CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice of Amendments to National Instrument 21-101 *Marketplace Operation* and Companion Policy 21-101 CP and to National Instrument 23-101 *Trading Rules* and Companion Policy 23-101CP

I. INTRODUCTION

The Canadian Securities Administrators (the CSA or we) have made amendments (the Amendments) to the following instruments:

- National Instrument 21-101 *Marketplace Operation* (NI 21-101) and Companion Policy 21-101CP (21-101CP);
- National Instrument 23-101 *Trading Rules* (NI 23-101) and Companion Policy 23-101CP (23-101CP);
- Form 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* (Form 21-101F1);
- Form 21-101F2 *Initial Operation Report Alternative Trading System* (Form 21-101F2);
- Form 21-101F3 *Quarterly Report of Marketplace Activities* (Form 21-101F3); and
- Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

NI 21-101, 21-101CP, NI 23-101, 23-101CP, and Forms 21-101F1, 21-101F2, 21-101F3, 21-101F4 *Cessation of Operations Report for Alternative Trading System* and 21-101F5 are collectively referred to as the Marketplace Rules in this Notice.

Jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently, all jurisdictions except Ontario) are also publishing amendments to that instrument to permit certain exemptive relief applications. As Ontario is not a party to Multilateral Instrument 11-102, these amendments will not be published in Ontario.

In Ontario, under subsection 143.3 of the Act, the Amendments will be delivered to the Minister of Finance for approval on March 28, 2012. Unless the Minister rejects the Amendments or returns them to the Commission for further consideration, they will come into force on July 1, 2012, with the exception of Form 21-101F3 which comes into force on December 31, 2012.

II. PURPOSE OF THE AMENDMENTS

The CSA published for comment proposed amendments to the Marketplace Rules (Proposed Amendments) on March 18, 2011.[1] The key objectives of the Proposed Amendments were to:

- update and streamline the regulatory and reporting requirements in the Marketplace Rules and to align, where applicable, the requirements applicable to all marketplaces;
- propose amendments to establish the circumstances under which orders are exempt from the pre-trade transparency requirements in NI 21-101;
- increase transparency of marketplace operations;
- propose or update other requirements applicable to marketplaces to address certain issues or situations, such as conflicts of interest, outsourcing arrangements, or business continuity plans;
- give guidance in a number of areas, including what would be considered a marketplace or when indications of interest would be considered to be firm orders;
- extend the current exemption from transparency requirements applicable to government debt securities until December 31, 2014;
- extend the obligation in NI 23-101 to not intentionally lock or cross markets to marketplaces in certain circumstances; and
- revise and update the requirements applicable to information processors.

III. PUBLICATION FOR COMMENT

We have received 12 comment letters to the Proposed Amendments. We have considered the comments received and thank all of the commenters for their submissions. A list of those who submitted comments, as well as a summary of the comments and our responses to them are attached at **Appendix A** to this Notice.

IV. DESCRIPTION OF THE PROPOSED AMENDMENTS AND SUBSEQUENT REVISIONS

After considering the comments to the Proposed Amendments, we have made some minor changes. These changes are not material and are explained in the remainder of the Notice. The Notice of Proposed Amendments published on March 18, 2011 includes a full description of the proposed changes to the Marketplace Rules and the rationale for these changes.

a. Amendments to facilitate the implementation of the regulatory framework for dark liquidity on equity marketplaces

Part 7 of NI 21-101 sets out the information transparency requirements for marketplaces dealing in exchange-traded securities. One of these requirements is that a marketplace

[1] Published at (2011) 34 OSCB (Supp-1).

that displays orders of exchange-traded securities must provide information regarding the orders displayed to an information processor.[2] An exemption from this requirement is available for orders that are displayed only to a marketplace's employees or to those retained by the marketplace to assist in its operation.[3] This exemption currently permits marketplaces that are "dark pools" to operate. It also allows orders to be entered with no pre-trade transparency on transparent marketplaces.

