

B.11

CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 EquiLend, LLC – Application for an Exemption from the Marketplace Rules – Notice and Request for Comment

NOTICE AND REQUEST FOR COMMENT

APPLICATION FOR AN EXEMPTION FROM THE MARKETPLACE RULES

EQUILEND, LLC

A. Background

EquiLend, LLC (**EquiLend**) has applied for an exemption from National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), National Instrument 23-101 *Trading Rules* (**NI 23-101**), and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**), in their entirety.

EquiLend is registered as an alternative trading system (**ATS**) with the Securities and Exchange Commission (**SEC**) and is an SEC-registered broker-dealer, as well as a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation.

EquiLend operates an electronic communications platform (**NGT Platform**) that facilitates the negotiation of securities borrow and loan transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (**SFTs**). Currently, the NGT Platform is operated in Canada through EquiLend Canada Corp. (**EquiLend Canada**), a registered investment dealer in Ontario and Québec and a member of the Canadian Investment Regulatory Organization (formerly known as the Investment Industry Regulatory Organization of Canada) for the purposes of operating as an ATS in Ontario and Québec.

B. Requested Relief

EquiLend will enable its users to negotiate SFTs on the NGT Platform, primarily involving “foreign exchange-traded securities” within the meaning of NI 21-101 and non-Canadian debt securities. In addition, EquiLend will enable referencing of Canadian exchange-traded securities, corporate debt securities and government debt securities (**Canadian Securities**) in SFTs negotiated on the NGT Platform, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

Where EquiLend may be subject to dealer registration under applicable Canadian securities legislation, with respect to “foreign securities” as defined in subsection 8.18(1) of NI 31-103, EquiLend will rely on the “international dealer exemption” under section 8.18 of NI 31-103; with respect to Canadian federal or provincial government debt securities, EquiLend will rely on the “specified debt exemption” under subsection 8.21(2)(a) of NI 31-103; and with respect to corporate debt securities, EquiLend will rely on the “trades through or to a registered dealer exemption” under section 8.5 of NI 31-103.

C. Application and Draft Exemption Order

In its application, EquiLend has described how it meets criteria for exemption from the Marketplace Rules. These criteria are consistent with those described in CSA Staff Notice 21-328 *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities*. The application and draft exemption order with terms and conditions are attached to this Notice at Appendices A and B respectively.

D. Comment Process

We are seeking public comment on EquiLend's application. Please provide your comments via email to marketregulation@osc.gov.on.ca on or before **December 27, 2023**.

Questions may be referred to:

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Ontario Securities Commission

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APPENDIX A

November 16, 2022

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Our Matter Number: 1207233

SENT BY OSC PORTAL AND EMAIL

Ontario Securities Commission
20th Floor, 20 Queen Street West
Toronto, Ontario M5H 3S8

Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec, Québec G1V 5C1

Nova Scotia Securities Commission
Ste. 400, Duke Tower, 5251 Duke St.
Halifax, NS B3J 1P3

Dear Sirs/Mesdames:

RE: Application by EquiLend LLC (“EquiLend”) for an exemption pursuant to subsection 15.1(1) of National Instrument 21-101 *Marketplace Operation* (“NI 21-101”) in the Jurisdictions (defined below) other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario from NI 21-101 in whole, pursuant to subsection 12.1(1) of National Instrument 23-101 *Trading Rules* (“NI 23-101”) in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole, and pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (“NI 23-103” and, together with NI 21-101 and NI 23-101, the “Marketplace Rules”) in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole, in accordance with the requirements of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (“NP 11-203”)

We are counsel to EquiLend. This is a coordinated review application (“**Application**”) on behalf of EquiLend, pursuant to section 3.4 of NP 11-203. We are filing this application on behalf of EquiLend in Ontario, Québec and Nova Scotia (collectively, the “**Jurisdictions**”).

In accordance with the guidelines set out in section 3.6 of NP 11-203, the Ontario Securities Commission (the “**OSC**”) has been selected as the principal regulator for the purposes of this Application on the basis that EquiLend has the most significant connection to Ontario. In accordance with subsection 5.2(3) of NP 11-203, this Application is being filed with each of the securities regulatory authorities in the Jurisdictions (“**ATS Relief Decision Makers**”) for relief from the securities legislation of each of those Jurisdictions (the “**Legislation**”). In accordance with section 3.4 of NP 11-203, EquiLend is filing a coordinated review application with, and paying fees to, each of the ATS Relief Decision Makers.

Relief Requested

On behalf of EquiLend, we hereby request that the ATS Relief Decision Makers grant a decision under the Legislation for the following decisions with respect to EquiLend (collectively, the “**Requested Relief**”) in relation to its operation of an alternative trading system (“**ATS**”) in the Jurisdictions:

- (a) Pursuant to subsection 15.1(1) of NI 21-101 in the Jurisdictions other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario for an exemption from NI 21-101 in whole;
- (b) Pursuant to subsection 12.1(1) of NI 23-101 in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario for an exemption from NI 23-101 in whole; and
- (c) Pursuant to subsection 10(1) of NI 23-103 in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario for an exemption from NI 23-103 in whole.

EquiLend is not in default of securities legislation in any of the Jurisdictions nor in its home jurisdiction, the United States of America (“**U.S.**”). The exemption sought is not novel and similar relief has been previously granted to GLMX Technologies, LLC¹ (“**GLMX**”).

¹ In the Matter of GLMX Technologies, LLC (2021), 44 OSCB 8481, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/glmx-technologies-llc>.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, NP 11-203 and NI 21-101 have the same meaning if used in this Application, unless otherwise defined.

Overview of the Application

For convenience, this Application is divided into the following Parts:

PART I BACKGROUND

1. **Description of EquiLend and its Business**

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

1. **Regulation of the ATS**
2. **Governance**
3. **Regulation of Products**
4. **Access**
5. **Regulation of Participants on the Alternative Trading System**
6. **Clearing and Settlement**
7. **Systems and Technology**
8. **Financial Viability and Reporting**
9. **Recordkeeping**
10. **Outsourcing**
11. **Fees**
12. **Information Sharing and Oversight Arrangements**

PART III SUBMISSIONS BY EQUILEND

1. **Submissions Concerning the ATS Relief**

PART IV FEES

1. **Fees**

PART V OTHER MATTERS

1. **Other Matters**

Appendix A – Draft Decision

Appendix B – Authorization and Verification Statement

PART I BACKGROUND

1. Description of EquiLend and its Business

- 1.1 EquiLend is a private limited liability company incorporated under the laws of the State of Delaware whose head office is located at 225 Liberty Street, 10th Floor, Suite 1020, New York, New York, 10281, U.S.
- 1.2 EquiLend is a wholly-owned direct subsidiary of EquiLend Holdings LLC (“**EquiLend Holdings**”). EquiLend Holdings is a holding company for various direct and indirect wholly-owned or majority-controlled regulated and unregulated entities that provide electronic platform communication functionality between counterparties in the securities borrow and loan (“**SBL**”) market, as well as financial technology (FinTech), regulatory technology (RegTech) and data analytical products and services.
- 1.3 EquiLend was formed in October 2001. EquiLend is registered as an ATS and a broker-dealer with the U.S. Securities and Exchange Commission (“**SEC**”) pursuant to section 15 of the U.S. *Securities Exchange Act of 1934*, as amended, (the “**Exchange Act**”). EquiLend is also a member of the Financial Industry Regulatory Authority (“**FINRA**”) and the Securities Investor Protection Corporation. EquiLend operates one (1) ATS that is registered with the SEC.
- 1.4 Pursuant to its ATS registration, EquiLend operates an electronic negotiation platform (the “**NGT Platform**”) that facilitates the negotiation of SBL transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (“**SFTs**”).

- 1.5 The NGT Platform is operated through EquiLend Holdings and its authorized subsidiary entities (collectively, the “**Subsidiaries**”), each of which being separately regulated or otherwise exempt from registration in their respective jurisdictions, including (a) in the U.S., through EquiLend, (b) in Canada, through EquiLend Canada Corp. (“**EquiLend Canada**”), (c) in the United Kingdom (“**UK**”), through EquiLend Europe Limited (“**EquiLend Europe**”), a Multi-Lateral Trading Facility (“**MTF**”) authorized by the UK Financial Conduct Authority, (d) in the Republic of Ireland and the European Union, through EquiLend Limited, an MTF authorized by the Central Bank of Ireland, (e) in Australia, through EquiLend, under a Foreign Financial Institution and Australian Market License authorized by the Australian Securities and Investments Commission, and (f) in Hong Kong and certain other jurisdictions in Asia, through EquiLend Europe and EquiLend, respectively.
- 1.6 EquiLend Canada operates the NGT Platform in Canada providing access to “foreign exchange-traded securities” and exchange-traded securities within the meaning of NI 21-101 and non-Canadian debt securities described in Schedule 1 of *In the Matter of EquiLend Canada Corp.* (December 19, 2019) (and set out in paragraph 1.1.12 below). EquiLend Canada is registered as an investment dealer in Ontario and Québec and is also a member of the Investment Industry Regulatory Organization of Canada(Ontario District) (“**IIROC**”) for the purposes of operating as an ATS in Ontario and Québec.

SFTs and the Parties to SFTs

- 1.7 SFTs are transactions where cash or securities, or both, are used to borrow cash or other securities, or both, and vice versa. This includes SBL arrangements. The principal participants in these markets are broker-dealers acting as intermediaries and their diverse institutional clients. In these transactions, securities are exchanged for collateral which can be in the form of cash or different securities. Transactions are driven by a need to borrow/lend specific securities or to borrow/lend cash, or both.
- 1.8 Borrowers in the SFT market generally use SBL transactions for the purpose of borrowing securities for a specific purpose. Typical borrowers include investment banks, broker-dealers, hedge funds and other institutional investors. Securities lenders in the SFT market generally enter into SBL transactions to finance their securities positions, to obtain leverage and to generate yield from their long portfolios. Typical cash borrowers/securities lenders are hedge funds, mortgage REITs, pension funds, asset managers, insurance companies and sovereign wealth funds.

SFTs negotiated on the NGT Platform

- 1.9 The NGT Platform facilitates the negotiation of potential SFTs in equities and fixed income securities by providing secure access and connectivity between potential borrowers and lenders through a private network or the internet. All SFTs communicated through the NGT Platform are “potential SFTs” as the counterparties to a potential SFT must migrate off of the NGT Platform to complete or reject the prospective transaction under their respective bilateral or global securities lending agreements.
- 1.10 There is no obligation on the part of any counterparty to a potential SFT communicated on the NGT Platform to ultimately settle the prospective transaction under the terms by which it was communicated and matched on the NGT Platform. Rather, the counterparties may ultimately settle the prospective transaction in the OTC market under those terms or the counterparties may cancel the prospective transaction.
- 1.11 EquiLend is informed of the ultimate status of the prospective transaction (i.e., whether the counterparties settle the prospective transaction under the terms through which it was communicated and matched on the NGT Platform or cancel the prospective transaction) through a feedback function in which the counterparties report back to EquiLend on the status of the potential SFT after they have migrated off of the NGT Platform.
- 1.12 In this way, the NGT Platform does not does not operate as a traditional cash execution marketplace, nor does it accommodate the universal simultaneous publication of bid/offer/inventory information pertaining to potential SFTs across the entire NGT Platform of users. Prospective SFT bid/offer/inventory information does not interact with all users on the NGT Platform to establish a clearing price for subsequent execution on the NGT Platform. Instead, users on the NGT Platform (e.g., lenders and borrowers) pre-select the universe of counterparties against whom to display the potential SFT transactional terms, with such information interacting solely amongst the agreed pre-selected universe of counterparties. Where there is a match of aligned bid/offer/inventory potential SFT transactional information between two paired counterparties, those paired counterparties migrate entirely off of the NGT Platform to settle, or cancel, the prospective transaction in the OTC market without any affirmative post-matched introduction, intermediation, direction or referral activity on the part of EquiLend.
- 1.13 Furthermore, the NGT Platform is not a cash transaction execution platform. EquiLend does not establish or maintain any funded client accounts, nor does EquiLend affirmatively act in an agency or principal capacity pertaining to any potential SFTs communicated on the NGT Platform. EquiLend does not maintain an MPID, does not maintain membership in any marketplace or exchange, nor does it introduce, intermediate, direct or refer users of the NGT Platform

to any marketplace or exchange. All terms and conditions of any final SFT are negotiated between the matched counterparties pursuant to their respective bilateral or global securities lending agreements.

