

ANNEX A

DESCRIPTION OF NOTABLE CHANGES TO THE PROPOSED AMENDMENTS

This Annex describes the notable changes to the Marketplace Rules from the proposed amendments published for comment on April 24, 2014. It contains the following sections:

1. Marketplace systems and business continuity planning;
2. Use of marketplace participants' trading information for research; and
3. Provision of data to an information processor.

1. MARKETPLACE SYSTEMS AND BUSINESS CONTINUITY PLANNING

We have revised NI 21-101 and certain of the Forms to account for issues raised by the commenters in areas related to business continuity planning, the use of uniform test symbols in marketplace production environments, material changes to marketplace technology requirements and the information required to be provided in Form 21-101F1 and Form 21-101F2.

(i) Business continuity planning

In our April 24, 2014 notice of proposed amendments to the Marketplace Rules, we noted that the increase in marketplace fragmentation for listed equities has made the recovery process in the case of a disaster significantly more complex and that a successful industry-wide business continuity test is key to any realistic expectation of a Canadian capital markets recovery from a major disaster within a reasonable length of time. Consequently, we have amended NI 21-101 to include a requirement for the mandatory participation in industry-wide business continuity tests as determined by a regulation services provider, regulator, or in Québec, a securities regulatory authority, as initially proposed. However, in response to comments, we have revised the requirement such that a "participant dealer", as defined in Part 1 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), rather than a "marketplace participant" must participate in the tests. As defined, a "participant dealer" means a marketplace participant that is an investment dealer. The effect of this change is that buy-side institutional investors will not be required to participate in industry-wide business continuity tests, reflecting the fact that such participants have historically not participated in these tests.

We have also revised subsection 12.4(2) of NI 21-101 such that a marketplace with a total trading volume in any type of security equal to or greater than 10% of the total dollar value of the trading volume in that type of security on all marketplaces in Canada during at least two of the preceding three months of operation must establish, implement, and maintain policies and procedures reasonably designed to ensure that each system operated by or on behalf of the marketplace that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, and trade clearing can resume operations within 2 hours following the

declaration of a disaster by the marketplace. We have similarly revised subsection 14.6(3) of NI 21-101 to require an information processor to establish, implement, and maintain policies and procedures reasonably designed to ensure that its critical information technology systems can resume operation within one hour following the declaration of a disaster by the information processor.

Lastly, we have included guidance in section 14.3 of 21-101CP to reflect the CSA's expectation that the policies and procedures required by section 12.4 of NI 21-101 will form part of the entity's business continuity and disaster recovery plans.

(ii) Uniform test symbols in production environments

As initially proposed, we have amended NI 21-101, at section 12.3.1, to require a marketplace to use uniform test symbols for the purpose of testing to be performed in the production environment. We have included guidance in section 14.2.1 of 21-101CP to reflect the CSA's view that the use of uniform test symbols is in furtherance to a marketplace's obligation under section 5.7 of NI 21-101 to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.

We have also include guidance in section 14.2.1 of 21-101CP to reflect our view that the use of uniform test symbols is not intended to facilitate stress testing by marketplace participants. To the extent that the use of test symbols may negatively impact the performance of a marketplace's production environment, our view is that a marketplace may suspend access to a test symbol where its use reasonably represents undue risk to the operation or performance of the marketplace's production environment. We also note our view that misuse of the test symbols by marketplace participants could amount to a breach of the fair and orderly markets provisions of NI 23-103.

We will be consulting with industry stakeholders on the implementation of uniform test symbols in advance of the new provision taking effect.

(iii) Material changes to marketplace technology requirements

As we indicated in the notice of the proposed amendments, the failure of a marketplace's systems can have wide-reaching and unintended consequences. A marketplace beginning operations or making a material change to its systems can therefore negatively impact many other parties if these actions are not carried out in a careful manner. In our view, marketplace participants and service vendors must have a reasonable opportunity to adapt to the systems changes demanded by the launch of new marketplaces and material changes to a marketplace's technology requirements.

We had initially proposed amendments to section 12.3 of NI 21-101 in order to codify practices regarding the launch of new marketplaces and the implementation of material changes to a marketplace's technology requirements, which have been established by OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes*. As proposed, these amendments would have prohibited the launch of new marketplaces and the implementation of

material changes to a marketplace's technology requirements until at least three months following notification of the marketplace of the completion of the regulatory review process.

Due to different practices in the various CSA jurisdictions, we have removed these provisions from section 12.3 and they will be retained in OSC Staff Notice 21-706.