In the Proposed Amendments, we proposed to revise the exemption from the pre-trade transparency requirements to include a requirement that orders also meet a size threshold in order to be exempt from the transparency requirements in NI 21-101.[4] The purpose of this proposed amendment was to facilitate the implementation of the regulatory framework for dark liquidity that the Investment Industry Regulatory Organization of Canada (IIROC) and the CSA proposed at the end of an extensive consultation process that involved market participants. That framework was first discussed in Joint CSA/IIROC Position Paper 23-405 *Dark Liquidity in the Canadian Market* (Position Paper), published on November 19, 2010.[5] On July 29, 2011, the CSA and IIROC published Joint CSA/IIROC Staff Notice 23-311 *Regulatory Approach to Dark Liquidity in the Canadian Market* (Joint CSA/IIROC Staff Notice 23-311) that introduced the regulatory framework for dark liquidity.[6] Joint CSA/IIROC Staff Notice 23-311 was published in conjunction with proposed amendments to IIROC's Universal Market Integrity Rules (UMIR) respecting requirements governing dark liquidity on Canadian equity marketplaces (Proposed UMIR Amendments).[7]

Throughout the process, we have received comments relating to the proposed requirement that orders meet a size threshold set by a regulation services provider in order to be exempt from transparency requirements. We have published responses to these comments in Joint CSA/IIROC Staff Notice 23-311. In **Appendix A** of this Notice we have included our responses to the specific comments received to the Proposed Amendments.

We acknowledge the concerns that were raised by the commenters regarding the proposal for a size threshold, and note that we do not propose an actual threshold at this time. However, we continue to be of the view that it is important to establish a regulatory framework that would allow the CSA and IIROC to introduce a threshold when appropriate and on a timely basis. As we indicated in Joint CSA/IIROC Staff Notice 23-311, we and IIROC will examine trading in the market over a period of time to evaluate what the minimum size threshold should be. More details regarding the specific review that will be undertaken will be published in a separate notice along with the UMIR amendments, once approved. Any decision regarding an appropriate size threshold will involve prior consultation with industry participants.

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[2] Subsection 7.1(1) of NI 21-101.
[3] Subsection 7.1(2) of NI 21-101.
[4] Proposed amendments to subsection 7.1(2) of NI 21-101.
[5] Available at (2010) 33 OSCB 10764.
[6] Published at (2011) 34 OSCB 8219.
[7] IIROC Notice 11-0225 Provisions Respecting Dark Liquidity, available at http://sdocs.iiroc.ca/English/Documents/2011/609a0965-97ac-43a3-9976-7b2f46c96443_en.pdf.

We also highlight a concern raised by one commenter that the proposed amendments to the pre-trade transparency requirements in Part 7 of NI 21-101 would restrict a marketplace that facilitates one-to-one negotiations between its marketplace participants. The commenter requested clarification as to whether an order communicated in a one-to-one negotiation would be considered to be displayed by the marketplace. We note that the Proposed Amendments do not change the status of existing marketplaces that are request-for-quotes systems or facilities that allow negotiation between two parties, other than to establish a size threshold, as discussed above. However, we think it is important to clarify and provide some transparency regarding how these types of marketplaces are treated, and have been treated since the Marketplace Rules were implemented. From a policy perspective, we do not think that the transparency provisions of NI 21-101 should apply to these marketplaces if the request for quotes or indications of interest (IOIs) that they disseminate are not initially "firm" or "actionable" and, once they are, they are only shown to the two counterparties and to the employees of the marketplace (as allowed by the current exemption from the transparency requirements). As a result, we have amended 21-101CP to state that we may consider granting an exemption from the transparency requirements in NI 21-101 for orders that result from a request for quotes or in a facility that allows negotiation between two parties, provided certain conditions are met.[8] These conditions are as follows:

- the order details may be shown only to the negotiating parties – this is because, if the orders are shown to multiple parties, they would effectively be displayed by the marketplace and become subject to the transparency requirements of NI 21-101;
- no actionable IOIs are displayed by either party involved in the negotiation or by the marketplace as displaying actionable IOIs to outside market participants would be akin to displaying orders outside of the marketplace, which would subject the marketplace to the transparency requirements of NI 21-101; and
- each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of NI 21-101 – this would ensure that, when a size threshold is proposed, orders entered on these marketplaces would also have to meet the applicable size threshold in order to be able to be entered without pre-trade transparency.