- 1.14 The securities exchanged in the potential SFTs negotiated on the NGT Platform are as follows:
- (a) “foreign exchange-traded securities” within the meaning of NI 21-101;
 - (b) non-Canadian debt securities, including:
 - (i) high-grade and high-yield U.S. corporate bonds;
 - (ii) U.S. Government-sponsored agency bonds;
 - (iii) U.S. Government debt securities (e.g., Treasury Bonds, Treasury Notes, etc.);
 - (iv) emerging market bonds, which are defined as U.S. dollar or Euro-denominated bonds issued by sovereign entities or corporations domiciled in a developing country, including both high grade and non-investment grade debt;
 - (v) European high-grade and high-yield corporate bonds, which are defined as corporate bonds issued by entities domiciled in Europe; and
 - (vi) non-U.S. sovereign government bonds (e.g., UK gilts or German bundesbonds).
- 1.15 In addition, EquiLend currently enables NGT Platform communication and matching functionality involving potential SFTs referencing “exchange-traded securities”, “corporate debt securities” and “government debt securities” (collectively, “**Canadian Securities**”) with counterparties outside of Canada, and intends in the future to enable NGT Platform communication and matching functionality involving potential SFTs referencing such securities with Canadian subscribers located in the Jurisdictions, each within the meaning of NI 21-101, as an incidental part of its business, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

User Agreements with Subscribers to the NGT Platform

- 1.16 Prior to getting access to the NGT Platform, a subscriber (customer) must sign an EquiLend Global User Agreement (“**User Agreement**”) with EquiLend that covers, among other things, obligations of the subscriber, and termination events.
- 1.17 The subscriber identifies to EquiLend by name an authorized Administrator, who then permissions each employee or contractor of the subscriber to use the NGT Platform (“**Named Users**”). The Named Users are the only individuals within the subscriber licensed to access and use the NGT Platform. EquiLend at all times has access to and affirmatively monitors all authorized Named Users, and may restrict, rescind or prohibit access by any Named User consistent with the terms and conditions of the User Agreement and consistent with legal, regulatory and self-regulatory organization (“**SRO**”) rule requirements.
- 1.18 EquiLend will provide the subscriber access to the NGT Platform through a web-based interface that can only be accessed when EquiLend white-lists the subscriber’s IP addresses. EquiLend will provide each Named User a unique username and password to enable such Named User to access the NGT Platform. Subscribers may also connect to EquiLend and facilitate NGT Platform communications through real time or batch process messaging protocols.
- 1.19 Once a trade is mutually agreed and completed outside the NGT Platform by the counterparties, and EquiLend is informed of the completion by the counterparties through EquiLend’s feedback function, the NGT Platform will send trade details to the parties of the transaction, which are typically transmitted through direct subscriber messaging, but are also accessible and downloadable via direct NGT Platform screen utility access. Subscribers, independently, and in advance, notify EquiLend that they are properly documented with, and able to trade with, specific counterparties prior to engaging in NGT Platform communications and subsequent transactions with that counterparty. EquiLend is not a party to any potential SFT transaction, nor does EquiLend facilitate, refer, direct, intermediate or otherwise engage in any aspect of the execution, clearing or settlement process facing any potential SFT communicated and matched through the NGT Platform.
- 1.20 EquiLend proposes to offer direct access to the NGT Platform to prospective subscribers in the Jurisdictions (“**Canadian Subscribers**”) to facilitate potential transactions in SFTs. Access to the NGT Platform will be limited to Canadian Subscribers who meet EquiLend’s eligibility criteria. Subscribers generally fall into the following categories: “qualified institutional buyers”, as such term is defined in Rule 144A (“**Rule 144A**”) under the U.S. *Securities Act of 1933*, as amended (the “**U.S. Securities Act**”); “eligible contract participants”, as such term is defined in Section 1a(18) of the

U.S. *Commodity Exchange Act of 1936*, as amended (the “CEA”); large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million which can include pension funds and hedge funds.

- 1.21 Before being provided direct access to the NGT Platform, EquiLend will confirm that each Canadian Subscriber is a “permitted client” as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”). Retail and other non-institutional customers will not be provided with access to the NGT Platform.
- 1.22 Once a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute the User Agreement in which the prospective Canadian Subscriber represents to EquiLend that the Canadian Subscriber’s conduct of potential SFT transactions is subject to regulation and oversight under applicable securities, banking or other appropriate laws that impose upon the Canadian Subscriber a combination of requirements, such as audits, public disclosure of financial information, capital rules, collateral requirements, record keeping requirements or other similar safeguards, and where the Canadian Subscriber agrees to use the NGT Platform and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a “permitted client” as defined in NI 31-103.
- 1.23 Under the User Agreement, a Canadian Subscriber and its affiliates constitute a “Subscriber Group”. The Subscriber Group will authorize Named Users, who are the only persons authorized to use the NGT Platform. The Subscriber Group’s right to use the NGT Platform is conditioned upon the Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the NGT Platform, and may use the NGT Platform only in compliance with applicable law.
- 1.24 EquiLend will maintain a current list of all Canadian Subscribers. It is proposed that EquiLend will provide to its Canadian Subscribers disclosure that states that:
 - A. rights and remedies against EquiLend may only be governed by the laws of its home jurisdiction, rather than the laws of Canada, and may be required to be pursued in its home jurisdiction rather than in Canada;
 - B. the rules applicable to trading on the NGT Platform may be governed by the laws of EquiLend’s home jurisdiction, rather than the laws of Canada; and
 - C. EquiLend is regulated by the regulator in its home jurisdiction rather than the securities regulators in Canada.

Other Information about the NGT Platform

- 1.25 The NGT Platform operates six and a half days a week, 24 hours per day.
- 1.26 EquiLend intends to make available training for each person who has access to trade on the NGT Platform. EquiLend’s client services team provides training sessions to new users to learn the functionality of the NGT Platform.
- 1.27 EquiLend may, at any time, in its sole discretion and without incurring any liability to a subscriber, temporarily or permanently suspend, restrict or terminate the Subscriber Group’s use of the NGT Platform in the event of (a) any failures, malfunctions, faults or errors within the NGT Platform, (b) external events or circumstances affecting use of the NGT Platform, or (c) a request or requirement by any government or regulatory organization or body. As an SEC registered broker-dealer, FINRA-dealer member and operator of a registered ATS in the U.S., EquiLend is required to comply with applicable law with respect to the operation of its marketplaces and “observe high standards of commercial honor and just and equitable principles” in the conduct of its business (see FINRA Rule 2010 – *Standards of Commercial Honor and Principles of Trade*, “**FINRA Rule 2010**”), which includes ensuring that subscribers have the capacity and the ability to meet their commitments when trading on the NGT Platform.
- 1.28 EquiLend seeks to ensure that trading on the NGT Platform is consistent with the requirements of U.S. law by monitoring the trading activity occurring on its marketplace primarily by looking for unusual activity in negotiations.
- 1.29 Suspected material breaches of rules promulgated by applicable regulatory authorities related to fair and orderly trading on the NGT Platform will be reviewed by EquiLend primarily based on information gleaned by EquiLend from monitoring electronic SFT negotiations. If necessary, the information from such review may be reported to the regulatory authorities and other appropriate regulatory organizations in a timely manner. EquiLend is committed to fully cooperating with its regulators in investigating any suspected breach or suspected market abuse.
- 1.30 EquiLend may immediately deny NGT Platform access privileges to any subscriber or any individual user where, without limitation, there is a suspected breach of law, regulatory requirements, SRO rules or its marketplace guidelines.

- 1.31 It is proposed that EquiLend will maintain the following information for each product traded on the NGT Platform:
- (a) the total trading volume and value originating from Canadian Subscribers and as attributed to each applicable Canadian province, and
 - (b) the proportion of aggregate global trading volume and value communicated on the NGT Platform as conducted by Canadian Subscribers and as attributed to each applicable Canadian province.

PART II APPLICATION OF APPROVAL CRITERIA TO THE ALTERNATIVE TRADING SYSTEM

1. Regulation of the ATS

1.1 Regulation of the ATS – The ATS is regulated in an appropriate manner in another jurisdiction by a foreign regulator (the “Foreign Regulator”)

- 1.1.1 In the U.S., an ATS is defined in Rule 300(a) of Regulation ATS under the Exchange Act (“**Regulation ATS**”) as “any organization, association, person, group of persons, or system:
- (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange; and
 - (2) That does not:
 - (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or
 - (ii) Discipline subscribers other than by exclusion from trading.”
- 1.1.2 An ATS is a trading system that meets the definition of “exchange” under federal securities laws of the U.S., but is not required to register as a national securities exchange if the ATS operates under the exemption provided under Rule 3a1-1(a)(2) of the Exchange Act.² To operate under this exemption, an ATS must comply with the requirements set forth in Rules 300-303 of Regulation ATS, which include, among other things, registering as a broker-dealer under section 15 of the Exchange Act. Regulation ATS establishes a regulatory framework for ATSs. Under the Rule 3a1-1 exemptions and Regulation ATS, ATSs are allowed to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume. EquiLend is operating as an ATS, is registered as a broker-dealer pursuant to section 15 of the Exchange Act, and is a member of FINRA, the SRO that governs broker-dealers in the U.S. As such, EquiLend is subject to the compulsory regulatory supervision of both the SEC and FINRA.
- 1.1.3 In the Jurisdictions, an ATS is required by section 6.1 of NI 21-101 to be registered as an investment dealer and be a member of the IROC in order to operate a business as an ATS in each of the Jurisdictions.
- 1.1.4 In addition, an ATS is subject to registration requirements under applicable Canadian securities law when engaging in the business of trading. Similarly, in the U.S., all broker-dealers and their associated persons must be registered with the SEC (and FINRA in the case of associated persons) pursuant to section 15 of the Exchange Act and are subject to its regulations. They must as well be a member of at least one authorized securities SRO, which is further delegated certain regulatory supervisory authority. Most broker-dealers in the U.S. are members of FINRA.
- 1.1.5 The SEC approved EquiLend’s initial registration as a broker-dealer on June 21, 2002, and as an ATS in 2010. EquiLend remains compliant with its regulatory requirements as demonstrated by its continued status as an SEC registered broker-dealer and ATS.
- 1.1.6 As a registered broker-dealer and ATS, EquiLend is subject to a comprehensive regulatory regime in the U.S. In such capacity, EquiLend is registered with and regulated by the SEC and FINRA. EquiLend is also subject to registration with and regulation by the New York State Department of Law and the Office of the Attorney General, and by other applicable U.S. state regulators pursuant to state “blue sky” laws, regulations and rules (collectively, the “**U.S. Regulators**”). The U.S. Regulators set rules, conduct compliance reviews and perform surveillance and enforcement. The U.S. regulatory structure for broker-dealers such as EquiLend includes: financial and other fitness criteria; reporting and record-keeping requirements; procedures governing the treatment of customer funds and property and business conduct standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse and market manipulation.

² 17 CFR Parts 202, 240, 242 and 249 Release No. 34-40760 -- *Regulation of Exchanges and Alternative Trading Systems (“Rule 3a1-1”)*; <https://www.sec.gov/rules/final/34-40760.txt>.

