marketplace which has the highest trading volume for that type of security in Canada during the previous calendar year;

"recognized exchange" means

(a) in Ontario, a recognized stock exchange,

(b) in Alberta, a recognized exchange, and

(c) in every other jurisdiction, an exchange recognized by the securities regulatory authority under securities legislation to carry on business as an exchange;

"recognized quotation and trade reporting system" means

(a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system, and

(b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system or as an exchange;

"self-regulatory entity" means a self-regulatory body or self-regulatory organization that

(a) is not an exchange,

(b) carries out member regulation, and

(c) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority under securities legislation;

"subscriber" means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS;

"transaction fee" means the fee that a marketplace charges for execution of a trade; and

"user" means, for a recognized quotation and trade reporting system, a person or company that reports trades on the recognized quotation and trade reporting system.

**1.2 Interpretation - Marketplace** - For the purposes of the definition of marketplace in section 1.1, a person or company is not considered to constitute, maintain or provide a market or facilities for bringing together buyers and sellers of securities, solely because the person or company routes orders to a marketplace or a dealer for execution.

### **1.3 Interpretation - Affiliated Entity**

(1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be a controlled entity of a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is a controlled entity of,

(i) that other,

(ii) that other and one or more persons or companies each of which is a controlled entity of that other, or

(iii) two or more persons or companies, each of which is a controlled entity of that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

**1.4 Interpretation - Security** - In Alberta and British Columbia, the term "security" includes an exchange contract but does not include a futures contract.

## **PART 2 APPLICATION**

**2.1 Application** - This Instrument does not apply to a marketplace that is a member of a recognized exchange in any jurisdiction.

## **PART 3 EXCHANGE-RECOGNITION**

### **3.1 Application for Recognition**

(1) An applicant for recognition as an exchange under securities legislation shall file Form 21-101F1.

(2) An applicant for recognition as an exchange shall inform in writing the securities regulatory authority immediately of any change to the information described on Form 21-101F1 or on an amendment to Form 21-101F1, and the applicant shall file an amendment to Form 21-101F1 no later than seven days after a change in the information on that form or on an amendment to that form takes place.

### **3.2 Change in Information**

(1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange shall file

(a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or

(b) if the exchange was recognized after this Instrument came into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

(2) If a recognized exchange implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized exchange shall, within 30 days after the end of the calendar quarter in which the change takes place, file

(a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or

(b) if the exchange was recognized after this Instrument came into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

## **PART 4 QUOTATION AND REPORTING SYSTEM - RECOGNITION**

### **4.1 Application for Recognition**

(1) An applicant for recognition as a quotation and trade reporting system under securities legislation shall file Form 21-101F1.

(2) An applicant for recognition as a quotation and trade reporting system shall inform in writing the securities regulatory authority immediately of any change to the information described on Form 21-101F1 or on an amendment to Form 21-101F1, and the applicant shall file an amendment to Form 21-101F1 no later than seven days after a change in the information on that form or on an amendment to that form takes place.

### **4.2 Change in Information After Recognition**

(1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized quotation and trade reporting system shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

(2) If a recognized quotation and trade reporting system implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized quotation and trade reporting system shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

## **PART 5 REQUIREMENTS APPLICABLE ONLY TO RECOGNIZED EXCHANGES AND RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEMS**

**5.1 Access Requirements** - A recognized exchange and a recognized quotation and trade reporting system shall

- (a) establish written standards for granting access to trading on it;
- (b) not unreasonably prohibit or limit access by a person or company to services offered by it; and
- (c) keep records of
  - (i) each grant of access including, for each member in the case of an exchange and for each user in the case of a quotation and trade reporting system, 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.

**5.2 Trading Off Exchange or Quotation and Trade Reporting System** - A recognized exchange or recognized quotation and trade reporting system shall not prohibit, condition, or otherwise limit, directly or indirectly, a member or user from effecting a transaction on an ATS.