b. Fair access requirements

In proposed amendments to 21-101CP, we stated that a marketplace that sends information regarding IOIs to a selected smart order router (SOR) should consider the extent to which such information should be sent to other SORs in order to meet the marketplace's fair access obligations.[9]

Comments received indicated that it is not sufficient that a marketplace only consider whether to send IOI information to other SORs, and that the marketplace should send that information to all SORs in order to avoid disadvantaging investors based on the SOR

[8] Subsection 5.1(4) of 21-101CP.
[9] Subsection 7.1(4) of proposed amendments to 21-101CP.

they use. We agree with these comments. We are of the view that, in order to meet the fair access requirements in section 5.1 of NI 21-101, a marketplace needs to ensure that all market participants[10] have equal access to the information it disseminates. As a result, we have revised 21-101CP to set out the expectation that a marketplace that sends IOIs to a selected SOR or, for that matter, to another system that is not an SOR, such as a trading algorithm, should send the information to other SORs or systems.

Finally, we have amended the guidance regarding fair access requirements included in 21-101CP to clarify that the reference to "services" in section 5.1 of NI 21-101 includes co-location, whether this service is offered by the marketplace or by a third party.[11]

c. Guidance regarding the definition of a marketplace

In proposed amendments to 21-101CP, we indicated that a dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair orders with contra-side orders outside of a marketplace and then reports the match to a marketplace as a cross would be considered to be operating a marketplace. The rationale was that the use of technology to match orders received by a dealer electronically in a non-discretionary, established fashion, is not materially different from the function of the marketplace.

While a few commenters agreed with this clarification, most raised a number of concerns. These included the need to ensure that there are no unintended consequences. Concerns were also expressed that all dealers might meet the definition of a marketplace since most order flow is automated. One commenter thought that treating dealers that use systems to match order flow as marketplaces would stifle innovation.

We remain of the view that a dealer that uses such a system may fall within the definition of a marketplace and, as a result, may need to be regulated as a marketplace. However, we acknowledge the possible unintended consequences of applying the definition of a marketplace so broadly to dealers, particularly in today's environment where most dealers' order flow is highly automated. For example, dealers that are ATSs are exempt from best execution responsibilities.[12] At this point, we do not think that we have sufficient information regarding the systems being used by dealers so as to clearly provide guidance as to when we would consider that a dealer using a system to match its own orders is or is not acting as a marketplace.

Staff of the Ontario Securities Commission (OSC) have issued a questionnaire to gather information about dealers' internalization and broker preferencing practices. The results of that work will assist us in determining what definitions, clarifications or requirements are needed, if any, to ensure that it is clear when dealers are operating marketplaces and

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[10] It is, and has always been, our view that access to a marketplace's services should be fair and equal among all market participants in a class that is clearly identifiable.
[11] Subsection 7.1(3) of 21-101CP.
[12] Specifically, section 4.1 of NI 23-101 states that Part 4 Best Execution of NI 23-101 does not apply to a dealer that carries on business as an ATS in compliance with section 6.1 of NI 21-101.

when they are engaging in traditional dealer activity in an automated manner. In the meantime, we encourage dealers to meet and discuss with the applicable securities regulatory authority when they operate or plan to operate systems that internalize orders to determine whether the dealer's system falls within the definition of "marketplace". We have revised subsection 2.1(8) of 21-101CP accordingly.

d. Requirement for fair and orderly markets

In the Proposed Amendments, we proposed a requirement that a marketplace not engage in any activity that interferes with fair and orderly markets.[13]

Some commenters expressed concern that the proposed requirement is very broad, especially for ATSs, which cannot set rules governing the conduct of their subscribers. We note that the requirement was not intended to add additional oversight responsibilities for ATSs which, by definition, do not have a regulatory role. In 21-101CP, we have clarified that the requirement for fair and orderly markets in NI 21-101 does not impose a responsibility on a marketplace to oversee the conduct of its marketplace participants, unless the marketplace is an exchange or QTRS that has assumed responsibility for monitoring the conduct of its marketplace participants directly, rather than through a regulation services provider. [14] We indicated, however, that marketplaces are expected to monitor activity on their markets for compliance with their own operational policies and procedures and to report any concerns about order entry or trading to IIROC.

