

NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION
(incorporating amendments up to May 20, 2004)

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NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION
(incorporating amendments up to December 31, 2003)

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this 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 continuous or 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;

"ATS" means an alternative trading system;

"corporate debt security" means a debt security issued in Canada by a company or corporation that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101, and does not include a government debt security;

"exchange-traded security" means a security that is listed on a recognized exchange or is quoted on a recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of this Instrument and NI 23-101;

"foreign exchange-traded security" means a security that is listed only on an exchange, or quoted only on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions;

"government debt security" means

- (c) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada, the government of any foreign country or any political division thereof,
- (d) a debt security of any municipal corporation in Canada, or
- (e) a debt security of a crown corporation

that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101;

"IDA" means the Investment Dealers Association of Canada;

"information processor" means any person or company that receives and provides information under this Instrument and has filed Form 21-101F5;

"inter-dealer bond broker" means a person or company that is approved by the IDA under IDA By-Law No. 36 Inter-Dealer Bond Brokerage Systems, as amended, and is subject to IDA By-law No. 36 and IDA Regulation 2100 Inter-Dealer Bond Brokerage Systems, as amended;

[Repealed December 31, 2003]

"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 executes a trade of an exchange-traded security outside of a marketplace,

but 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;

"NI 23-101" means National Instrument 23-101 Trading Rules;

"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;

"recognized exchange" means

- (a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange,
- (b) in Quebec, an exchange recognized by the securities regulatory authority as a self-regulatory organization, and
- (c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"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 as a quotation and trade reporting system or as an exchange;

"regulation services provider" means a person or company that provides regulation services and is

- (a) a recognized exchange,
- (b) a recognized quotation and trade reporting system, or
- (c) a recognized self-regulatory entity;

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

- (a) is not an exchange, and
- (b) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority;

"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;

"trading volume" means the number of securities traded;

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

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

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

1.2 Interpretation - Marketplace - For the purpose 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, Controlled Entity and Subsidiary 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 controlled by 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

- (1) In Alberta and British Columbia, the term "security", when used in this Instrument, includes an option that is an exchange contract but does not include a futures contract.
- (2) In Ontario, the term "security", when used in this Instrument, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the Commodity Futures Act or the form of which is not accepted by the Director under the Commodity Futures Act.

PART 2 APPLICATION

- 2.1 Application** - This Instrument does not apply to a marketplace that is a member of a recognized exchange or a member of an exchange that has been recognized for the purposes of this Instrument and NI 23-101.

PART 3 EXCHANGE - RECOGNITION

3.1 Application for Recognition

- (1) An applicant for recognition as an exchange 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 provided in Form 21-101F1, and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

3.2 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 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 is recognized after this Instrument comes 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 is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.
- (3) Subsection (2) does not apply to a change to a matter set out in Exhibits F and O of Form 21-101F1.

PART 4 QUOTATION AND TRADE REPORTING SYSTEM - RECOGNITION

4.1 Application for Recognition

- (1) An applicant for recognition as a quotation and trade reporting system 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 provided in Form 21-101F1 and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change 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, condition 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 No Restrictions on Trading on Another Marketplace - 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 any marketplace.

5.3 Public Interest Rules

- (1) 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 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 co-operation and co-ordination 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 among clients, issuers and members or among clients, issuers and users; or
 - (b) impose any burden on competition that is not reasonably necessary and appropriate.

5.4 Compliance Rules - A recognized exchange or a recognized quotation and trade reporting system shall have rules or other similar instruments that

- (a) require compliance with securities legislation; and
- (b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

5.5 Filing of Rules - A recognized exchange or a recognized quotation and trade reporting system shall file all rules, policies and other similar instruments, and all amendments thereto.

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 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;
- (b) it is a member of a self-regulatory entity; and
- (c) it complies with the provisions of this Instrument and NI 23-101.

6.2 Registration Exemption Not Available - The registration exemptions listed in Appendix A are not available to an ATS.

6.3 Securities Permitted to be Traded on an ATS - An ATS shall not execute trades in securities other than

- (a) exchange-traded securities;
- (b) corporate debt securities;

- (c) government debt securities; or
- (d) foreign exchange-traded securities.