### **5.3 Public Interest Rules**

(1) By-laws, rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system

- (a) shall not be contrary to the public interest; and
- (b) shall be designed, with respect to members in the case of an exchange and users in the case of a quotation and trade reporting system, to
  - (i) ensure compliance with securities legislation,
  - (ii) prevent fraudulent and manipulative acts and practices,
  - (iii) promote just and equitable principles of trade, and
  - (iv) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in, securities.

(2) A recognized exchange or a recognized quotation and trade reporting system shall not

- (a) permit unreasonable discrimination between customers, issuers and members in the case of an exchange, or between customers, issuers and users in the case of a quotation and trade reporting system; or
- (b) impose any burden on competition that is not reasonably necessary and appropriate.

**5.4 Discipline Rules** - A recognized exchange or a recognized quotation and trade reporting system shall have by-laws, rules, policies or other similar instruments that provide that their respective members or users shall

- (a) comply with securities legislation; and
- (b) be appropriately disciplined for violations of the by-laws, rules, policies and other similar instruments of the exchange or quotation and trade reporting system.

**5.5 By-law Filing** - A recognized exchange or a recognized quotation and trade reporting system shall file with the securities regulatory authority all by-laws, rules, policies and other similar instruments, and all amendments thereto, when adopted by the exchange or quotation and trade reporting system.

**5.6 Filing of Annual Audited Financial Statements** - A recognized exchange or a recognized quotation and trade reporting system shall file annual audited financial statements with the securities regulatory authority within 90 days after the end of its latest financial year.

## **PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSs**

**6.1 Registration** - An ATS shall not carry on business as an ATS unless

- (a) it is registered as a dealer; and
- (b) it is a member of a self-regulatory entity.

## **6.2 Reporting Requirements**

- (1) An ATS shall file an initial operation report on Form 21-101F2 at least 30 days before the ATS begins to carry on business as an ATS.
- (2) An ATS shall file an amendment to Form 21-101F2 at least 45 days before implementing a significant change to its operations.
- (3) If a change in the information on Form 21-101F2 or an amendment to that form takes place, other than a change referred to in subsection (2), an ATS shall file an amendment to Form 21-101F2 no later than 30 days after the end of the calendar quarter in which the change takes place.
- (4) An ATS shall file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the ATS has carried on business.

## **6.3 Ceasing to Carry on Business as an ATS**

- (1) An ATS that intends to cease carrying on business as an ATS shall 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 shall file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.

## **6.4 Notification of Non-ATS Activities**

- (1) An ATS shall notify the securities regulatory authority in writing at least six months before it first
  - (a) requires an issuer to enter into an agreement before the issuer's securities can trade on the ATS;
  - (b) provides, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a reasonably continuous basis;
  - (c) sets requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the ATS; or
  - (d) establishes procedures for disciplining subscribers other than by exclusion from trading.

## **6.5 Notification of Threshold**

- (1) An ATS shall notify the securities regulatory authority in writing, if, during at least three of the preceding four calendar quarters, the average daily dollar value of the trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the average daily dollar value of the trading volume for the calendar quarter in that type of security on all marketplaces in Canada.
- (2) An ATS shall provide the notice referred to in subsection (1) within ten days after the threshold in subsection (1) is met or exceeded.

## **6.6 Confidential Treatment of Trading Information**

- (1) An ATS shall not release a subscriber's trading information to a person or company, other than the subscriber, unless



- (a) the subscriber 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) 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, including
- (a) limiting access to the trading information of subscribers to
    - (i) employees of the ATS, or
    - (ii) persons or companies retained by the ATS to operate the system or to be responsible for compliance by the ATS with Canadian securities legislation; and
  - (b) implementing standards controlling trading by employees of the ATS for their own accounts.
- (3) An ATS shall not carry on business as an ATS unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.
- (4) Nothing in this section shall prohibit an ATS from complying with National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer.<sup>3</sup>

<sup>3</sup>This subsection is necessary because an investment dealer that operates as an ATS may be an intermediary for the purposes of National Instrument 54-101 and required to disclose information under that Instrument.