We have also revised NI 21-101 to clarify that the requirement to maintain fair and orderly markets is not absolute; a marketplace must take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets.[15] In 21-101CP, we have indicated that, as part of these reasonable steps, the marketplace should ensure that its operations support compliance with regulatory requirements, including UMIR. This does not mean that the marketplace must system-enforce all regulatory requirements, but rather that it should not operate in a manner that, to the best of its knowledge, would cause the marketplace participants to breach regulatory requirements when trading on that marketplace. [16] For example, a marketplace should not accept orders from a marketplace participant if it knows that entry of such orders would violate regulatory requirements.

e**. Management and disclosure of conflicts of interest**

In the Proposed Amendments, we introduced a requirement that a marketplace establish, maintain and ensure compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the marketplace or the services it provides.[17] In 21-101CP, we indicated that this may include conflicts, actual or perceived,

[13] In section 5.7 of proposed amendments to NI 21-101.
[14] Subsection 7.6(2) of 21-101CP.
[15] See section 5.7 of NI 21-101.
[16] Subsection 7.6(3) of 21-101CP.
[17] Section 5.11 of proposed amendments to NI 21-101.

related to the commercial interest of a marketplace, the interests of its owners or operators, and the responsibilities and sound functioning of the marketplace.[18] Proposed paragraph 10.1(e) of NI 21-101 would require that a marketplace disclose its conflict of interest policies and procedures.

One commenter noted that referral arrangements also create a potential conflict of interest and disclosure should be required. We agree and note that proposed paragraph 10.1(f) of NI 21-101 would require a marketplace to disclose referral arrangements between the marketplace and service providers. We have now revised subsection 7.8(1) of 21-101CP to clarify that a marketplace's policies and procedures related to conflicts of interest should also cover conflicts arising from referral arrangements.

Given that dealers that are owners of a marketplace may have a conflict of interest with respect to their clients, we have also amended 21-101CP to clarify our expectation that a marketplace ensure that its marketplace participants disclose their ownership to their clients at least quarterly.[19] The disclosure could be done by including a requirement for this disclosure in any agreements between the marketplace and marketplace participants. Furthermore, since conflicts of interest could also arise when a marketplace or an affiliated entity of the marketplace trades on its own account on a marketplace, for example when it trades against or in competition with client orders, we are of the view that such potential conflicts of interest should also be disclosed. We have amended subsection 12.1(4) of 21-101CP to indicate this. We note that these disclosure requirements are consistent with existing disclosure obligations of marketplace participants that are registered under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements*.

f. Outsourcing

In the Proposed Amendments, we proposed requirements for marketplaces that outsource any of their key services or systems to a service provider, which may be an affiliate or associate of the marketplace.[20] One of these requirements was that marketplaces establish policies and procedures to evaluate and approve outsourcing agreements. We also proposed amendments to 21-101CP to provide guidance regarding the content of these policies and procedures.[21]

For greater clarity, we have further revised 21-101CP to indicate that it is our expectation that a marketplace's policies and procedures also include an assessment of whether the marketplace will be able to continue to comply with securities legislation in the event of the bankruptcy of insolvency of a service provider to which the marketplace has outsourced key services.

g. Transparency of marketplace operations

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[18] Section 7.8 of proposed amendments to 21-101CP.
[19] Subsection 7.8(2) of 21-101CP.
[20] Section 5.12 of NI 21-101.
[21] Section 7.9 of 21-101CP.