6.4 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) At least 45 days before implementing a significant change to a matter set out in Form 21-101F2, an ATS shall file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.
- (3) If an ATS implements a change involving a matter set out in Form 21-101F2, other than a change referred to in subsection (2), the ATS 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 21-101F2 in the manner set out in Form 21-101F2.
- (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.

6.5 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.

6.6 Notification of Intent to Carry on Exchange Activities - 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 continuous or 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.

6.7 Notification of Threshold

- (1) An ATS shall notify the securities regulatory authority in writing if,

- (a) 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;
 - (b) during at least three of the preceding four calendar quarters, the total trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the total trading volume for the calendar quarter in that type of security on all marketplaces in Canada; or
 - (c) during at least three of the preceding four calendar quarters, the number of trades on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the number of trades 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 90 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 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.

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

6.10 Risk Disclosure for Trades in Foreign Exchange-Traded Securities

- (1) When opening an account for a subscriber, an ATS that is trading foreign exchange-traded securities shall provide that subscriber with disclosure in substantially the following words:

The securities traded by or through [the ATS] are not listed on an exchange in Canada and 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 the first order for a foreign 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 required in subsection (1).

6.11 Risk Disclosure to Non-Registered Subscribers

- (1) When opening an account for a subscriber that is not registered as a dealer under securities legislation, an ATS shall provide that subscriber with disclosure in substantially the following words:

Although the ATS is registered as a dealer under securities legislation, it is a marketplace and therefore does not ensure best execution for its subscribers.

- (2) Before the first order submitted by a subscriber that is not registered as a dealer under securities legislation is entered onto the ATS by the subscriber, the ATS shall obtain an acknowledgement from that subscriber that the subscriber has received the disclosure required in subsection (1).

6.12 No Restrictions on Trading on Another Marketplace - An ATS shall not prohibit, condition, or otherwise limit, directly or indirectly, a subscriber from effecting a transaction on any marketplace.

6.13 Access Requirements – An ATS shall

- (a) establish written standards for granting access to trading on it;

- (b) not unreasonably prohibit, condition 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 subscriber, 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.

amended December 31, 2003

PART 7 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN EXCHANGE-TRADED SECURITIES AND FOREIGN EXCHANGE-TRADED SECURITIES

7.1 Pre-Trade Information Transparency - Exchange-Traded Securities

- (1) A marketplace that displays orders of exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the exchange-traded securities displayed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.2 Post-Trade Information Transparency – Exchange-Traded Securities – A marketplace shall provide accurate and timely information regarding orders for exchange-traded securities executed on the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider.

7.3 Pre-Trade Information Transparency – Foreign Exchange-Traded Securities

- (1) A marketplace that displays orders of foreign exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed on the marketplace to an information vendor.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

- 7.4 Post-trade Information Transparency – Foreign Exchange-Traded Securities** - A marketplace shall provide accurate and timely information regarding orders for foreign exchange-traded securities executed on the marketplace to an information vendor.
- 7.5 Exemption for Options** - This Part does not apply to exchange-traded securities that are options, or foreign exchange-traded securities that are options, until January 1, 2007.

amended December 31, 2003

PART 8 INFORMATION TRANSPARENCY REQUIREMENTS FOR MARKETPLACES DEALING IN UNLISTED DEBT SECURITIES, INTER-DEALER BOND BROKERS AND DEALERS

8.1 Pre-Trade and Post-Trade Information Transparency Requirements - Government Debt Securities

- (1) A marketplace that displays orders of government debt securities to a person or company shall provide to an information processor accurate and timely information regarding orders for government debt securities displayed on the marketplace as required by the information processor.
- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.
- (3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.
- (4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.
- (5) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed through the inter-dealer bond broker as required by the information processor.

8.2 Pre-Trade and Post-Trade Information Transparency Requirements - Corporate Debt Securities

- (1) A marketplace that displays orders of corporate debt securities to a person or company shall provide to an information processor accurate and timely information regarding orders for corporate debt securities displayed on the marketplace as required by the information processor.

