

**COMPANION POLICY 21-101CP
TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION**
(incorporating amendments up to May 20, 2004)

TABLE OF CONTENTS

PART	TITLE
PART 1	INTRODUCTION
	1.1 Introduction
	1.2 Definition of Exchange-Traded Security
PART 2	MARKETPLACE
	2.1 Marketplace
PART 3	CHARACTERISTICS OF EXCHANGES, QUOTATION AND TRADE REPORTING SYSTEMS AND ATSS
	3.1 Exchange
	3.2 Quotation and Trade Reporting System
	3.3 Definition of an ATS
	3.4 Requirements Applicable to ATSS
PART 4	RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM
	4.1 Recognition as an Exchange or Quotation and Trade Reporting System
PART 5	ORDERS
	5.1 Orders
PART 6	FORMS FILED BY MARKETPLACES
	6.1 Forms Filed by Marketplaces
	6.2 Forms Filed in Electronic Format
PART 7	CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS
	7.1 Access Requirements
	7.2 Compliance Rules
	7.3 Filing of Rules
PART 8	REQUIREMENTS ONLY APPLICABLE TO ATSS
	8.1 Confidential Treatment of Trading Information by ATSS
	8.2 Access Requirements

- PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES
 - 9.1 Information Transparency Requirements for Exchange-Traded Securities
 - 9.2 [Repealed]

- PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES
 - 10.1 Information Transparency Requirements for Unlisted Debt Securities
 - 10.2 [Repealed]
 - 10.3 Consolidated Feed

- PART 11 MARKET INTEGRATION
 - 11.1 [Repealed]
 - 11.2 [Repealed]
 - 11.3 [Repealed]
 - 11.4 [Repealed]
 - 11.5 Market Integration

- PART 12 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES
 - 12.1 Disclosure of Transaction Fees by Marketplaces

- PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES
 - 13.1 Recordkeeping Requirements for Marketplaces
 - 13.2 Synchronization of Clocks

- PART 14 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS
 - 14.1 Capacity, Integrity and Security of Marketplace Systems

- PART 15 CLEARING AND SETTLEMENT
 - 15.1 Clearing and Settlement

- PART 16 INFORMATION PROCESSOR
 - 16.1 Information Processor
 - 16.2 Selection of an Information Processor
 - 16.3 Change to Information

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

PART 1 INTRODUCTION

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

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

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

1.2 Definition of Exchange-Traded Security – Section 1.1 of the Instrument defines an “exchange-traded security” as 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 NI 21-101 and NI 23-101. A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed only on a foreign exchange or quoted only on a foreign quotation and trade reporting system falls within the definition of “foreign exchange-traded security”.

1.3 Definition of Foreign Exchange-Traded Security – The definition of foreign exchange-traded security includes a reference to ordinary members of the International Organization of Securities Commissions (IOSCO). To determine the current list of ordinary members, reference should be made to the IOSCO website at www.iosco.org.

PART 2 MARKETPLACE

2.1 Marketplace

- (1) The Instrument uses the term “marketplace” to encompass the different types of trading systems that match trades. A marketplace is an exchange, a quotation and trade reporting system or an ATS. Paragraphs (c) and (d) of the definition of “marketplace” describe marketplaces that the Canadian securities regulatory authorities consider to be ATSs. A dealer that internalizes its orders of exchange-traded securities and does not execute and print the trades on an exchange or quotation and trade reporting system in accordance with the rules of the exchange or the quotation and trade reporting system (including an exemption from those rules) is considered to be a marketplace pursuant to paragraph (d) of the definition of “marketplace” and an ATS.

amended December 31, 2003

- (2) Two of the characteristics of a "marketplace" are
 - (a) that it brings together orders for securities of multiple buyers and sellers; and
 - (b) that it uses established, non-discretionary methods under which the orders interact with each other.
- (3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it
 - (a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or
 - (b) receives orders centrally for processing and execution (regardless of the level of automation used).
- (4) The Canadian securities regulatory authorities are of the view that "established, non-discretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."
- (5) The Canadian securities regulatory authorities do not consider the following systems to be

marketplaces for purposes of the Instrument:

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

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

- (6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is trading for the purposes of securities legislation and is required to be registered as a dealer under securities legislation.
- (7) Inter-dealer bond brokers have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to IDA By-law No. 36 and IDA Regulation 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to By-law No. 36 or IDA Regulation 2100, but will be subject to all other IDA requirements applicable to a dealer.