**6.7 Name - An ATS shall not use in its name the word "exchange", the words "stock market" or any derivations of those terms.**

**6.8 Risk Disclosure**

- (1) An ATS that is trading non-exchange-traded securities shall provide its subscribers with disclosure in substantially the following words:

The securities traded by or through [the ATS] may not be listed on an exchange in Canada or 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 any order for a non-exchange-traded security is entered onto the ATS by a subscriber, the ATS shall obtain an acknowledgement from the subscriber that the subscriber has received the disclosure in subsection (1).

## **PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EQUITY SECURITIES, PREFERRED SECURITIES OR OPTIONS**

### **7.1 Pre-trade Information Transparency - Equity Securities and Preferred Securities**

(1) A marketplace that displays orders of equity securities or preferred securities to a person or company shall provide to the data consolidator accurate and timely information for each equity security and preferred security traded on the marketplace in the format required by the data consolidator.

(2) Subsection (1) does not apply if the marketplace only displays orders to its own employees or persons or companies retained by the marketplace to assist in the operation of the marketplace.

### **7.2 Pre-trade Information Transparency - Options**

(1) A marketplace that displays orders of put and call options to a person or company shall provide to the data consolidator accurate and timely information for every series of every put and call option at every available exercise price traded on the marketplace in the format required by the data consolidator.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or persons or companies retained by the marketplace to assist in the operation of the marketplace.

**7.3 Post-trade Information Transparency - Equity Securities and Preferred Securities** - A marketplace shall provide to the data consolidator, in the format required by the data consolidator, accurate and timely information regarding details of all trades of equity securities and preferred securities executed on the marketplace, including details as to the type, issuer, class and series of the security, the volume, the symbol, the price and the time of the trade.

**7.4 Post-trade Information Transparency - Options** - A marketplace shall provide to the data consolidator, in the format required by the data consolidator, accurate and timely information regarding the details of all trades of put and call options executed on the marketplace, including details as to the underlying interest, the expiry month, the exercise price, the volume, the price and the time of the trade.

**7.5 Consolidated Feed - Equity Securities, Preferred Securities and Options** - The data consolidator shall produce a consolidated feed showing the information provided to the data consolidator under sections 7.1, 7.2, 7.3 and 7.4 and the identity of the marketplace on which each trade took place, but shall not disclose information about the identity of the buyer and seller of the securities traded.

**7.6 Compliance with Requirements of the Data Consolidator** - A marketplace that is subject to this Part shall comply with the requirements of the data consolidator.

## **PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN DEBT SECURITIES AND INTER-DEALER BOND BROKERS**

### **8.1 Pre-trade Information Transparency - Debt Securities**

(1) An inter-dealer bond broker or a marketplace that displays orders of debt securities to a person or company shall provide to an information processor accurate and timely information for each debt security traded through the inter-dealer bond broker or on the marketplace in the format required by the information processor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its own employees or persons or companies retained by the marketplace to assist in its operations.

**8.2 Post-trade Information Transparency - Debt Securities** - An inter-dealer bond broker or a marketplace shall provide to an information processor accurate and timely information regarding details of all trades of debt securities executed through the inter-dealer bond broker or executed on the marketplace including details as to the type, issuer, class and series of the security, the volume, the price and the time of the trade.

**8.3 Consolidated Feed - Debt Securities** - An information processor shall produce a consolidated feed showing the information provided to the information processor under sections 8.1 and 8.2, but shall not disclose information about the identity of the inter-dealer bond broker, buyer or seller involved in a trade.

**8.4 Compliance with Requirements of the Information Processor** - A marketplace or inter-dealer bond broker that is subject to this Part shall comply with the reasonable requirements of the information processor.

## **PART 9 MARKET INTEGRATION FUNCTION FOR MARKETPLACES**

### **9.1 Market Integration Function for Marketplaces**

(1) A marketplace that is subject to subsection 7.1(1), 7.2(1) or 8.1(1) shall comply with the requirements of the market integrator to provide for access to orders displayed through the data consolidator.