- 1.1.7 In the U.S., broker-dealers are primarily governed by the Exchange Act, and the regulations and rules promulgated thereunder. Section 4 of the Exchange Act provides for the creation of the SEC, which was established in 1934. The Exchange Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, oversee and supervise marketplaces, exchanges, broker-dealers, transfer agents and clearing agencies, as well as U.S. SROs, including FINRA. The Exchange Act also identifies and prohibits certain types of conduct in the markets and provides the SEC with examination and disciplinary powers over regulated entities and their associated persons. FINRA has significant SEC-delegated authority over broker-dealers, that is consented to by its members, along with the authority to adopt and enforce member rules, impose fines and other sanctions, and conduct examinations and investigations.
- 1.1.8 In the U.S., investors are protected by comprehensive regulation that governs the conduct of broker-dealers, including EquiLend, and other market participants. These regulatory frameworks include, but are not limited to, the U.S. Securities Act, the Exchange Act (including Regulation ATS, as set forth in greater detail below), anti-money laundering (“**AML**”) and know-your-customer (“**KYC**”) law, rules and regulations of the U.S. Department of the Treasury Financial Crimes Enforcement Network (“**FinCEN**”), and state securities law, rules and regulations.
- 1.1.9 With respect to the agencies and organizations that regulate broker-dealers and ATSs, the SEC and FINRA share common goals, including the common stipulated mission to “protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation.” In response to the 2008 financial crisis, the SEC and FINRA have imposed heightened responsibilities on key market participants and have used their examination and enforcement resources to bolster investor protections.
- 1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the ATS. This includes regular, periodic oversight reviews of the ATS by the Foreign Regulator.**
- 1.2.1 The SEC and FINRA have the appropriate supervisory, examination and enforcement authority and resources to ensure that broker-dealers and ATSs, such as EquiLend, comply with their regulatory requirements. The SEC and FINRA have the power to direct regulated firms that are failing, or have failed, to comply with any applicable rules or regulations to take specific actions to remedy any such non-compliance, and have the legal authority to suspend or revoke a firm’s registration and regulatory authorizations.

Scope of authority

- 1.2.2 The SEC has delegated certain of its day-to-day broker-dealer regulatory oversight responsibility to FINRA. FINRA’s rules, which are approved by the SEC, allow for disciplining member firms, including EquiLend, for improper conduct and for establishing measures to ensure market integrity and investor protection. FINRA conducts various ATS surveillance and examination programs pertaining to trading activities and other sensitive client information that are designed to detect abusive activities. FINRA’s ATS surveillance and examination programs also evaluate financial and operational fitness for continued registration.
- 1.2.3 As set forth in greater detail below, broker-dealers in the U.S. are subject to routine and for-cause examinations by the SEC and FINRA. Broker-dealers are also subject to periodic financial and operational reporting (monthly and annually) through the filing of Financial and Operational Combined Uniform Single (“**FOCUS**”) Reports, which are filed with FINRA.
- 1.2.4 Broker-dealers registered in the U.S. are subject to a number of self-reporting obligations imposed by both the SEC and FINRA, including the requirement to self-report certain events pursuant to FINRA Rule 4530 – *Reporting Requirements* (as discussed in greater detail below, “**FINRA Rule 4530**”), file and keep current certain information with respect to the broker-dealer’s business and operations on Form BD – *the Uniform Application for Broker-Dealer Registration* (“**Form BD**”), and file and keep current information with respect to registered representatives employed with, or terminated by, the broker-dealer (including with respect to certain reportable events, such as certain criminal charges or convictions) on Form U4 – *Uniform Application for Securities Industry Registration or Transfer* and Form U5 – *Uniform Termination Notice For Securities Industry Registration*.
- 1.2.5 Broker-dealers registered in the U.S. are typically, depending on the nature of their business, subject to market surveillance by the SEC and FINRA, which is largely accomplished through various trade-reporting forms and systems. Subject to certain exemptions, broker-dealers are also required to file quarterly reports with the SEC on Form 17-H (*Risk Assessment Reports for Brokers and Dealers*), which includes information with respect to the broker-dealer and the financial and securities activities of certain affiliates of a broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer.
- 1.2.6 Broker-dealers registered in the U.S. that operate a regulated ATS are subject to additional oversight and reporting under Regulation ATS (as discussed in greater detail below), including the requirements to file and keep current a Form ATS (*Initial Operation Report, Amendment To Initial Operation Report And Cessation Of Operations Report For Alternative Trading Systems*) (“**Form ATS**”) and quarterly marketplace transaction reporting pursuant to Form ATS-R (*Quarterly Report of Alternative Trading System Activities*) (“**Form ATS-R**”).

- 1.2.7 The SEC and the securities regulatory authorities in the Jurisdictions are parties to a memorandum of understanding (“**MoU**”) related to securities market oversight, enforcement and information sharing arrangements. The AMF and the OSC are each parties to a similar MoU with FINRA.

U.S. regulation of broker-dealers and ATSS – Source of its authority to supervise the ATS

- 1.2.8 Pursuant to subsection 15(a) of the Exchange Act, subject to certain exceptions, all persons that use the mails or any means or instrumentality of interstate commerce to effect securities transactions must register with the SEC and become members of a national securities association, of which there is only one for registered broker-dealers, that being FINRA. An ATS may only be operated by a registered broker-dealer. EquiLend is registered with the SEC as a broker-dealer and is subject to all applicable rules and regulations to which registered U.S. broker-dealers are subject, as well as specific rules and regulations applicable to the operation of an ATS.
- 1.2.9 ATSS are subject to a comprehensive regulatory framework in the U.S. Subject to certain limited exceptions, all U.S. ATSS must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSS are subject to extensive regulation and oversight by both the SEC and FINRA with respect to ATS operations and as to the broker-dealer’s operations as a whole. In becoming a member of FINRA, each broker-dealer must enter into a membership agreement that sets forth the parameters of the broker-dealer’s operations, not only with respect to business lines, but also with respect to minimum net capital requirements, number of offices, and number of client-facing registered representatives that the broker-dealer may employ.
- 1.2.10 In addition to the foregoing, to acquire and maintain its status as an ATS, EquiLend must satisfy several statutorily-prescribed requirements set out in Regulation ATS, which sets forth additional guidelines and requirements with respect to:
- A. Broker-dealer registration;
 - B. Notice;
 - C. Order display and execution access;
 - D. Fees;
 - E. Fair access;
 - F. Capacity, integrity, and security of automated systems;
 - G. Recordkeeping;
 - H. Reporting obligations;
 - I. Compliance and controls.
- 1.2.11 **Broker-dealer registration.** As noted in paragraph 1.2.8 above, pursuant to Exchange Act Rule 301(b)(1), an ATS is required to be registered as a broker-dealer under section 15 of the Exchange Act. When the SEC adopted Regulation ATS in 1998 it revised the definition of “exchange”³ to clarify that electronic communication networks (“**ECNs**”) are deemed to be exchanges. The SEC then provided flexibility to ECNs by permitting them to be regulated as a broker-dealer, rather than as a traditional stock exchange. Accordingly, the operator of an ATS is regulated as a broker-dealer, as described in greater detail in this application.
- 1.2.12 **Notice.** Form ATS requires EquiLend to provide the SEC with details relating to the operation of the ATS, including (but not limited to):
- A. The type of subscribers (e.g., broker-dealers, institutional clients, etc.) that will be permitted to access the ATS, and any differences in access that will be offered by the ATS to the different groups of subscribers, if applicable.
 - B. A list of the types of securities the ATS trades (e.g., debt, equity, etc.) and whether such securities will not be registered under subsection 12(a) of the Exchange Act.
 - C. A list of the securities (as opposed to the “categories” of securities) the ATS trades.

³ See 63 Fed. Reg. 70,844 (Dec. 22, 1998).

- D. The manner of operation of the ATS, procedures governing orders, means of access, procedures governing execution, clearing and settlement, and the reporting of securities transactions effected through the ATS, each as applicable.
 - E. The system guidelines, and any other manuals or other materials provided to the subscriber relating to the ATS.
 - F. The ATS' procedures for reviewing systems capacity, security and contingency planning.
- 1.2.13 Exchange Act Rule 301(b)(2)(ii) requires an amendment to Form ATS be filed with the SEC at least twenty (20) days prior to implementing a "material change" to the operation of its ATS.
- 1.2.14 Exchange Act Rule 301(b)(2)(iii) requires a quarterly filing be made with the SEC in the event that any information previously provided pursuant to Rules 301(b)(2)(i) and (ii) become inaccurate.
- 1.2.15 Exchange act Rule 301(b)(2)(iv) requires that a filing be made with the SEC promptly in order to correct information previously reported on Form ATS pursuant to Rules 301(b)(2)(i) and (ii) that has become inaccurate.
- 1.2.16 Exchange Act Rule 301(b)(2)(v) requires that a filing be made with SEC promptly in the event that the ATS ceases operations.
- 1.2.17 **Order display and execution access.** Sections 8.1 and 8.2 of NI 21-101 in the Jurisdictions imposes certain pre-trade and post-trade information transparency requirements on ATSS displaying orders of government debt securities and corporate debt securities, respectively. Similar mandated order display and reporting requirements have not been implemented in the U.S. and are not appropriate for SFTs of the nature communicated through the NGT Platform. EquiLend's proposed exemption order includes an exemption in this regard.
- 1.2.18 Section 10.1 of NI 21-101 requires disclosure by a marketplace (including an exchange and an ATS) on its website of certain information reasonably necessary to enable a person or company to understand the marketplace's operations or services it provides, including information related to the system's protocols and rulebook. Since the NGT Platform only offers participants the ability to communicate and negotiate potential SFTs, it is not standard practice, or otherwise appropriate in the context, to have a rulebook, although EquiLend does maintain Marketplace Guidelines describing the operational and interactive attributes for the access and use of the NGT Platform. Moreover, U.S. ATSS are not currently required to post their current fee schedules on public-facing company websites.
- 1.2.19 CSA Notice 21-328 – *Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities* ("**CSA Notice 21-328**") requires that a foreign ATS provide information regarding its transparency of operations, including disclosure relating to order execution, fees and order priority. U.S. ATSS are not currently required to post their current fee schedules on public-facing company websites. Furthermore, the NGT Platform operates solely as a communications utility and does not directly or indirectly facilitate or effect the execution of trades in potential SFTs.
- 1.2.20 Exchange Act Rule 301(b)(3) imposes similar market transparency requirements. The rule requires ATSS with five (5) percent or more of trading volume in any covered security to publicly disseminate their best priced orders in those securities. EquiLend does not accommodate any trading volume per se on the NGT Platform and, therefore, does not meet this threshold, as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity. Moreover, the NGT Platform does not support active trading in the equities and debt securities that collateralize the potential SFT obligations communicated through the NGT Platform. With respect to the NGT Platform, the requirements under Exchange Act Rule 301(b)(3) are inapplicable, as the NGT Platform is not a National Market System ("**NMS**") stock ATS, nor does it support active trading in NMS stocks.
- 1.2.21 **Fees.** Exchange Act Rule 301(b)(4) is generally inapplicable to the NGT Platform. In practice, EquiLend is required to comply with the rules or standards of practice governing fees established by FINRA, including FINRA Rule 2010 and FINRA Rule 2121 - *Fair Prices and Commissions* (also known as the 5% Rule). While neither rule prescribes a specific limitation on the fees that may be charged to a client with respect to effecting a securities transaction either as agent or principal, each rule requires that EquiLend implement its fees in a manner that is fair and reasonable under the circumstances. EquiLend's standard fee schedule is provided to all clients at the time of onboarding and annually thereafter. Likewise, EquiLend reports any changes to its fee schedule directly to the SEC through ordinary course amended Form ATS filings.
- 1.2.22 **Fair access.** While the NGT Platform is not currently required to comply with the "Fair Access" requirements of Exchange Act Rule 301(b)(5), EquiLend monitors daily SBL activity that is communicated on its ATS to ensure that it complies with the relevant rules relating to "Fair Access". More specifically, Exchange Act Rule 301(b)(5) requires an ATS that meets the trading volume thresholds to establish written standards for granting access to its system and apply those standards fair and non-discriminatory manner. The operation of the NGT Platform does not implicate or otherwise meet the "Fair Access" trading volume thresholds as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity.