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

3.1 Exchange

- (1) Canadian securities legislation of most jurisdictions does not define the term "exchange".
- (2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace
 - (a) requires an issuer to enter into an agreement in order for the issuer's securities to

trade on the marketplace, *i.e.*, the marketplace provides a listing function;

- (b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, *i.e.*, the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;
 - (c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or
 - (d) disciplines marketplace participants, in addition to discipline by exclusion from trading, *i.e.*, the marketplace can levy fines or take enforcement action.
- (3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.
- (4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

- (1) Canadian securities legislation in certain jurisdictions contains the concept of a quotation and trade reporting system. A quotation and trade reporting system is defined under Canadian securities legislation in those jurisdictions as a person or company, other than an exchange or registered dealer, that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers. A person or company that carries on business as a vendor of market data or a bulletin board with no execution facilities would not normally be considered to be a quotation and trade reporting system.
- (2) A quotation and trade reporting system is considered to have "quoted" a security if
 - (a) the security has been subject to a listing or quoting process, and

- (b) the issuer issuing the security or the dealer trading the security has entered into an agreement with the quotation and trade reporting system to list or quote the security.

3.3 Definition of an ATS

- (1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as
 - (a) requiring listing agreements,
 - (b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,
 - (c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and
 - (d) disciplining subscribers.

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

- (2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be “requirements governing the conduct of subscribers”.
- (3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

3.4 Requirements Applicable to ATSS

- (1) Part 6 of the Instrument applies only to an ATS that is not a recognized exchange or a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101. If an ATS is recognized as an exchange, the provisions of the Instrument relating to marketplaces and recognized exchanges apply.

- (2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.
- (3) Under subsection 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under Canadian securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.
- (4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under subsection 6.1(a) of the Instrument and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.
- (5) Subsection 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the IDA is the only entity that would come within the definition.
- (6) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS, its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having market dominance over a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) and section 12.2 of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, preferred securities, debt securities or options.

- (7) Any marketplace that is required to provide notice under section 6.7 of the Instrument will determine the calculation based on publicly available information.

amended December 31, 2003

- (8) Subsections 6.10(2) and 6.11(2) of the Instrument require an ATS to obtain an acknowledgement from its subscribers. The acknowledgement may be obtained in a number of ways, including requesting the subscriber's signature or requesting that the subscriber initial an initial box or check a check-off box. This may be done electronically. The acknowledgement must be specific to the information required to be disclosed under the relevant subsection and must confirm that the subscriber has received the required disclosure. The Canadian securities regulatory authorities are of the view that it is the responsibility of the ATS to ensure that an acknowledgement is obtained from the subscriber in a timely manner.

PART 4 RECOGNITION AS AN EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

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

PART 5 ORDERS

5.1 Orders

- (1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith, non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders".
- (2) The label put on a transaction is not determinative of whether the transaction constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated price, based on understandings or past dealings, will be viewed as an order.
- (3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special term orders such as all or none, minimum fill or cash or delay delivery to be firm indications.

amended December 31, 2003
- (4) The determination of whether an order has been placed does not turn on the level of automation used. Orders can be given over the telephone, as well as electronically.

PART 6 FORMS FILED BY MARKETPLACES

6.1 Forms Filed by Marketplaces

- (1) Subsection 3.1(1) of the Instrument requires an applicant for recognition as an exchange to file Form 21-101F1. This subsection does not apply to an exchange that was recognized before the Instrument came into force.
- (2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain intimate

financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.

amended December 31, 2003

- (3) Under subsection 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to the information provided in Form 21-101F1, in each case, in the manner set out in Form 21-101F1. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, G, I, J, K, M, N, P and Q of Form 21-101F1. This is also applicable to recognized quotation and trade reporting systems under subsection 4.2(1) of the Instrument.
- (4) A recognized exchange or recognized quotation and trade reporting system that files amendments to the information provided in Form 21-101F1 should number each filing consecutively.
- (5) Securities legislation or the terms and conditions of the recognition of the exchange or quotation and trade reporting system may require that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority.
- (6) Under subsection 6.4(2) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F2, an ATS is required to file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2. The Canadian securities regulatory authorities consider that a significant change includes any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers.
- (7) Subsection 6.4(4) of the Instrument requires an ATS to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).
- (8) If an ATS files notice of its intention to carry on exchange activities pursuant to section 6.6 of the Instrument, and the ATS intends to begin to carry on business as an exchange, the ATS is required to file Form 21-101F1.

6.2 Forms Filed in Electronic Format – The Canadian securities regulatory authorities request that all forms and exhibits required to be filed under the Instrument be filed in electronic format, where possible.