(2) When receiving an order from another marketplace, the marketplace receiving the order shall apply its own rules to the execution of that order.

(3) A marketplace shall provide to marketplace participants of any other marketplace access to the orders it displays to the data consolidator that is equivalent to the access that the marketplace provides to its own marketplace participants.

### **9.2 Application**

(1) An ATS that is subject to subsection 7.1(1), 7.2(1) or 8.1(1) shall establish a connection to the principal market for securities traded on its system and satisfy the best bid or best offer on any principal market before executing a trade on the ATS.

(2) Subsection (1) does not apply if the market integrator has established requirements to provide for access to orders displayed through the data consolidator.

## **PART 10 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES**

**10.1 Disclosure of Transaction Fees for Marketplaces** - If a marketplace charges a transaction fee to participants of another marketplace to execute a trade by accessing an order on that other marketplace that is displayed through the data consolidator, the marketplace shall disclose to the data consolidator a schedule of all transaction fees applicable.

## **PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES**

**11.1 Business Records** - A marketplace shall keep such records as are necessary for the proper recording of its business.

**11.2 Other Records** - In addition to the records required to be maintained under section 11.1, a marketplace shall keep the following information

- (a) a record of all marketplace participants who have been granted access to trading in the marketplace; and
- (b) daily trading summaries for the marketplace, including
  - (i) securities traded,
  - (ii) transaction volumes
    - (A) for shares and derivatives of shares, expressed as number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that currency, and
    - (B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that currency,
- (c) time-sequenced records of order information in the system, including
  - (i) the date and time, expressed in hours, minutes and seconds, that the order was received and entered,
  - (ii) details of the order, including the type, issuer, class and series of the security, whether the order is a buy or sell order, the quantity specified and all designated price parameters including market order and applicable price limits,
  - (iii) all other order modifiers, including time limit in force, short sale and special terms,
  - (iv) all instructions to modify or cancel the order,

- (v) all execution report details, including the amount of the order executed, the price at which the order was executed, the currency, if not in Canadian dollars, the time of execution, whether the transaction was a cross and the identity of each counterparty, and
  - (vi) time-sequenced records of all messages sent to or received from the data consolidator, the market integrator and any other marketplace; and
- (d) the transaction fees.

### **11.3 Record Preservation Requirements**

(1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep

- (a) all records required to be made under sections 11.1 and 11.2;
- (b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1;
- (c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;
- (d) if the marketplace is an ATS and it is not required to comply with section 12.1, at least one copy of all records made or received by the marketplace in the course of carrying out any activities of a type described in paragraphs (a) to (g) of section 12.1, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results and other similar records related to those activities; and
- (e) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace.

(2) During the period in which a marketplace is in existence, the marketplace shall keep

- (a) all organizational documents, minute books and stock certificate books;
- (b) in the case of a recognized exchange, copies of all forms filed under Part 3;
- (c) in the case of a recognized quotation and trade reporting system, copies of all forms filed under Part 4; and
- (d) in the case of an ATS, copies of all forms filed under sections 6.2 and 6.3 and notices given under sections 6.4 and 6.5.

**11.4 Means of Record Preservation** - A marketplace may keep all records, documents and forms referred to in this Part by means of mechanical, electronic or other devices, if

- (a) such method of recordkeeping is not prohibited under other applicable law;
- (b) the marketplace takes reasonable precautions, appropriate to the means used, to govern against the risk of falsification of the information recorded; and
- (c) the marketplace provides a means for making the information available in an accurate and intelligible form, capable of being printed, within a reasonable time to any person or company lawfully entitled to examine the records.

**11.5 ATS Trade Report Transmittal** - Each ATS shall transmit in electronic form within 90 seconds after execution the information set out in subsections 11.2(c) and (d) to the approved agent of the ATS in the format required by the approved agent.