- 1.2.23 With respect to the NGT Platform, the “Fair Access” requirements will be triggered if during at least four (4) of the preceding six (6) calendar months, the ATS had with respect to municipal securities, five (5) percent or more of the average daily trading volume traded in the U.S., or with respect to corporate debt securities, five (5) percent or more of the average daily volume traded in the U.S. Where the volume thresholds are met, the ATS, pursuant to Exchange Act Rule 301(b)(5)(ii)(C), is required to make and keep records of all grants and denials of access, including for all subscribers, the reason for granting or denying such access to the ATS. Such information is required to be filed with the SEC on a quarterly basis on Form ATS-R. As EquiLend does not accommodate any trading volume per se on its NGT Platform, it does not meet this threshold, as the NGT Platform operates solely as a communication utility and does support active trading in equities or debt securities in any principal or agency capacity. Moreover, the NGT Platform does not support active trading in the equities and debt securities that collateralize the potential SFT obligations communicated through the NGT Platform. Therefore, these reporting requirements are not well-suited to the SFT market generally or to EquiLend specifically. In any event, EquiLend does maintain updated information regarding Canadian Subscribers who are provided with direct access to the NGT Platform and would maintain updated information regarding any Canadian applicants for status as a Canadian Subscriber who were denied such status, and would submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis.
- 1.2.24 **Capacity, integrity, and security of automated systems.** Exchange Act Rule 301(b)(6) is triggered by a trading volume threshold that is currently not satisfied by the NGT Platform. However, EquiLend monitors on an ongoing basis the level of SFT activity that occurs on its ATS to ensure that it complies with the relevant requirements of Exchange Act Rule 301(b)(6). More specifically, Exchange Act Rule 301(b)(6) requires an ATS that meets the trading thresholds to establish reasonable capacity estimates (both current and future), develop and implement procedures to review system development and testing methodology, review system vulnerability from external and internal threats, physical hazards and natural disasters and establish adequate contingency and disaster recovery plans. With respect to the last two items, EquiLend, as a broker-dealer, is separately subject to such requirements. As EquiLend does not accommodate any trading volume per se on its NGT Platform, whether in respect of prospective SBL transactions or any underlying collateral, these thresholds are not relevant to EquiLend, the NGT Platform specifically and the SFT ATSS generally.
- 1.2.25 **Recordkeeping.** Pursuant to Exchange Act Rule 301(b)(8) as an ATS, EquiLend is required to make, keep and preserve certain records relating to the operation of its ATS, including those records required to be maintained pursuant to Exchange Act Rule 302 and in the manner provided in Exchange Act Rule 303. As a registered broker-dealer, EquiLend is required pursuant to Section 17(a)(1) of the Exchange Act to make, keep, furnish and disseminate records and reports as prescribed by the SEC. The SEC’s books and records rules applicable to broker-dealers, Exchange Act Rules 17a-3 and 17a-4, specify minimum requirements with respect to the records that broker-dealers must make, how long those records and other documents relating to a broker-dealer’s business must be kept and in what format they may be kept. The SEC requires that broker-dealers create and maintain certain records so that, among other things, the SEC and SROs can use such records in the conduct of their examinations.
- 1.2.26 **Reporting Obligations.** Pursuant to Exchange Act Rule 301(b)(9), an ATS is required to file with the SEC on a quarterly basis the information required by Form ATS-R.
- 1.2.27 Form ATS-R requires the submitter to provide the SEC with details relating to the operation of the ATS during the previous calendar quarter, including (but not limited to):
- A. The total unit and dollar volume of transaction in various categories of securities.
 - B. A list of all persons granted, denied, or limited access to the ATS during the period covered by the report.
- 1.2.28 **Written procedures to protect confidential trading information.** Pursuant to Exchange Act Rule 301(b)(10) as an ATS, EquiLend is required to establish adequate written safeguards and written procedures to protect subscribers’ confidential trading information. Such written safeguards and written procedures must include:
- A. Limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with these or any other applicable rules;
 - B. Implementing standards controlling employees of the ATS trading for their own accounts; and
 - C. Adopting and implementing adequate written oversight procedures to ensure that the written safeguards and procedures established are followed.
- 1.2.29 **Compliance and controls.** Broker-dealers that provide market access are subject to an additional layer of regulatory oversight under Exchange Act Rule 15c3-5 (17 C.F.R. §240.15c3-5) (the “**Market Access Rule**”), which imposes additional financial and regulatory risk management controls and supervisory procedure requirements on the ATS or broker-dealer. This includes the requirement to establish, maintain and ensure compliance with risk management and supervisory controls, policies, and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with market access or providing clients with market

access. These risk management and supervisory controls, policies and procedures are required to be reasonably designed to ensure that all orders are monitored and include pre-trade controls and regular post-trade review. Under the Market Access Rule, a broker-dealer must preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records obligations under SEC Rule 17a-4. Although the NGT Platform does not accommodate direct trading in securities per se, EquiLend has implemented controls and supervisory policies and procedures in compliance with the Market Access Rule.

- 1.2.30 Additionally, the risk management controls and supervisory procedures required pursuant to the Market Access Rule must be reasonably designed to systematically limit the financial exposure of the broker-dealer (e.g., preventing the entry of one or more orders that exceed pre-determined price or size parameters), ensure compliance with the broker-dealer's regulatory obligations (e.g., restricting access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer), and ensure that the entry of orders does not interfere with fair and orderly markets. Although EquiLend does not accommodate or establish any cash or securities funded "trading" accounts for its clients or otherwise as principal, and does not accommodate trading in securities per se, EquiLend has implemented reasonably designed controls and supervisory policies and procedures in compliance with the risk exposure requirements under the Market Access Rule.
- 1.2.31 A broker-dealer's risk management controls and supervisory procedures should be reasonably designed to:
- A. Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and
 - B. Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order by-order basis or over a short period of time, or that indicate duplicative orders.
- 1.2.32 Under the Market Access Rule, a broker-dealer must (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and (b) document any material deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy these deficiencies. Although EquiLend does not accommodate or establish any cash or securities funded "trading" accounts for its clients or otherwise as principal, and does not accommodate trading in securities per se, EquiLend has implemented reasonably designed controls and supervisory policies and procedures designed to monitor and assess, on a daily, weekly, monthly, annual and periodic basis, as applicable, NGT Platform client engagement and associated risks in compliance with the risk exposure requirements under the Market Access Rule.
- 1.2.33 Broker-dealers are also subject to the general supervision and monitoring requirements of FINRA Rule 3110 – *Supervision* ("**FINRA Rule 3110**"), which requires broker-dealers to establish and maintain a system to supervise the broker-dealer's business and the activities of each associated person employed by the broker-dealer that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.
- 1.2.34 EquiLend is required to comply with the above identified compliance and control obligations as a condition to maintaining its registration and ability to operate the NGT Platform under its broker-dealer and ATS licensing. Taking into account its SFT business model, EquiLend is required to:
- A. have systems and controls in place to monitor transactions on the NGT Platform;
 - B. retain sufficient financial resources for the performance of its functions as ATS operator;
 - C. operate its Platform with due heed to the protection of investors;
 - D. ensure that trading is conducted in an orderly and fair manner;
 - E. monitor compliance with the SEC, FINRA, and the rules of the NGT Platform;
 - F. investigate complaints with respect to its business;
 - G. maintain high standards of integrity and fair dealing; and
 - H. prevent abuse.
- 1.2.35 Regulation ATS was most recently amended in 2018, with such amendments enhancing operational transparency requirements and expanding the SEC's regulatory oversight function. The amendments also represent a significant tightening of the safeguards and requirements pertaining to client confidential trading information. More recently, the SEC has proposed to further expand the regulation of ATSs to include the registration of certain interdealer brokers (IDBs) in

the U.S. Treasury securities markets, demonstrating that the SEC continues to consider the regulation of ATSS a primary regulatory priority.

Rules and policy statements

- 1.2.36 As noted above, the primary regulatory frameworks governing broker-dealer activity in the U.S. include, the U.S. Securities Act and the Exchange Act (and the rules and regulations promulgated thereunder, including Regulation ATS), FINRA and Municipal Securities Rule-Making Board (“MSRB”) rules, FinCEN AML and Customer Identification Program (“CIP”) / KYC rules and regulations, and state securities rules and regulations (“State Blue Sky Laws”). SEC and FINRA also routinely publish regulatory guidance and interpretive notices, including through SEC no-action letters and FINRA regulatory notices.⁴

Financial protections afforded to customer funds

- 1.2.37 The NGT Platform operated by EquiLend does not hold customer funds or securities, or otherwise directly or indirectly accommodate any cash-based potential SFTs.

Authorization, licensure or registration of the NGT Platform

- 1.2.38 As noted above, ATSS, including EquiLend, are subject to a comprehensive regulatory framework in the U.S. Subject to certain limited exceptions, all U.S. ATSS must be registered with the SEC as a broker-dealer and be a member of FINRA. In this regard, ATSS are subject to extensive regulation and oversight by the SEC and FINRA, including in respect of both ATS and broker-dealer capital and operational requirements. Failure to comply with obligations pursuant to both the ATS and broker-dealer regulatory frameworks can lead to fines, the suspension of licensing and/or other sanctions, including the cessation of operations.
- 1.2.39 As described in greater detail below, broker-dealers in the U.S. are subject to routine and for-cause examinations by both the SEC and FINRA. Broker-dealers are also subject to periodic financial and operational reporting (monthly and annually) through the filing of FOCUS Reports, which are filed with FINRA. Further, a broker-dealer is subject to a number of self-reporting obligations imposed by the SEC and FINRA, including the requirement to self-report certain events pursuant to FINRA Rule 4530 (as discussed in greater detail below) and to file and keep current certain information with respect to the broker-dealer’s business and operations on Form BD and Form ATS. In addition, pursuant to FINRA Rule 3110 and FINRA Rule 3130 – *Annual Certification of Compliance and Supervisory Processes* (“FINRA Rule 3130”), a broker-dealer’s chief executive officer (or equivalent officer) must certify annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures that are reasonably designed to achieve compliance with applicable FINRA rules and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer’s chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer’s board of directors and audit committee.

The foreign regulator’s approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market

- 1.2.40 Pursuant to U.S. AML and anti-financial crime rules and regulations, broker-dealers are required to file with FinCEN a Suspicious Activity Report (“SAR”) pertaining to any suspicious transaction or pattern of transactions relevant to a possible violation of law or regulation. Instruments or mechanisms that may be used in suspicious activities and that are subject to SAR filings include, but are not limited to, transactions involving wire transfers, letters of credit and other trade instruments, correspondent accounts, shell companies, financial instruments, digital currency business services and other transactions involving suspected market manipulation and/or insider trading.
- 1.2.41 Additionally, broker-dealers and market participants are subject to a number of rules and regulations with respect to securities fraud, market manipulation, and abusive and/or insider trading practices. Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder prohibit any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries in the U.S.

- 1.2.42 The U.S. has a comprehensive financial services regulatory regime. The laws, regulations, rules and policies that govern the authorization and ongoing supervision and oversight of market intermediaries, include, but are not limited to, the U.S. Securities Act and the Exchange Act (and the rules and regulations promulgated thereunder), the U.S. *Investment Company Act of 1940*, as amended, the U.S. *Investment Advisers Act of 1940*, as amended, the rules of FINRA, the

⁴ For additional information with respect to FINRA regulatory notices, please see <https://www.finra.org/rules-guidance/notices>.