PART 7 CERTAIN REQUIREMENTS APPLICABLE ONLY TO EXCHANGES AND QUOTATION AND TRADE REPORTING SYSTEMS

7.1 Access Requirements - Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not, however, restrict the authority of an exchange or quotation and trade reporting system to maintain reasonable standards for access. In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company.

amended December 31, 2003

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

7.3 Filing of Rules - Section 5.5 of the Instrument requires a recognized exchange and recognized quotation and trade reporting system to file all rules, policies and other similar instruments and amendments as required by the securities regulatory authority. Initially, all rules, policies and other similar instruments will be reviewed before implementation by the exchange or quotation and trade reporting system. It is the intention of the securities regulatory authority to develop and implement a protocol that will set out the procedures to be followed with respect to the review and approval of rules, policies and other similar instruments and amendments.

PART 8 REQUIREMENTS ONLY APPLICABLE TO ATSS

amended December 31, 2003

8.1 Confidential Treatment of Trading Information by ATSS

- (1) Subsection 6.8(2) of the Instrument provides that an ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information. These include
 - (a) limiting access to the trading information of subscribers, such as the identity of subscribers and their orders, to those employees of, or persons or companies retained by, the ATS to operate the system or to be responsible for its compliance with Canadian securities legislation; and
 - (b) having in place procedures to ensure that employees of the ATS cannot use such information for trading in their own accounts.

- (2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ATS, whether or not they have direct responsibility for the operation of the ATS.
- (3) Nothing in section 6.8 of the Instrument prohibits an ATS from complying with National Policy 41 Shareholder Communication, or its successor instrument. This statement is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Policy 41, or its successor instrument, and may be required to disclose information under that Instrument.

8.2 Access Requirements – Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. In addition, the reference to “a person or company” in subsection (b) includes a system or facility that is operated by a person or company.

amended December 31, 2003

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

amended December 31, 2003

9.1 Information Transparency Requirements for Exchange-Traded Securities

- (1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide information to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an information vendor that meets the standards set by that regulation services provider.
- (2) Each regulation services provider will define the process, the business content of the reporting and regulatory data feeds, including the core data elements, the message catalogue and the service level standards. The regulation services provider will also define

the service level standards for delivery and receipt of market data to and from information vendors and marketplaces under sections 7.1 and 7.2 of the Instrument.

- (3) A regulation services provider will identify through a certification process which information vendors meet the standards required by the regulation services provider under section 7.1 and 7.2 of the Instrument.
- (4) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.
- (5) Section 7.5 of the Instrument states that the pre-trade and post-trade transparency requirements in Part 7 do not apply to exchange-traded securities and foreign exchange-traded securities that are options until January 1, 2007. The Canadian securities regulatory authorities are of the view that additional study is necessary to determine the appropriate transparency standards for options.

amended December 31, 2003

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

- (1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2007. The Canadian securities regulatory authorities will continue to review the transparency requirements, to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended. One of the issues we will consider is to what extent systems displaying executable prices compete with inter-dealer bond brokers and therefore should be subject to the same level of transparency as the inter-dealer bond brokers.
- (2) The requirements of the information processor for government debt securities are as follows:
 - (a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to unlisted debt securities

designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and

- (b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.
- (3) The requirements of the information processor for corporate debt securities are as follows:
- (a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all designated corporate debt securities, including details as to the type, issuer, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, within one hour of the trade. If the total par value of a trade of an investment grade corporate debt security is greater than \$2 million, the trade details provided to the information processor shall report the trade as “\$2 million+”. If the total par value of a trade of a non-investment grade corporate debt security is greater than \$200,000, the trade details provided to the information processor shall report the trade as “\$200,000+”.
 - (b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.
- (4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.
- (5) The information processor will use transparent criteria and a transparent process to select the designated government debt securities and designated corporate debt securities. The information processor will make the criteria and the process publicly available.
- (6) An “investment grade corporate debt security” is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

Rating Organization	Long Term Debt	Short Term Debt
Fitch, Inc.	BBB	F3

Dominion Bond Rating Service Limited	BBB	R-2
Moody's Investors Service, Inc.	Baa	Prime-3
Standard & Poors Corporation	BBB	A-3

- (7) A “non-investment grade corporate debt security” is a corporate debt security that is not an investment grade corporate debt security.
- (8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.
- (9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.

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10.2 [Repealed December 31, 2003.]