In the Proposed Amendments, we introduced a requirement that a marketplace publicly disclose on its website certain information. This information includes the listing, trading, data and routing fees charged by a marketplace, an affiliate, or by a third-party entity to which the marketplace outsourced its services.[22]

We received a number of comments on this section of the Proposed Amendments. A few commenters requested clarification of the fees that should be disclosed. One commenter suggested that fees charged by a marketplace affiliate or by a third party that provides marketplace services should also be disclosed. We agree with this comment and have amended NI 21-101 to require that all fees be disclosed, including those charged by affiliates or third parties that provide marketplace services.[23]

One commenter requested clarification regarding the treatment of co-location fees. We are of the view that, because co-location is a core service of a marketplace that is subject to the fair access provisions of NI 21-101, co-location fees must also be disclosed. We have amended paragraph 10.1(a) of NI 21-101 to state this requirement.

We have also made consequential amendments to Exhibit L - *Fees* of Form 21-101F1 and 21-101F2.

h. Initial filing requirements for marketplaces

NI 21-101 sets out the initial filing requirements applicable to marketplaces. They are as follows:

- An applicant for recognition as an exchange or QTRS must file Form 21-101F1;[24] and
- An ATS must file an initial operation report using Form 21-101F2 before commencing its operations.[25]

In the Proposed Amendments, we proposed revisions to Forms 21-101F1 and 21-101F2 that would update these forms and ensure they are more reflective of the current market structure and of the trading activities of marketplaces. We did this by increasing consistency between the information filing requirements in the forms, by enhancing the forms with additional information, including information about the operations of the marketplace, outsourcing activities or governance, and by removing obsolete and unduly onerous requirements.

Based on feedback from commenters, we have made a few non-material changes to the forms. These include clarifying, in Form 21-101F1, that if an exchange files the

[22] Section 10.1 of proposed amendments to NI 21-101.
[23] Paragraph 10.1(a) of NI 21-101.
[24] Subsections 3.1(1) and 4.1(1) of NI 21-101 for Exchanges and QTRSs, respectively.
[25] Section 6.4 of NI 21-101.

information required by the form pursuant to section 5.5 of NI 21-101 *Filing of Rules*, it does not need to file the information again as an amendment to the form.

i. Ongoing filing and reporting requirements for marketplaces

NI 21-101 sets out ongoing filing requirements for all marketplaces. These requirements include prior notification of significant changes to marketplace operations, as described in Form 21-101F1 or 21-101F2, as applicable. 21-101CP provides guidance on what constitutes a significant change.

In the Proposed Amendments, we proposed a number of changes to the existing filing requirements applicable to marketplaces and to their timing.[26] Specifically, we proposed to:

- require that changes that are not considered significant changes be filed by a marketplace immediately before their implementation;
- shorten the filing period for fee changes from 45 days to seven business days before their implementation; and
- introduce principles-based guidance on what would be considered a significant change in 21-101CP.[27]

We also proposed that all marketplaces, ATSs and exchanges file Form 21-101F3, which is currently filed only by ATSs. We proposed a number of revisions to Form 21-101F3 that would tailor the reporting requirements to the different types of marketplaces currently operating, to include information that is more reflective of a marketplace's activities, and to remove the requirement to report certain detailed information, such as the requirement to list all the securities traded on a marketplace.

Many commenters supported the changes we proposed. However, some concerns were expressed that the proposed requirement that non-significant changes be filed prior to their implementation would be burdensome and, in some circumstances, not possible. We agree with these comments and have amended NI 21-101 to require that a change that is not significant be reported by the earlier of the close of business on the tenth day after the end of the month in which the change was made and the date on which such change is made public by the marketplace, if applicable.[28] We believe that this would allow the CSA to obtain more timely notification of all relevant changes to a marketplace, while giving the marketplace more flexibility.

We have also amended paragraph 6.1(4)(k) of 21-101CP to clarify that only changes in affiliates that provide services to or on behalf of the marketplace are considered significant. We did this in response to concerns raised that the Proposed Amendments would have required prior notification of changes in all affiliates, which could be unduly

[26] Section 3.2 of proposed amendments to NI 21-101.
[27] Subsection 6.1(4) of proposed amendments to 21-101CP.
[28] Subsection 3.2(3) of NI 21-101.

onerous for an international marketplace with many affiliates that do not provide services for the marketplace.