MSRB, and the National Futures Association (“NFA”), FinCEN AML and KYC rules and regulations, and State Blue Sky Laws.

- 1.2.43 The vast majority of subscribers with access rights to the NGT Platform and that could potentially face counterparties organized or located in the Jurisdictions are highly qualified institutional market intermediaries – participants legally formed in the U.S.

Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk for market intermediaries who may deal with members and other participants located in Canada

- 1.2.44 FINRA members, such as EquiLend, are required to maintain membership with the Securities Investor Protection Corporation (“SIPC”). SIPC was created under the U.S. *Securities Investor Protection Act of 1970* (“SIPA”) as a non-profit membership corporation. SIPC oversees the liquidation of member firms that close when the firm is bankrupt or in financial trouble, and customer assets are missing. In a liquidation under the SIPA, SIPC and a court-appointed trustee work to return customers’ funds and securities as quickly as possible.

Examination and reporting requirements

- 1.2.45 As described above, the SEC and FINRA exercise their supervisory authority by, among other methods, conducting periodic and ad hoc examinations. These examinations are designed to determine, among other things, whether an ATS and broker-dealer’s rules, supervisory policies and procedures and operational practices are adequate for the protection of investors and to ensure that the firm maintains an orderly market under the conditions of its ATS and broker-dealer authorizations.
- 1.2.46 As a registered broker-dealer in the U.S., EquiLend, is subject to periodic examinations by both the SEC and FINRA that include: (i) cause examinations, which are initiated in order to investigate some particular issue or event; (ii) sweep examinations, in which multiple firms receive, and must respond to, written inquiries regarding a particular issue; and (iii) cycle examinations, which occur periodically over the life of the broker-dealer. Both the SEC and FINRA conduct examinations of these types, and both have considerable staff and resources to conduct such examinations and implement and enforce conditional and remedial measures, where applicable.
- 1.2.47 During examinations, the examination staff seek to determine whether the entity being examined is (i) conducting its activities in accordance with the federal securities laws and rules adopted under such laws, as well as the rules of SROs, such as FINRA; (ii) adhering to the disclosures it has made to its clients, customers, the general public and/or the SEC and FINRA; and (iii) implementing and maintaining supervisory systems and/or compliance policies and procedures that are reasonably designed to ensure that the entity’s operations are in compliance with applicable legal requirements.
- 1.2.48 Pursuant to Regulation ATS, each ATS, including EquiLend, must file an initial operation report with the SEC on Form ATS prior to commencing operations. Form ATS requires detailed disclosures regarding a wide range of information concerning the ATS, its owners, its businesses and its operating procedures, including disclosure to the applicable regulators (the SEC and FINRA) as to terms and conditions of use, subscriber qualification and/or the filing of any ATS user guide(s). Form ATS serves as a supplement to Form BD, which is filed by firms seeking registration with the SEC as a broker-dealer, and the new membership application process, which is required for broker-dealers to become members of FINRA. Information required to be provided in these forms and applications include ownership and corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, trade reporting procedures, business contingency planning, and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2 *Information Statement - Alternative Trading System* (“**Form 21-101F2**”).
- 1.2.49 Form ATS and Form BD must be amended, as necessary, to correct any previously submitted information that becomes inaccurate for any reason. Amendments include changes to information regarding ownership, corporate governance information, affiliate information, details regarding the manner of operation of the ATS and its associated functions, including the structure, means of access, trade reporting procedures, business contingency planning and marketplace participants, similar to the information that is required to be provided to the Canadian securities regulators in a Form 21-101F2.
- 1.2.50 Pursuant to FINRA Rules 3110 and 3130, a broker-dealer’s chief executive officer (or equivalent officer) must certify annually that the broker-dealer has in place processes to establish, maintain, review, test and modify written compliance policies and supervisory procedures that are reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules, and federal securities laws and regulations. This report must be supported by an underlying report and discussion with the broker-dealer’s chief compliance officer with respect to the same. FINRA Rule 3130 also requires the compliance report underlying this certification be submitted to the broker-dealer’s board of directors and audit committee.
- 1.2.51 Pursuant to SEC and FINRA rules, broker-dealers are subject to periodic financial and operational reporting (monthly and annually) through the filing of FOCUS Reports, which are filed with FINRA. The net capital rule, Exchange Act Rule

15c3-1 (17 C.F.R. §240.15c3-1), is the principal rule by which the financial health of U.S. broker-dealers, including EquiLend, is regulated and monitored. The net capital rule requires U.S. broker-dealers to maintain “net capital” (i.e., capital in excess of liabilities) in specified amounts that are determined by the nature of the business conducted by the broker-dealer. The net capital rule requires broker-dealers to compute net capital based on U.S. generally accepted accounting principles (“GAAP”), as modified by the various provisions and interpretations of the rule.

- 1.2.52 Regulation ATS also requires EquiLend, as an ATS, to permit the examination and inspection of its premises, systems and records, and to cooperate with the examination, inspection or investigation of subscribers, whether such examination is being conducted by the SEC or by an SRO of which such subscriber is a member, such as FINRA.
- 1.2.53 Regulation ATS also requires that EquiLend, as an ATS, report information regarding marketplace activity to the SEC on a quarterly basis on Form ATS-R, including information as to the total unit volume of trading activity and aggregate unit value of trading activity by security type as conducted through the instrumentalities of the ATS, similar to certain information a Canadian ATS is required to provide in Form 21-101F3 *Quarterly Report of Marketplace Activities*.
- 1.2.54 FINRA Rule 4530 requires that a FINRA-member broker-dealer, including EquiLend, report to FINRA certain specified events, including any findings that the broker-dealer has discovered significant, widespread or systemic violations of securities and investment related laws by the broker-dealer or any of its associated persons. FINRA Rule 4530 not only requires self-reporting of violations of securities laws and regulations, but also of specified events, such as certain criminal convictions, customer complaints, and ongoing regulatory actions. Finally, FINRA reporting rules require that a broker-dealer report to FINRA certain statistical and summary information regarding written customer complaints on a quarterly basis.
- 1.2.55 Regulation ATS requires that an ATS, including EquiLend, that intends to cease carrying on business as an ATS, file a Form ATS cessation report with the SEC promptly upon ceasing to operate as an ATS. This requirement is similar to the requirement for a Canadian ATS to provide prior notice to the regulator of an intention to cease carrying on business as an ATS and the requirement to file a Form 21-101F4 *Cessation of Operations Report for Alternative Trading System*.

The protection of customer funds and securities by market intermediaries who may deal with Canadian Subscribers

- 1.2.56 Exchange Act Rule 15c3-3, which is commonly known as the “customer protection rule,” is intended to protect customers’ funds held by their broker-dealers and prohibit broker-dealers from using customer funds and securities to finance any part of their business that is unrelated to servicing securities customers. EquiLend does not hold customer funds, securities or other assets, and the NGT Platform does not accommodate cash trading activity. Accordingly, EquiLend is characterized as a “Non-Covered Firm” that engages in “Non-Covered Firm Activities” pursuant to SEC regulatory and interpretive guidance, is deemed, in effect, not to be subject to the various SEC Rule 15c3-3 requirements. EquiLend is eligible to file an annual exemption report, in contrast to a mandated compliance report, with each of the SEC and FINRA.

2. Governance

2.1 Governance – The governance structure and governance arrangements of the alternative trading system ensure:

(a) Effective oversight of the ATS operations,

- 2.1.1 EquiLend has independent departments handling product development, testing, change management (code deployment), infrastructure and system operation. Further, EquiLend employs real-time monitoring of the ATS with end of day checks by supervisory personnel in various departments with remit over data management, trading integrity and regulatory compliance oversight.

(b) That business and regulatory decisions are in keeping with its public interest mandate,

- 2.1.2 EquiLend, through the NGT Platform, provides subscribers with an inventory and price discovery communications utility for potential SFTs in equity and fixed income securities. As an ATS conforming with U.S. regulatory requirements, EquiLend offers a legally safe forum for communicating potential SFTs in equity and fixed income securities, in addition to certain potential off-platform collateral trading exchange transactions between lenders and total return swap communication functionality between hedgers and other qualified institutional subscribers in a purely brokerage capacity. As an ATS, EquiLend comes under the direct jurisdiction of the SEC, as discussed above.
- 2.1.3 EquiLend has a statutory requirement to ensure that business on its markets is conducted in an orderly manner, providing proper protection to investors. EquiLend rules have been designed to ensure compliance with all applicable laws, regulations and rules to ensure a fair and orderly market. EquiLend has an internal compliance department and contracts with a third-party compliance consultant which, amongst other things, monitors EquiLend’s compliance with all applicable legislation. EquiLend’s chief compliance officer (“CCO”) is responsible for updating policies and procedures to comply with changes in applicable laws, regulations and rules.

(c) Fair, meaningful and diverse representation on the board of directors and any committees of the board of directors, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using services and facilities of the ATS,

2.1.4 EquiLend's directors are appointed pursuant to the terms of the EquiLend limited liability agreement (the "**LLC Agreement**") and its by-laws, and are subject to the duties and obligations imposed under Delaware law. EquiLend's directors are appointed based on skills and experience appropriate to the firm's business as a SFT ATS and broker-dealer. EquiLend does not have independent directors; however, at its parent level, EquiLend Holdings has one (1) independent third-party director.

(d) The ATS has policies and procedures to appropriately identify and manage conflicts of interest, and

2.1.5 EquiLend takes potential conflicts of interest and the associated consequences seriously and has implemented appropriate procedures to mitigate the risk of such occurrences. EquiLend does not engage in principal or agency trading, whether for its own account or otherwise with discretion for the account of any third-party, so it has no interests subject to trading risk conflicts. These procedures supplement the legal duties applicable to each director to avoid any situation in which they have, or could have, a direct or indirect interest that conflicts, or could conflict, with the interests of EquiLend or its subscribers.

2.1.6 EquiLend's directors and executive officers are not members of any board of directors, nor otherwise employed in any capacity, including as a consultant, with any unaffiliated direct competitor of the firm.

2.1.7 All EquiLend employees are subject to contractual restrictions that are designed to mitigate, manage and limit conflicts of interest. EquiLend also runs background checks on all of its employees and conducts audits, no less than annually, of all employee outside securities accounts and business activities, which are required to be affirmatively disclosed to each of the firm's human resources and compliance departments, and are reviewed, subject to CCO approval, recorded, and maintained consistent with books and records requirements applicable to the firm's SEC and FINRA registrations, as well as doing business corporate record-keeping requirements.

2.1.8 EquiLend has implemented conflicts of interest, confidentiality and information barrier policies and procedures that are communicated to all employees and supervised consultants. These policies and procedures provide an overview of EquiLend's key obligations and the controls implemented in order to identify, manage and disclose actual and potential conflicts of interest.

(e) There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.1.9 As a Delaware limited liability company, the LLC Agreement is EquiLend's principal governance document. EquiLend's governance structure as memorialized in the LLC Agreement is compliant with the provisions of the Delaware *Limited Liability Company Act*, as amended and as interpreted by the Delaware Court of Chancery.

2.1.10 Directors receive no remuneration, but every director is entitled to be indemnified by EquiLend against all costs, charges, losses, expenses and liabilities incurred by them in the execution and discharge of his or her duties to EquiLend or in relation thereto to the maximum extent allowable by law. The directors also have the benefit of the directors' and officers' liability insurance.