#### **11.6 Synchronization of Clocks**

- (1) Each marketplace or approved agent for equity securities, preferred securities or options shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded pursuant to this Part to the clock used by the data consolidator and the marketplace shall maintain the synchronization of those clocks in conformity with procedures established by the data consolidator.
- (2) Each marketplace or approved agent for debt securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded pursuant to this Part to the clock used by the information processor and the marketplace shall maintain the synchronization of those clocks in conformity with procedures established by the information processor.

### **PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**

**12.1 System Requirements** - Subject to section 12.2, an ATS, a recognized exchange and a recognized quotation and trade reporting system shall, for each of their systems that support order entry, order routing, execution, trade reporting and trade comparison,

- (a) make reasonable current and future capacity estimates;
- (b) conduct capacity stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;
- (d) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (e) establish reasonable contingency and business continuity plans;
- (f) on an annual basis, perform an independent review, in accordance with established audit procedures and standards, of their controls for ensuring that each of them is in compliance with paragraphs (a) through (e), and conduct a review by

senior management of a report containing the recommendations and conclusions of the independent review; and

(g) promptly notify the securities regulatory authority of material systems failures.

**12.2 Application** - Paragraphs 12.1(f) and (g) do not apply to an ATS unless trades on the ATS in any type of security, during at least four of any six consecutive calendar months, are greater than 20 percent of the average daily dollar value of the trading volume in that type of security on all marketplaces in Canada.

## **PART 13 CLEARING AND SETTLEMENT**

**13.1 Clearing and Settlement** - All trades made through or by an ATS shall be reported, confirmed and settled through a clearing agency listed in Appendix B.

## **PART 14 JURISDICTION**

**14.1 Jurisdiction** - Despite section 6.1, if an ATS is registered as a dealer in a jurisdiction in Canada and is providing access only to registered dealers in the local jurisdiction, then the ATS is exempt from the requirement to be recognized as an exchange or registered as a dealer in the local jurisdiction.

## **PART 15 INFORMATION PROCESSOR**

### **15.1 Information Processor**

(1) A person or company shall not act as an information processor unless the person or company files Form 21-101F5 90 days prior to commencing operations as an information processor.

(2) A person or company who has filed Form 21-101F5 may commence operations as an information processor unless the securities regulatory authority disapproves the commencement of operations within 90 days of the filing of Form 21-101F5.

(3) During the 90 day period referred to in subsections (1) and (2), a person or company who files Form 21-101F5 shall inform in writing the securities regulatory authority immediately of any change to the information described on Form 21-101F5 or on an amendment to Form 21-101F5, and the person or company shall file an amendment to Form 21-101F5 no later than seven days after a change in the information on that form or on an amendment to that form takes place.

### **15.2 Change in Information**

(1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor shall file an amendment to the information provided on Form 21-101F5 in the manner set out in Form 21-101F5

(2) When there is a change to any information described on Form 21-101F5 or an amendment to that form, other than the information referred to in subsection (1), an information processor shall file an amendment to Form 21-101F5 not later than 30 days after the end of the calendar quarter in which the change takes place.

### **15.3 Requirements Applicable to an Information Processor**

(1) An information processor shall provide prompt, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and executed trades in, securities.

(2) An information processor shall not unreasonably prohibit or limit access by a person or company to services offered by it.

(3) An information processor shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs.

## **PART 16 EXEMPTION**

### **16.1 Exemption**

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.



**APPENDIX A**  
**TO**  
**NATIONAL INSTRUMENT 21-101**  
**MARKETPLACE OPERATION**  
**INTER-DEALER BOND BROKERS**

1. Cantor Fitzgerald Securities Canada Ltd.
2. Freedom International Brokerage Inc.
3. Prebon Yamane (Canada) Ltd.
4. Shorcan Brokers Ltd.
5. Tullett & Tokyo Securities Canada Ltd.

**APPENDIX B  
TO  
NATIONAL INSTRUMENT 21-101  
MARKETPLACE OPERATION  
CLEARING AGENCIES**

1. Canadian Depository for Securities Limited
2. Canadian Derivatives Clearing Corporation