A few commenters requested clarification regarding the technology changes that would be considered significant. We have amended paragraph 6.1(4)(h) of 21-101CP to clarify that these would include changes to the systems and technology used by a marketplace that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, co-location and, if applicable, market surveillance and trade clearing, including those affecting capacity. [29] For clarity, these would be significant changes to the information related to marketplace systems and technology documented in the relevant exhibits of Forms 21-101F1 or 21-101F2, as applicable. Currently, information regarding marketplaces' systems and technology is included in Exhibit G – *Systems and Contingency Planning*, and may also be included in other exhibits, such as Exhibit E – *Operations of the Marketplace*. It is our intention to review, and possibly broaden, the scope of the requirements in Forms 21-101F1 and 21-101F2 to disclose information regarding marketplaces' systems and technology.

j. Audit trail requirements

In the Proposed Amendments, we proposed a requirement that marketplaces and dealers indicate whether orders they receive are directed-action orders (DAO).[30] We also proposed a requirement that marketplaces keep records that indicate whether a marketplace or a marketplace participant marked an order as a DAO.[31] DAO orders are currently required to be marked as such by the Order Protection Rule[32], which became effective on February 1, 2011.

One commenter indicated that a marketplace would not know which orders arriving from another marketplace's SOR, a commercial SOR or other execution order platform were marked DAO by a marketplace or by a marketplace participant. We have revised clause 11.2(c)(xviii) of NI 21-101[33] to clarify that the requirement is that a marketplace keep records of orders that it receives as DAO and of orders that the marketplace itself marks as DAO.

In anticipation of the publication for comment of proposed National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), which proposed provisions regarding electronic trading, including a proposed requirement to identify clients that have direct electronic access, we proposed a requirement in the Proposed Amendments that records be kept and an audit trail maintained of clients with direct electronic access to a marketplace.[34]

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[29] Paragraph 6.1(4)(h) of 21-101CP.
[30] Clause 11.2(1)(c)(xviii) of proposed amendments to NI 21-101 and clause 11.2(1)(u) of proposed amendments to NI 23-101 for the requirements applicable to marketplaces and dealers, respectively.
[31] Clause 11.2(1)(c)(xix) of proposed amendments to NI 21-101.
[32] See Part 6 of NI 23-101.
[33] The provision was contained in clause 11.2(c)(xix) of the Proposed Amendments. For clarity, it has been combined with the preceding clause in the Amendments.
[34] Paragraph 11.2(c)(iv) and 11.2(d)(x) of NI 21-101, respectively.

Some concerns regarding this proposed requirement were received. Specifically, commenters noted that NI 23-103 only requires participants to advise marketplaces about which of the participants' trader IDs represent clients with direct electronic access, but not the identity of the ultimate client. As a result, they noted that the marketplace would not have records of the ultimate clients with direct electronic access. We acknowledge these comments, and confirm that the client identifier may be the marketplace trader ID assigned to a client accessing the marketplace using direct electronic access and that a particular client may have multiple trader IDs.

k. Marketplace systems and business continuity planning

NI 21-101 includes a number of requirements applicable to a marketplace's systems, including a requirement that a marketplace promptly notify the regulators and, if applicable, its regulation services provider, of any material systems failure, malfunction or delay.[35] In response to requests for clarification, we have amended subsection 14.1(4) of 21-101CP to clarify that a system failure would be considered material if, in the normal course of operation, the marketplace would escalate the matter to senior management ultimately accountable for technology. We have also clarified our expectation that a marketplace will update the regulators on the status of the failure, the resumption of the services and the results of its internal review of the failure.