(iv) Information in Form 21-101F1 and Form 21-101F2

We have also revised the proposed amendments to Exhibit G to Form 21-101F1 and Form 21-101F2 to clarify the kind of information that a marketplace should provide regarding its business continuity and disaster recovery plans. In particular, Exhibit G has been revised to require information about the creation, management, and oversight of the plans; escalation procedures; internal and external communications procedures; and triggering scenarios included in a marketplace's business continuity and disaster recovery plans.

2. USE OF MARKETPLACE PARTICIPANTS' TRADING INFORMATION FOR RESEARCH

Background

Subsection 5.10(1) of NI 21-101 prohibits a marketplace from providing a marketplace participant's order and trade information to a person or company other than the market participant, a securities regulatory authority or an RSP unless (i) the marketplace participant has consented in writing, (ii) the release of the order and trade information is required by applicable law or NI 21-101, or (iii) the order and trade information was disclosed by another person or company, and the disclosure was lawful. An unintended consequence to the previous amendments to the Marketplace Rules was that all marketplaces, including exchanges, were prohibited from providing order and trade information for capital markets research without the written consent of all of their marketplace participants. In Ontario, an exemption order was granted to marketplaces to allow them to provide marketplace participants' data for capital markets research.¹

Amendments

As we indicated in the notice that accompanied the proposed amendments, we support capital markets research and our view is that marketplaces should be permitted to provide third parties with marketplace participants' order and trade information to carry out this research, provided that appropriate safeguards are in place to prevent the inappropriate use and disclosure of that information.

However, in response to comments made on the proposed amendments, we have revised subsection 5.10(1.1) of NI 21-101 to impose certain obligations directly on a marketplace that proposes to disclose a marketplace participant's order and trade information for purposes of capital markets research. In particular, we have revised the subsection to provide that, in order

¹ Available at http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20131003_210_alpha-trading.htm

for a marketplace to release a marketplace participant's order or trade information, the marketplace must reasonably believe that the information will be used solely for the purpose of capital markets research. In the event that the information would identify, directly or indirectly, a marketplace participant or client of the marketplace participant, the marketplace must also reasonably believe that the information is required for the purpose of the capital markets research and that the research is not intended for the purpose of identifying a particular marketplace participant or a client of the marketplace participant or identifying a trading strategy, transactions, or market positions of the marketplace participant or its client.

We have also included guidance in subsection 7.7(0.2) of 21-101CP to reflect our expectation that, in order for a marketplace to reasonably believe that the information will be used for the purpose of capital markets research, the marketplace will make sufficient inquiries of the recipient of the information in order for the marketplace to sustain a reasonable belief that the information will be used by the recipient only for capital markets research. Similarly, where the information to be released to the recipient could identify a marketplace participant or a client of a marketplace participant, our expectation is that the marketplace will make sufficient inquiries of the recipient in order for the marketplace to sustain a reasonable belief that the information identifying, directly or indirectly, a marketplace participant or its client is required for purposes of the research and that the purpose of the research is not to identify a particular marketplace participant or client or to identify a trading strategy, transactions, or market positions of a particular marketplace participant or a client of the marketplace participant.

We have also included guidance in subsection 7.7(0.3) of 21-101CP reflecting our view that marketplaces should exercise caution when considering releasing order or trade information that could disclose the identity of a marketplace participant or client of the marketplace participant. In particular, our view is that a marketplace may only release information in any order entry field that would identify the marketplace participant or client, using a broker number, trader ID, or DEA client identifier, if it reasonably believes that this information is required for the research.

Lastly, we have revised subsection 5.10(1.1) of NI 21-101 to include additional requirements on a recipient of information released by a marketplace when the recipient proposes onward disclosure of the information for purposes of allowing those conducting peer reviews of the research to have access to the data to verify the result of the research prior to publication.

3. PROVISION OF DATA TO AN INFORMATION PROCESSOR

In the notice accompanying the proposed amendments to the Marketplace Rules, we expressed the view that, given the important role that an information processor (or information vendor, in its absence) plays in a multiple marketplace environment for listed equity securities, an information processor must receive accurate and timely information from marketplaces. This view is reflected in the amendments to sections 7.1 and 7.2 of NI 21-101, which codify guidance initially in 21-101 CP. These sections now prohibit a marketplace from making pre- and post-trade information available to any person or company before it makes that information available to an information processor or an information vendor.

We have revised section 9.1 of 21-101CP to indicate that, in order to comply with new subsections 7.1(3) and 7.2(2) of NI 21-101, we expect that marketplaces will release order and trade information simultaneously to both the information processor and to persons or companies that may receive order and trade information directly from the marketplace.