2.1.11 EquiLend has policies and procedures in place to recruit, hire and onboard new employees. Its policies ensure that all staff are qualified for their roles and receive appropriate workplace, security awareness, compliance and job-specific training. EquiLend's human resources, information technology – infrastructure and compliance departments, respectively, conducts annual and periodic mandatory subject-matter continuing education and other professional training. All internal and external training undertaken by staff is documented consistent with the firm's books and records obligations. In the event that an employee termination occurs, robust off-boarding procedures are followed to secure the firm's access to accounts and physical hardware, and to protect confidential subscriber and proprietary firm information.

2.1.12 EquiLend has established, maintains and reviews compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the marketplace or the services it provides. EquiLend conducts its business with the highest standards of commercial honor and just and equitable principles of trade. EquiLend's supervisory policies and procedures provide guidance to designated supervisors in their oversight of EquiLend's business. EquiLend recognizes that compliance is not a static event and has implemented policies, procedures and best practices designed to promote and sustain a culture of compliance. The supervisory policies and procedures are updated as necessary.

- 2.1.13 Consistent with FINRA Rule 3110 and FINRA Rule 3310 – *Anti-Money Laundering and Compliance Program*, EquiLend has implemented written policies and procedures designed to achieve compliance with all applicable securities laws, regulations and rules. As a broker-dealer, EquiLend has an obligation to identify and respond to actual and potential conflicts of interest applicable to its business, and to resolve such actual or potential conflicts of interest by putting the customer's interest before its own. Further, EquiLend must design its organizational structures, lines of reporting and physical locations to control for and minimize such conflicts of interest. EquiLend must ensure that before or at the time it provides a service that gives rise to any such conflict, that it discloses the conflict to the entitled party.
- 2.1.14 EquiLend relies on its employees to adhere to written standards of conduct, which are memorialized in the firm's employee handbook, written supervisory policies and procedures and employee disclosure and communications documentation. These communications and documents, in the collective, demonstrate EquiLend's core competencies, reinforce its commitment to protecting confidential subscriber and proprietary firm information and emphasize the firm's obligation to address and control for actual and potential conflicts of interest. A conflict of interest is a situation where an opportunity for personal gain conflicts with EquiLend's best interests. While it is EquiLend's preference to avoid conflicts of interest, if a conflict of interest cannot be avoided, or an employee cannot determine whether a given situation presents a conflict, it is EquiLend's policy for the conflict or the potential conflict to be immediately escalated to and discussed with a manager to determine the appropriate course of action. To avoid potential conflicts of interest, it is EquiLend's policy that work performed or positions held by EquiLend employees outside of working at the firm must not interfere with the employee's duty to EquiLend and its subscribers, and outside business activities are required to be disclosed to and approved by EquiLend. EquiLend has adopted policies that require employees to proactively address potential conflicts of interest related to an employee's family members or other persons with whom the employee has a close personal relationship. Conflicts regarding a financial interest in a customer, competitor or supplier as well as conflicts relating to business gift, meal and entertainment are also addressed in EquiLend's policies.
- 2.1.15 EquiLend has appropriate conflict of interest provisions for all directors, officers and employees. EquiLend has implemented reasonable safeguards and procedures to protect subscriber communications and other confidential and/or protected information, including by limiting access to NGT Platform communications, order and trade-related information to approved employees and/or internal departmental functions within EquiLend, and by implementing standards for the disclosure and monitoring of employee outside securities accounts and outside business activities. EquiLend has implemented effective oversight procedures to ensure that the safeguards and procedures established by it are followed.
- 2.2 Fitness – The ATS has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.**
- 2.2.1 Each director of EquiLend has the appropriate skills, qualifications and industry experience to be a member of the board of directors, and is subject to detailed disclosure requirements under Form BD, which includes information as to criminal or civil sanctions and regulatory actions, and such disclosures are publicly accessible on EquiLend's Form BD filing.
- 3. Regulation of Products**
- 3.1 Review and Approval of Products – Business lines must be approved by the Foreign Regulator**
- 3.1.1 EquiLend's business lines, including the operation of the ATS, are approved by the SEC and FINRA, listed on Form ATS and Form BD, as filed with the SEC, and are disclosed in the broker-dealer's membership agreement with FINRA. Any addition of a new line of business must be approved by FINRA prior to implementation.
- 3.1.2 Pursuant to Regulation ATS, when filing its initial operation report on Form ATS, an ATS is required to provide the SEC with a list of the types of transactions the ATS facilitates or expects to facilitate, as well as the types of securities the ATS trades or expects to trade. As noted above, an ATS is required to update its Form ATS, as necessary, to correct any previously provided information that becomes inaccurate for any reason. The types of products offered on the NGT Platform that would trade or expect to trade for Canadian Subscribers is set out in detail above at paragraphs 1.9 to 1.15 at "Part I Background, 1. Description of EquiLend and its Business".
- 3.1.3 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written policies and procedures to supervise the activities of its registered representatives and other associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules. EquiLend must ensure that the operation of the NGT Platform, as well as its written policies and procedures, comply with applicable securities laws, regulations and FINRA rules. In addition, the Market Access Rule, which EquiLend is subject to, imposes additional financial and regulatory risk management controls and supervisory policy and procedure requirements on an ATS and broker-dealer. This includes the requirement for EquiLend to establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with market access or providing clients with market access.

4. Access

4.1 The requirements of the ATS relating to access to the facilities of the ATS change are fair, transparent and reasonable

In particular, the ATS:

- A. has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;**
- B. has financial standards for those persons who enter orders for execution on the system, including, the need for pre-existing contractual relationships with each counterparty;**
- C. does not unreasonably prohibit or limit access by a person or company to services offered by it;**
- D. keeps records of each grant and denial or limitation of access, including reasons for granting, denying or limiting access; and**
- E. restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.**

Details of access criteria

- 4.1.1** EquiLend has established written standards for granting access to each of its services to ensure prospective subscribers are appropriately eligible to access and use the NGT Platform, as described above. EquiLend keeps records of each grant of access, including the reasons for granting access, to each subscriber, and each denial or limitation of access, including the reasons for denying or limiting access, to a prospective subscriber.
- 4.1.2** Regulation ATS sets forth certain fair access requirements applicable to ATSs, where, if during at least four (4) of the preceding six (6) calendar months, the ATS had:
 - A.** With respect to any NMS stock, five (5) percent or more of the average daily volume in that security reported by an effective transaction reporting plan;
 - B.** With respect to an equity security that is not an NMS stock and for which transactions are reported to a SRO, five (5) percent or more of the average daily trading volume in that security as calculated by the SRO to which such transactions are reported;
 - C.** With respect to municipal securities, five (5) percent or more of the average daily volume traded in the U.S.; or
 - D.** With respect to corporate debt securities, five (5) percent or more of the average daily volume traded in the U.S.
- 4.1.3** If any of the fair access requirements are met, subject to certain exceptions, an ATS must:
 - A.** Establish written standards for granting access to trading on its system;
 - B.** Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the written standards required above in an unfair or discriminatory manner;
 - C.** Make and keep records of:
 - 1.** All grants of access including, for all subscribers, the reasons for granting such access; and
 - 2.** All denials or limitations of access and reasons, for each applicant, for denying or limiting access; and
 - D.** Report the information required on SEC Form ATS-R regarding grants, denials, and limitations of access.
- 4.1.4** These access requirements are similar to the required access requirements for ATSs in Canada.
- 4.1.5** As EquiLend's NGT Platform does not permit or otherwise accommodate cash-based trading, the direct execution of any securities transactions or otherwise the facilitation, direction, intermediation or referral of potential securities transactions, including SFTs, for subsequent execution, clearing or settlement to any third-party, the fair access requirements do not apply to the firm's business or its operation of the NGT Platform.

Due diligence and ongoing supervision

- 4.1.6 EquiLend conducts due diligence on each subscriber prior to permitting access to and authorizing use of the NGT Platform, so as to ensure that each subscriber meets the eligibility criteria requirements under applicable laws, regulations and SEC / FINRA rules, and to protect the integrity of EquiLend and the orderliness of NGT Platform engagement between subscribers.
- 4.1.7 Access to the NGT Platform will be limited to Canadian Subscribers who meet EquiLend’s eligibility criteria. Subscribers generally fall into the following categories: “qualified institutional buyers”, as such term is defined in Rule 144A, “eligible contract participants”, as such term is defined in Section 1a(18) of the CEA, large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million, which can include pension funds and hedge funds. Before being provided direct access to the NGT Platform, each Canadian Subscriber will be required to confirm that it is a “permitted client” as that term is defined in NI 31-103. Retail customers will not be provided access to the NGT Platform.
- 4.1.8 After a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must:
- A. execute an EquiLend Global User Agreement;
 - B. be and remain at all times either (i) an “institutional account” as defined in FINRA Rule 4512 – *Customer Account Information*⁵, or (ii) a broker-dealer registered pursuant to Section 15 of the Exchange Act; and
 - C. appoint an “Administrator”, who will be the individual appointed by the Canadian Subscriber with the authority to designate a list of users that are authorized and permitted to access the NGT Platform and enter into transactions on the Canadian Subscriber’s behalf.
- 4.1.9 A Canadian Subscriber will be required to provide prompt notification to EquiLend if it no longer qualifies as a permitted client.
- 4.1.10 EquiLend will maintain the following updated information and submit such information in a manner and form acceptable to the ATS Relief Decision Makers on a semi-annual basis (within thirty (30) days of the end of each six (6) month period), and at any time promptly upon the request of the ATS Relief Decision Makers:
- A. a current list of all Canadian Subscribers on a per province basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to EquiLend that it could be provided with direct access;
 - B. a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;
 - C. for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
 - D. for each product:
 - 1. the total trading volume and value originating from Canadian Subscribers and as attributed to each applicable Canadian province, and
 - 2. the proportion of aggregate global trading volume and value communicated on the NGT Platform as conducted by Canadian Subscribers and as attributed to each applicable Canadian province, and
 - E. a list of any system outages that occurred for any system impacting Canadian Subscribers’ trading activity on the NGT Platform which were reported to the regulator in the home jurisdiction, if any.
- 4.1.11 As required under the U.S. *Bank Secrecy Act* and its implementing regulations, as amended (collectively, the “**BSA**”), EquiLend is required to have written AML policies and procedures (collectively, an “**AML Policy**”) which prohibit and actively prevent money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities. Contained in its AML Policy is EquiLend’s CIP that complies with the requirements of the BSA. Additionally, as a U.S. entity, EquiLend complies with sanctions requirements established by the Office of Foreign Assets Control.

⁵ An “institutional account” means the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the U.S. *Investment Advisers Act of 1940* or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million.

5. Regulation of Participants on the Alternative Trading System

5.1 Regulation – The alternative trading system has the authority, resources, capabilities, systems and processes to set requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them by exclusion from participation in the marketplace.

Members and other participants are required to demonstrate their compliance with these requirements

5.1.1 The SEC and FINRA maintain appropriate systems and resources for conducting market and member regulation and for disciplining market participants, including ATSS and broker-dealers. EquiLend maintains appropriate systems and resources for evaluating and achieving compliance with SEC and FINRA requirements.

5.1.2 Subscribers to an ATS are subject to the SEC rules and regulations applicable to securities transactions generally, and the SEC has investigation, examination, and enforcement power with respect to subscribers who violate these rules and regulations. In addition, subscribers that are FINRA-member broker-dealers are subject to FINRA rules, with FINRA having investigation, examination, and enforcement power with respect subscribers who violate applicable FINRA rules.

EquiLend Operating Procedures

5.1.3 Broker-dealers, including those that operate an ATS, are subject to market surveillance by the SEC and FINRA, which is largely accomplished through mandated periodic and event-driven reporting forms and/or data captured through trade reporting and audit systems. Regulation ATS also requires ATSS to report certain information regarding marketplace activity on a quarterly basis on Form ATS-R.