- (2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.
- (3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities executed on the marketplace as required by the information processor.
- (4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities executed through the inter-dealer bond broker as required by the information processor.
- (5) A dealer executing trades of corporate debt securities outside of a marketplace shall provide to an information processor accurate and timely information regarding details of trades of corporate debt securities traded by or through the dealer as required by the information processor.

8.3 Consolidated Feed — Unlisted Debt Securities - An information processor shall produce a consolidated feed in real-time showing the information provided to the information processor under sections 8.1 and 8.2.

8.4 Compliance with Requirements of an Information Processor - A marketplace, inter-dealer bond broker or dealer that is subject to this Part shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

8.5 Exemption for Government Debt Securities - Section 8.1 does not apply until January 1, 2007.

amended December 31, 2003

8.6 [Repealed December 31, 2003]

8.7 [Repealed December 31, 2003]

PART 9 [Repealed December 31, 2003.]

PART 10 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES

10.1 Disclosure of Transaction Fees by Marketplaces - A marketplace shall make its schedule of transaction fees publicly available.

amended December 31, 2003

10.2 [Repealed December 31, 2003]

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.1 Business Records - A marketplace shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

11.2 Other Records

- (1) 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;
 - (b) daily trading summaries for the marketplace, in electronic form, including
 - (i) a list of securities traded,
 - (ii) transaction volumes
 - (A) for securities other than debt securities, expressed as the 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 other 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 other currency,
 - (c) a record of each order which shall include
 - (i) the order identifier assigned to the order by the marketplace,
 - (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
 - (iii) the identifier assigned to the marketplace where the order is received or originated,
 - (iv) the type, issuer, class, series and symbol of the security,
 - (v) the number of securities to which the order applies,
 - (vi) the strike date and strike price, if applicable,
 - (vii) whether the order is a buy or sell order,
 - (viii) whether the order is a short sale order, if applicable,

- (ix) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
 - (x) the date and time the order is first originated or received by the marketplace,
 - (xi) whether the account is a retail, wholesale, employee, proprietary or any other type of account,
 - (xii) [repealed December 31, 2003]
 - (xiii) the date and time the order expires,
 - (xiv) whether the order is an intentional cross,
 - (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
 - (xvi) [repealed December 31, 2003]
 - (xvii) the currency of the order; and
 - (xviii) [repealed December 31, 2003] amended December 31, 2003
- (d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including
- (i) the identifier assigned to the marketplace where the order was executed,
 - (ii) whether the order was fully or partially executed,
 - (iii) the number of securities bought or sold,
 - (iv) the date and time of the execution of the order,
 - (v) the price at which the order was executed,
 - (vi) the identifier assigned to the marketplace participant on each side of the trade,
 - (vii) whether the transaction was a cross,
 - (viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace, amended December 31, 2003
 - (ix) the marketplace transaction fee for each trade.

- (2) An ATS, a recognized exchange, or a recognized quotation and trade reporting system, that has entered into an agreement with a regulation services provider in accordance with NI 23-101 shall transmit in electronic form to a regulation services provider information required by the regulation services provider in the format and at the time required by the regulation services provider.

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 or 6.13;
amended December 31, 2003
 - (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) 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;
 - (e) the acknowledgement obtained under subsection 6.10(2) or 6.11(2);
 - (f) a copy of any agreement referred to in section 8.4 of NI 23-101; and
 - (g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3).
- (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 6.4 and 6.5 and notices given under sections 6.6 and 6.7.

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) the 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 Synchronization of Clocks

- (1) A marketplace trading exchange-traded securities or foreign exchange-traded securities, an information processor receiving information about those securities, a dealer trading those securities and a regulation services provider monitoring the activities of marketplaces trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.
- (2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, an inter-dealer bond broker trading those securities and a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part and under NI 23-101.

PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

12.1 System Requirements - Subject to section 12.2, a marketplace shall, for each of its systems that support order entry, order routing, execution, trade reporting and trade comparison,

- (a) on a reasonably frequent basis, and in any event, at least annually,
 - (i) make reasonable current and future capacity estimates,
 - (ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,
 - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,

- (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and
 - (v) establish reasonable contingency and business continuity plans;
- (b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the securities regulatory authority of any material systems failures.

12.2 Application - Paragraphs 12.1(b) and 12.1(c) do not apply to an ATS unless, during at least three of the preceding four calendar quarters, the total trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the total trading volume for the calendar quarter in that type of security on all marketplaces in Canada.

PART 13 CLEARING AND SETTLEMENT

13.1 Clearing and Settlement

- (1) All trades executed through an ATS shall be reported and settled through a clearing agency.
- (2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by
- (a) the ATS;
 - (b) the subscriber; or
 - (c) an agent for the subscriber that is a clearing member of a clearing agency.
- (3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by
- (a) the ATS; or
 - (b) an agent for the subscriber that is a clearing member of a clearing agency.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR

14.1 Filing Requirements for an Information Processor

- (1) A person or company that intends to carry on business as an information processor shall file Form 21-101F5 at least 90 days before the information processor begins to carry on business as an information processor.
- (2) During the 90 day period referred to in subsection (1), a person or company that files Form 21-101F5 shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F5 and the person or company shall file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5 no later than seven days after a change takes place.

14.2 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 in Form 21-101F5 in the manner set out in Form 21-101F5.
- (2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor 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 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

- (1) If an information processor intends to cease carrying on business as an information processor, the information processor shall file a report on Form 21-101F6 at least 30 days before ceasing to carry on that business.
- (2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor shall file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

- (1) An information processor shall enter into an agreement with each marketplace, inter-dealer bond broker and dealer that is required to provide information to the information processor that the marketplace, inter-dealer bond broker or dealer will
 - (a) provide information to the information processor in accordance with Part 7 or 8, as applicable; and
 - (b) comply with any other reasonable requirements set by the information processor.

- (2) An information processor shall provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.
- (3) An information processor shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.
- (4) An information processor shall establish in a timely manner an electronic connection to a marketplace, inter-dealer bond broker or dealer that is required to provide information to the information processor .
- (5) An information processor shall provide prompt and accurate order and trade information and shall not unreasonably restrict fair access to such information.

14.5 System Requirements - An information processor shall

- (a) on a reasonably frequent basis, and in any event, at least annually,
 - (i) make reasonable current and future capacity estimates for each of its systems,
 - (ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner,
 - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,
 - (iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and
 - (v) establish reasonable contingency and business continuity plans;
- (b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and
- (c) promptly notify the securities regulatory authority of any material systems failures.

PART 15 EXEMPTION

15.1 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.

PART 16 EFFECTIVE DATE

16.1 Effective Date - This Instrument comes into force on December 31, 2003.

**APPENDIX A
TO
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**

Alberta - section 65(1)(j) of the Securities Act, S.A. 1981, c. S-6.1.
British Columbia - section 45(2)(7) of the Securities Act, R.S.B.C. 1996, c. 418.
Saskatchewan - section 39(1)(j) of the Securities Act, S.S. 1988, c. S-42.2.
Manitoba - section 19(1)(g) of the Securities Act, R.S.M. 1988, c. S50.
Ontario - paragraph 35(1)10 of the Securities Act, R.S.O. 1990, c. S-5.
Quebec - no applicable provision.
Nova Scotia - section 41(1)(j) of the Securities Act, R.S.N.S. 1989, c. 418.
Newfoundland - section 36(1)(j) of the Securities Act, R.S.N. 1990, c. S-13.
New Brunswick - no applicable provision.
Prince Edward Island - section 2(3)(h) of the Securities Act, R.S.P.E.I. 1988, c. S-3.
Yukon Territory - section 2(b) of the Securities Act, R.S.Y. 1986, c. 158.
Northwest Territories - section 2(b) of the Securities Act, R.S.N.W.T. 1988, c. S-5.
Nunavut - section 2(b) of the Securities Act, R.S.N.W.T. 1988, c. S-5.