10.3 Consolidated Feed - Section 8.3 of the Instrument requires the information processor to produce a consolidated feed in real-time showing the information provided to the information processor.

amended December 31, 2003

PART 11 MARKET INTEGRATION

11.1 [Repealed December 31, 2003]

11.2 [Repealed December 31, 2003]

11.3 [Repealed December 31, 2003]

11.4 [Repealed December 31, 2003]

11.5 Market Integration – Although the Canadian securities regulatory authorities have removed the concept of a market integrator, we continue to be of the view that market integration is important to our marketplaces. We expect to achieve market integration by focusing on compliance with fair access and best execution requirements. We will continue to monitor developments to ensure that the lack of a market integrator does not unduly affect the market.

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PART 12 DISCLOSURE OF TRANSACTION FEES FOR MARKETPLACES

12.1 Disclosure of Transaction Fees by Marketplaces – Section 10.1 of the Instrument requires that each marketplace make its schedule of transaction fees publicly available. It is not the intention of the Canadian securities regulatory authorities that a commission fee charged by a dealer for dealer services be disclosed. Each marketplace is required to publicly post a schedule of all trading fees that are applicable to outside marketplace participants that are accessing an order and executing a trade displayed through an information processor or information vendor. The requirement to disclose transaction fees does not require a combined price calculation by each marketplace.

amended December 31, 2003

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

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

13.2 Synchronization of Clocks – Subsection 11.5(1) requires 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 their clocks. Subsection 11.5(2) requires 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 their clocks. The Canadian securities regulatory authorities are of the view that synchronization means that in most circumstances, the clocks will be within 2 seconds of each other. The clocks should be checked at least daily for synchronization and should be adjusted on a weekly basis. For exchange-traded securities and foreign exchange-traded securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks. For unlisted debt securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks.

PART 14 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

14.1 Capacity, Integrity and Security of Marketplace Systems

- (1) Subsection (a) of section 12.1 of the Instrument requires a marketplace to meet certain systems, capacity, integrity and security standards. Subsections (b) and (c) of section 12.1 of the Instrument require a recognized exchange, a recognized quotation and trade reporting system and an ATS that exceeds the threshold in section 12.2 of the Instrument to meet certain additional systems, capacity, integrity and security standards.
- (2) The activities in subsection (a) of section 12.1 of the Instrument must be carried out at least once a year. The Canadian securities regulatory authorities would expect these activities to be carried out even more frequently if there is a change to the marketplace that is material either in terms of structure or volume of trading that necessitates that these functions be carried out more frequently in order to ensure that the marketplace can appropriately service its marketplace participants.
- (3) The independent review contemplated by subsection (b) of section 12.1 of the Instrument should be performed by competent, independent audit personnel following established audit procedures and standards.
- (4) An ATS becomes subject to subsections (b) and (c) of section 12.1 of the Instrument after it first satisfies the trading volume test in section 12.2 of the Instrument. It remains subject to subsections (b) and (c) of section 12.1 even if, thereafter, it no longer satisfies the trading volume test, unless it is successful in obtaining relief under section 15.1 of the Instrument.

PART 15 CLEARING AND SETTLEMENT

15.1 Clearing and Settlement - Subsection 13.1(1) of the Instrument requires that all trades executed through an ATS shall be reported and settled through a clearing agency. Subsections 13.1(2) and (3) of the Instrument require that an ATS and its subscriber enter into an agreement that specifies which entity will report and settle the trades of securities. If the subscriber is registered as a dealer under securities legislation, either the ATS, the subscriber or an agent for the subscriber that is a member of a clearing agency may report and settle trades. If the subscriber is not registered as a dealer under securities legislation, either the ATS or an agent for the subscriber that is a clearing member of a clearing agency may report and settle trades. The ATS is responsible for ensuring that an agreement with the subscriber is in place before any trade is executed for the subscriber. If the agreement is not in place at the time of the execution of the trade, the ATS is responsible for clearing and settling that trade if a default occurs.

PART 16 INFORMATION PROCESSOR

16.1 Information Processor

- (1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular

securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (i.e., orders).

- (2) The purpose of an information processor is to ensure the availability of prompt and accurate order and trade information and to guarantee fair access to the information.

16.2 Selection of an Information Processor

- (1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,
 - (a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;
 - (b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms which are not unreasonably discriminatory;
 - (c) personnel qualifications;
 - (d) whether the information processor has sufficient financial resources for the proper performance of its functions;
 - (e) the existence of another entity performing the proposed function for the same type of security;
 - (f) the systems report referred to in subsection 14.5(b) of the Instrument.
- (2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.
- (3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

amended December 31, 2003

- ## **16.3 Change to Information** - Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days

- 18 -

before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, F, G, H, O, P, Q, R and S and Item 10 of Form 21-101F5.