5.1.4 A characteristic of an ATS that distinguishes it from that of an exchange in the U.S. is that an ATS is not permitted to “[s]et rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on the system; or (ii) discipline subscribers other than by exclusion from trading. To the extent that a subscriber breaches the NGT Platform’s terms and conditions, EquiLend is limited to either suspending or terminating their access to the NGT Platform and ATS products and services. If the subscriber’s acts are thought to be violation of law, EquiLend will refer the subscriber to the SEC, FINRA and/or law enforcement authorities, as authorized and appropriate.

6. Clearing and Settlement

6.1 Clearing arrangements – The ATS has appropriate arrangements for the clearing and settlement of transactions through a clearing broker.

6.1.1 The NGT Platform will not be involved in clearing or settlement activities, which are the responsibility of market participants and are conducted entirely outside EquiLend and the NGT Platform.

7. Systems and Technology

7.1 Systems and technology – The ATS’s critical systems have appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the ATS to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) execution,
- (c) trade reporting,
- (d) trade comparison,
- (e) data feeds,
- (f) market surveillance,
- (g) trade clearing, and
- (h) financial reporting.

7.1.1 EquiLend’s critical systems provide for the continuing function of the overall application presented to subscribers. The NGT Platform enables the communication and negotiation of potential SFTs between qualified financial institutions. Execution, clearing and settlement functionality is not part of any NGT Platform or other services offered by or through EquiLend.

Infrastructure – Data Center Redundancy

- 7.1.2 The NGT platform is comprised of infrastructure hosted at a primary site, also referred to as the “Production” or “**PROD**” site, located in a private locked cage in New Jersey and a secondary site, also referred to as the “Disaster Recover” or “**DR**” site, located in Texas.
- 7.1.3 Each site contains self-contained infrastructure that can handle all traffic if necessary. Each data center site contains various redundancy features at both the hardware and software level.
- 7.1.4 Servers are configured in a cluster mode and feature disks in a RAID1 or RAID10 configuration, dual power supplies connected to separate PDUs (each connected to a separate circuit) and have ethernet connections to two (2) separate switches. There are dual firewalls (each with separate connections to each switch), acting as highly available pairs, as well as redundant load balancers in isolated networks servicing externally facing virtual IPs.
- 7.1.5 Data for the application is stored in a database, which is live-replicated to a DR database at the DR site. Daily incremental and weekly full backups are taken for all databases and these backups are live-replicated between the PROD and DR data centers. Application servers respond to requests forwarded by the load balancers, with multiple instances of each application server available to handle the requests both for load balancing as well as redundancy. In addition to live replication off-site for customer data, it is also backed up daily.

Infrastructure – External Connectivity

- 7.1.6 EquiLend offers its services over the public internet, and optionally enables customers to connect over leased lines via the BT Radianz provider.
- 7.1.7 EquiLend uses multiple public internet service providers to provide reliable access. There are a pair of routers interconnected with each other as well as our providers, with BGP sessions to provide neighbor information for the EquiLend ATS.

Infrastructure – Security/Protection

- 7.1.8 Subscribers using the web UI connect over https using a strong cipher and key exchange. To access the system, the subscriber’s IP range must be whitelisted in both the firewall and the application, and they must enter a valid user-specific username and password.
- 7.1.9 Subscribers using the automated MQ Messaging connect to an SSL endpoint using a strong cipher and key exchange, on an organization-specific port, and must use a pre-arranged Company ID and password to establish a channel session. Each such port has an organization-specific IP whitelist.
- 7.1.10 Leased line connections are handled in the same manner as ones over the public internet, with the same security precautions. The only difference is that the traffic is routed over a private BT leased line rather than over the internet.
- 7.1.11 Internally, all communication is restricted between zones. All inbound TCP connections are inspected and terminated in the DMZ. Once inspection is passed, the session is then handed off to the authentication/authorization zone, which then passes it off to the web zone. The web zone communicates with the application zone and the application zone in turn accesses the database zone. The firewalls prevent any other direct communication between the zones.

8. Financial Viability And Reporting

8.1 Financial viability – The ATS has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

- 8.1.1 Pursuant to Exchange Act Rule 15c3-1, EquiLend must have financial resources sufficient for the proper performance of its functions as an ATS. EquiLend maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed to meet SEC and FINRA requirements.

9. Recordkeeping

9.1 Recordkeeping – The ATS has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the ATS, audit trail information on all trades, and compliance with, and/or violations of the ATS requirements.

- 9.1.1 EquiLend keeps books, records and other documents as are reasonably necessary for the proper recording of its business in electronic form. This includes a record of all subscribers who have been granted access to the NGT Platform, subscription agreements, correspondence, daily trading summaries, and detailed order records, as applicable. Records are kept in electronic form and are readily accessible.

- 9.1.2 EquiLend's written supervisory policies and procedures refer to the firm's record retention policy and detail how all relevant records are required to be retained and the applicable duration of retention. This is maintained by the EquiLend CCO and ensures that EquiLend remains in compliance with all relevant regulatory requirements, which include SEC and FINRA rules. EquiLend has implemented a policy, which outlines its regulatory requirements under all applicable laws, regulations and rules, including, as applicable, under Exchange Act Rules 15c3-1, 17a-3 17a-4, 17a-5, 17a-8, 17a-11, 17f-2, Regulation ATS, FINRA Rules 1250, 2210, 2111, 2232, 3010, 3110, 3170, 3270, 3280, 3310 4511, 4512, 4513, 4515, 4517, 4530, MSRB Rules G-5, G-7, G-9, G-10, G-20, G-27 G-37 and CFR 1023.100 to 1023.670.
- 9.1.3 Regulation ATS, SEC Rules 17a-3 and 17a-4, and FINRA Rule 4511 – *General Requirements* set forth record keeping requirements that detail the types of information that must be retained by broker-dealers, as well as the duration for which these records must be maintained. The types of information include business records and other records, including, but not limited to, those subscribers who have been granted access to EquiLend, daily trading summaries, and records of each order. The SEC and FINRA have mechanisms in place to ensure that the information necessary to conduct adequate surveillance of ATSS for supervisory and enforcement purposes is available to the U.S. Regulators on a timely basis.
- 9.1.4 The SEC and FINRA conduct periodic compliance reviews and examinations and require that records comply with SEC and FINRA rules and are readily accessible, on an ongoing basis.
- 9.1.5 The record preservation requirements for ATSS are set forth in Rule 303 of Regulation ATS and SEC Rule 17a-4. These rules and regulations establish the time period, which varies depending on the record being retained, for which certain books and records are to be retained and preserved.
- 10. Outsourcing**
- 10.1 Outsourcing – Where the ATS has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations, and that are in accordance with industry best practices.**
- 10.1.1 Consistent with local jurisdiction regulatory and licensing requirements, as applicable, EquiLend will outsource certain services (listed below) related to operation of the NGT Platform to other entities.
- 10.1.2 There are administrative services agreements between EquiLend Holdings and the Subsidiaries that describe services rendered and the cost associated with these services. Administrative and technology services provided by EquiLend Holdings include, but are not limited to, infrastructure system administration and maintenance, data management, payroll and human resources services and legal and regulatory compliance services.
- 10.1.3 The NGT Platform is hosted on infrastructure managed by EquiLend staff with server and storage functionality hosted within a facility managed by a third-party vendor. The third-party vendor does not have logical access to EquiLend devices or data, which is directly managed and controlled by EquiLend. The third-party vendor provides EquiLend with space, power, interconnectivity and cooling within a SOC2 Type 2 certified secure facility. EquiLend has chosen to co-locate in facilities with direct access to market participants in order to support private network connectivity.
- 10.1.4 Market data vendors provide securities reference data and securities pricing services pursuant to formal market data agreements.
- 10.1.5 Pursuant to FINRA Rule 3110, each broker-dealer must establish, maintain, and enforce written policies and procedures to supervise the activities of its registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws, regulations and rules, including with applicable FINRA rules.
- 10.1.6 If a broker-dealer, as part of its business structure, outsources certain covered activities (e.g., data center services), the broker-dealer's supervisory system and written supervisory policies and procedures must include procedures regarding its outsourcing practices to ensure compliance with applicable securities laws, regulations and rules, including applicable FINRA rules. The broker-dealer's policies and procedures should include, without limitation, a due diligence analysis of all of its current or prospective third-party service providers to determine whether they are capable of performing the outsourced activities. In addition, when a broker-dealer outsources covered activities to a third-party, the broker-dealer has a continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities. This requires the broker-dealer to have in place specific policies and procedures that will monitor the service providers' compliance with the terms of any agreements and assess the service provider's continued fitness and ability to perform the covered activities being outsourced.
- 10.1.7 EquiLend satisfies the foregoing regulatory requirements as outlined in several of EquiLend's written supervisory policies and procedures, including both technical, non-technical and regulatory policies and procedures, created to ensure

compliance with applicable regulations. As required under FINRA Rule 3110, EquiLend has implemented policies⁶ and procedures in connection with its use of third-party services providers. When entering into an outsourcing agreement, EquiLend's policies require that EquiLend has a written contract with the service provider that includes the expectations of EquiLend and the other party to the services agreement. EquiLend is required to follow prudent business practices and conduct a due diligence analysis of prospective service providers, including an assessment of its reputation, financial stability, capability to deliver the services and have adequate confidentiality safeguards. On an ongoing basis, but at least annually, EquiLend reviews certain third-party service providers to determine the quality of services provided, whether such third-party service providers are providing the services in a satisfactory manner consistent with the requirements outlined in such third-party service provider's contract.

11. Fees

11.1 Fees – The ATS's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the ATS on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criterion that the ATS has sufficient revenues to satisfy its responsibilities.

11.1.1 All fees imposed by the ATS are reasonable and equitably allocated and do not have the effect of creating barriers to access and are balanced with the criterion that the ATS has sufficient revenues to satisfy its responsibilities.

12. Information Sharing And Oversight Arrangements

12.1 Information sharing and regulatory cooperation – The ATS has mechanisms in place to enable it to share information and otherwise co-operate with the securities regulatory authorities in the Jurisdictions, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

12.1.1 The CCO of EquiLend undertakes to notify staff of the securities regulators in each of the Jurisdictions promptly if any of the representations made in connection with or related to this Application cease to be true or correct in any material respect, or become incomplete or misleading.

12.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the securities regulatory authorities in the Jurisdictions and the Foreign Regulator.

12.2.1 The SEC and the securities regulatory authorities in the Jurisdictions are parties to a MoU related to securities market oversight and enforcement, which is available at:

https://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf

In addition, the AMF and the OSC are parties to a MoU with FINRA related to securities market oversight and enforcement, which is available at:

https://www.finra.org/sites/default/files/MoU_FINRA_QAMF_061015.pdf (AMF), and

<https://www.finra.org/sites/default/files/Industry/p125113.pdf> (OSC).

PART III SUBMISSIONS BY EQUILEND

1. Submissions Concerning the ATS Relief

1.1 EquiLend is regulated and operates in the U.S. as an ATS and, therefore, may be considered an "alternative trading system" as defined in section 1.1 of NI 21-101. EquiLend is prohibited from carrying on business in the Jurisdictions unless it (a) is registered as a dealer, (b) is a member of a self-regulatory entity and (c) complies with the provisions of the Marketplace Rules. EquiLend seeks to provide Canadian Subscribers that enter into SFTs (securities borrowing and lending transactions in respect of equities and fixed income products) with access to communicate potential SFTs on the NGT Platform and, therefore, may be considered to be engaging in the business of "trading" in the Jurisdictions. EquiLend is not registered as an investment dealer with the ATS Relief Decision Makers in the Jurisdictions, is not a member of any Canadian self-regulatory entity (e.g., IIROC) and is not approved to carry on business as an ATS in the Jurisdictions. EquiLend currently relies on the "international dealer exemption" under section 8.18 of NI 31-103 in Ontario and Québec.