The system requirements in NI 21-101 also include a requirement that marketplaces develop and maintain reasonable business continuity and disaster recovery plans and test their business continuity and disaster recovery plans on a reasonably frequent basis and, in any event, at least annually.[36] We have made a further revision to 21-101CP to indicate our expectation that marketplaces participate, as part of their business continuity plan testing, in industry-wide tests.[37] In the current environment, where market participants are highly inter-connected, it is imperative that a marketplace business continuity plan also be tested in conjunction with those of other market participants to assess the marketplace's ability to communicate and complete transactions in case of significant disruptive events.

l. Locked and crossed markets

In proposed section 6.5 of NI 23-101, we extended the requirement that a marketplace participant not intentionally lock or cross markets to marketplaces that route or reprice orders. In proposed section 6.4 of 23-101CP, we gave additional guidance regarding situations that would be considered to be an unintentional lock or cross. We have further revised section 6.4 of 23-101CP to clarify that triggering an on-stop order would not be considered to intentionally lock or cross a market because it does not involve "repricing" of an order, but rather it makes a previously-entered order eligible to trade.

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[35] Paragraph 12.1(c) of NI 21-101.
[36] In section 12.4 of NI 21-101.
[37] Section 14.3 of 21-101CP.

m. Other changes to the Marketplace Rules

In addition to the changes discussed above, we have made a number of other non-material changes to the Marketplace Rules. They are described below.

i. Section 1.1 of NI 21-101 Definitions

We amended a number of defined terms to take into account that they are now defined in the *Securities Act* (Ontario).

ii. Exhibit E of Forms 21-101F1 and 21-101F2

In item 7, we have clarified that the description of the manner of operation of a marketplace and its associated functions would include a description of how the orders interact, including the full priority of execution for all order types.

iii. Exhibit K of Forms 21-101F1 and 21-101F2

This Exhibit requires marketplaces to provide a list of marketplace participants, including a description of the types of trading activities primarily engaged in by the marketplace participants, including the traders. In response to a comment received that noted that a marketplace does not collect such detailed information, we revised the Exhibit to require that a marketplace report only the types of trading activities in which its marketplace participants engage.

iv. Form 21-101F3

We have made minor changes to the Proposed Amendments to clarify that marketplaces are required to provide, on a quarterly basis, a brief description of amendments to Forms 21-101F1 or 21-101F2 that were implemented during a particular quarter and of those that were not implemented. This will enable us to track and, if necessary, follow up on changes previously filed by a marketplace but not implemented. We have also made minor changes to the reporting requirements in the Form based on feedback we received from the marketplaces.

V. IMPLEMENTATION OF THE AMENDMENTS

As noted above, the Amendments would introduce revised Forms 21-101F1, 21-101F2, 21-101F3 and 21-101F5. We are not requiring marketplaces and information processors to refile a complete and updated copy of their existing forms by the date of the implementation of the Amendments. We expect, however, that these forms will be filed by December 31, 2012. In the meantime, marketplaces and information processors will be expected to file any amendments to the information in their forms using the revised exhibits to these forms up to and until December 31, 2012. Marketplaces will be expected to file the information required by the new Form 21-101F3 beginning with the quarter ending December 31, 2012.

The Amendments require the marketplaces to file their forms in electronic form.[38] The marketplaces are currently complying with this requirement by providing soft copies of their applicable forms. OSC staff are currently developing a filing system that would allow the marketplaces to submit their forms online. When that process is complete, we will notify the marketplaces and work with them to implement the new filing system. We will also consider what, if any, amendments are needed to 21-101CP to document the new filing process.

VI. AUTHORITY FOR THE AMENDMENTS

In those jurisdictions in which the Amendments to the Marketplace Rules are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the amendments.

In Ontario, the amendments to NI 21-101 and the Forms are being made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 143(1)7 authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants.
- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination, and other use, filing and review of all documents required under or governed by the Act, the regulation or the rules and all documents, determined by the regulations or the rules to be ancillary to the documents.

[38] Section 3.5 of NI 21-101.

In Ontario, the amendments to NI 23-101 are being made under the following provisions of the Act:

- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

VII. QUESTIONS

Questions may be referred to any of the following:

Timothy Baikie
Ontario Securities Commission
(416) 593-8136

Ruxandra Smith
Ontario Securities Commission
(416) 593-2317

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