1.2 EquiLend is registered with the SEC as a broker-dealer and an ATS and is a member of FINRA, a SRO in the U.S. with a mandate similar to that of IIROC in Canada. EquiLend satisfies all of the criteria for registration with the SEC as a broker-dealer, continues to satisfy the requirements under Regulation ATS and is a member in good standing of FINRA.

⁶ For additional information with respect to broker-dealer obligations with respect to third-party service providers, please see *Notice to Members 05-48 - Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers*, available at <https://www.finra.org/rules-guidance/notices/05-48>.

As described in “Part II - Application of Approval Criteria to the Alternative Trading System”, above, EquiLend is subject to a substantially similar regulatory regime in the U.S. to that in Canada.

- 1.3 In CSA Notice 21-328, CSA Staff provide an exemption model where foreign ATSS may be permitted to offer direct access to Canadian participants without having to establish a Canada-based affiliate, provided they meet certain terms and conditions, including a requirement that they comply with the applicable regulations in their home jurisdiction. In CSA Notice 21-328, CSA Staff state that to offer direct access to Canadian participants, a foreign ATS would need to apply for an exemption from the Marketplace Rules and provide details of the application process, exemption criteria, and sample terms and conditions that may be included in a foreign ATS’s exemption order. A foreign ATS may be exempt from the Marketplace Rules provided that certain conditions of the CSA’s proposed exemption and regulatory framework are met, including maintaining regulatory compliance in its home jurisdiction, providing the CSA with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model. Although the proposed exemption would grant foreign ATSS relief from the Marketplace Rules, depending on their model of operations, foreign ATSS or their participants may, as discussed below, still be subject to the dealer registration requirements under applicable securities legislation for engaging in the business of trading.
- 1.4 EquiLend submits that it satisfies the criteria in the exemption model for foreign ATSS to offer direct access to Canadian participants without having to establish a Canada-based affiliate, as set out in CSA Notice 21-328. EquiLend has submitted this Application for an exemption from the Marketplace Rules and has provided details demonstrating how it meets the CSA’s criteria set out in CSA Notice 21-328, including maintaining regulatory compliance in its home jurisdiction, providing the ATS Relief Decision Makers with ongoing information about its operations and trading activity in Canada and ensuring that there is sufficient transparency for participants of the regulatory structure, specifically the substitute compliance model.
- 1.5 Under section 6.2 of NI 21-101, registration exemptions are denied for marketplaces. However, CSA Notice 21-328 does not purport to alter the registration regime for marketplaces as demonstrated in the following statement:

“We note that although the proposed exemption would grant foreign ATSS relief from the Marketplace Rules, depending on their model of operations, foreign ATSS or their participants may still be subject to registration under applicable securities legislation. Foreign ATSS may trigger registration requirements under applicable Canadian securities laws because they may engage in the business of trading. A common exemption available in these cases would be the International Dealer Exemption (IDE). The IDE may be available where the foreign ATS offers trading in foreign securities. Foreign ATSS should consider the registration requirement and available exemptions when determining which securities to offer for trading.

In the case of participants on foreign ATSS, they may also need to be registered where they are dealing with Canadian participants. For example, in the case of a request-for-quote system that results in agreements to trade where a foreign participant is interacting directly with Canadian participants, the foreign participant may need to be registered as a dealer or rely on a registration exemption.” (emphasis added)
- 1.6 By its terms, CSA Notice 21-328 was designed for foreign ATS platforms trading non-Canadian fixed income products. The *ICE Bonds Securities Corporation*⁷ and *Trumid Financial, LLC*⁸ exemption orders have each involved platforms trading non-Canadian fixed income instruments.
- 1.7 However, the GLMX order⁹ has further expanded the exemption framework by permitting trading in SFTs involving “Canadian Government Securities”, defined as all debt instruments denominated in Canadian dollars and issued domestically by the Government of Canada or provincial governments or municipalities, as an incidental part of its business which will constitute less than 10% measured by total GLMX volume for the last twelve (12) months. Similar to the case of GLMX, EquiLend will not be trading outright in “foreign securities”, but enables NGT Platform communication functionality involving potential SFTs referencing securities that go beyond the foreign security category. EquiLend’s model of operations for SFTs will accommodate communications in both “foreign securities” and Canadian Securities, where any communicated Canadian Securities will comprise less than 10% of attributed global NGT Platform volume, notional value and revenue, as calculated on an annualized twelve (12) month basis.
- 1.8 EquiLend currently offers, and intends in the future to offer to Canadian Subscribers located in the Jurisdictions, potential SFT communication capabilities on the NGT Platform referencing Canadian Securities, as an incidental part of its business, which will constitute less than 10% of attributed global NGT Platform volume, notional value and revenue, as calculated on an annualized twelve (12) month basis. This will allow EquiLend to conduct potential SFT communication

⁷ Re *ICE Bonds Securities Corporation*, 2020 ABASC 95, which is available at <https://www.asc.ca/-/media/ASC-Documents-part-1/Exemption-Orders/2020/06/ICE-Bonds-Securities-Corporation-Creditex-Decision.ashx>.

⁸ In the Matter of *Trumid Financial, LLC* (2021), 44 OSCB 1724, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/trumid-financial-llc-0>.

⁹ *Supra*, footnote 1.

capabilities on the NGT Platform in a manner that is similar to EquiLend Canada, subject to the 10% cap on SFTs referencing Canadian Securities.

- 1.9 EquiLend has determined that where it may be subject to dealer registration under applicable Canadian securities legislation with respect to “foreign securities” as defined in subsection 8.18(1) of NI 31-103, EquiLend will rely on the “international dealer exemption” under section 8.18 of NI 31-103 in the Jurisdictions and, observe the volume/value/revenue ceiling for (a) the “specified debt exemption” under subsection 8.21(2)(a) of NI 31-103 for federal or provincial government debt securities, and (b) the “trades through or to a registered dealer exemption” under section 8.5 of NI 31-103 for corporate debt securities.
- 1.10 The robust U.S. regulatory regime governing ATSS provides adequate investor protection and oversight and supervision of EquiLend. It is appropriate for EquiLend to rely on the regulatory regime in the U.S. as a substitute for the regulatory regime in Canada, as the oversight, supervision and regulatory requirements are sufficiently similar to that of the Canadian regulatory regime applicable to ATSS.
- 1.11 By complying with the regulatory regime applicable to ATSS in the U.S., EquiLend considers that it will be complying with the substantially similar requirements of the Canadian regulatory regime applicable to ATSS. Access to the NGT Platform will be limited to Canadian Subscribers who must meet EquiLend’s eligibility criteria. Before being provided direct access to the NGT Platform, EquiLend will confirm that each Canadian Subscriber is a “permitted client” as that term is defined in NI 31-103. A Canadian Subscriber will be required to confirm that it continues to satisfy the eligibility criteria for access to the NGT Platform on an ongoing basis.
- 1.12 Canadian Subscribers that engage in SFTs would benefit from the ability to trade on the NGT Platform, as they would have access to a range of non-Canadian fixed income and equity securities, including as collateral, which is not currently widely available in the Jurisdictions. EquiLend would offer subscribers resident in the Jurisdictions a transparent, efficient market to engage in negotiation of potential SFTs. EquiLend uses sophisticated information systems and has adopted rules and compliance functions that will ensure that Canadian Subscribers are adequately protected. EquiLend therefore submits that it would not be prejudicial to the public interest to grant the Requested Relief.
- 1.13 In Canada, an ATS can only execute trades in “exchange-traded securities”, “corporate debt securities”, “government debt securities”, or “foreign exchange-traded securities”, as defined in section 1.1 of NI 21-101. EquiLend wishes to accommodate negotiation of securities and potential SFT transactions in categories of securities broader than this and CSA Notice 21-328 seems well-adapted to permitting this objective for foreign ATSS, and this result is therefore not at odds with the basic objectives of NI 21-101 insofar as SFT platforms are concerned.
- 1.14 In the U.S., EquiLend is not subject to pre-trade or post-trade transparency requirements. In Canada, pre-trade transparency requirements are not applicable to EquiLend pursuant to sections 7.1 and 8.1 of NI 21-101 because orders capable of acceptance in foreign exchange-traded securities and exchange-traded securities and debt securities will not be displayed on the NGT Platform as there is no cash trading, execution, clearance or settlement in these instruments on the NGT Platform.
- 1.15 The Canadian rules as to post-trade transparency are somewhat different than in the U.S. where no such rules apply to SFTs. Section 7.4 of NI 21-101 imposes post-trade transparency requirements for exchange-traded securities and foreign exchange-traded securities and subsection 8.2(3) of NI 21-101 imposes post-trade transparency requirements for government debt securities and corporate debt securities. We respectfully submit that these provisions were not drafted with SFTs in mind.
- 1.16 SFTs do not need, and cannot accommodate, the same level of transparency as a marketplace in which outright cash trading, execution, clearing and settlement in fixed income and equity instruments occur. SFTs are uniquely driven by credit risk determinations with respect to the borrower. For this reason, if CSA Notice 21-328 were not relied upon, exemptive relief from transparency requirements would likely have been granted in Canada following the *EquiLend Canada* decision¹⁰. This would make the resulting Canadian regulatory approach consistent with the one in the U.S. and should not therefore be a basis for denying the exemption sought.

PART IV FEES

1. Fees

- 1.1 Filing fees have been paid or are in the process of being paid to the ATS Relief Decision Makers in the Jurisdictions.

¹⁰ *In the Matter of EquiLend Canada* (2020), 43 OSCB 408, which is available at <https://www.osc.ca/en/securities-law/orders-rulings-decisions/equilend-canada-corp>.

PART IV OTHER MATTERS

1. Other Matters

1.1 In connection with this Application we enclose:

- (a) Appendix A – Draft Decision, and
- (b) Appendix B – *Authorization and Verification Statement* of the EquiLend, authorizing us to file this Application and confirming the truth of the facts contained herein.

1.2 Should you have any questions regarding this Application, please contact me at the number or email above with any questions regarding this Application.

Yours very truly,

(signed) “Terence Doherty”

Terence Doherty
Osler, Hoskin & Harcourt LLP

cc:

Paul Nigrelli, Chief Financial Officer & Chief Compliance Officer, *EquiLend LLC*
Ralph Hipsher, Associate Director, *EquiLend LLC*
Gawain Chan, *Osler, Hoskin & Harcourt LLP*
Sheri Wang, *Osler, Hoskin & Harcourt LLP*

Enclosures

APPENDIX B

DRAFT DECISION

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO,
QUEBEC
AND
NOVA SCOTIA
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
EQUILEND, LLC
(the Filer)

DECISION

(Section 15.1 of NI 21-101 and section 12.1 of NI 23-101 and section 10 of NI 23-103)

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be:

- (a) exempt pursuant to subsection 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;
- (b) exempt pursuant to subsection 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole;
- (c) exempt pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) from NI 23-103 in whole

(the relief mentioned in paragraphs (a) to (c) being collectively referred to herein as the **Exemptive Relief Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a private limited liability company incorporated under the laws of the State of Delaware in the United States of America (**U.S.**), whose head office is located at 225 Liberty Street, 10th Floor, Suite 1020, New York, New York, 10281, U.S.
2. The Filer is a direct wholly-owned subsidiary of EquiLend Holdings LLC (**EquiLend Holdings**). EquiLend Holdings is a holding company for various EquiLend entities, including the Filer and EquiLend Canada Corp. (**EquiLend Canada**).

3. The Filer was formed in October 2001. It is registered as an alternative trading system (**ATS**) and a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) pursuant to section 15 of the U.S. *Securities Exchange Act of 1934*, as amended, (the **Exchange Act**). The Filer is also a member of the Financial Industry Regulatory Authority (**FINRA**) and the Securities Investor Protection Corporation. The Filer operates one (1) ATS that is registered with the SEC.
4. The Filer is subject to a comprehensive regulatory regime in the U.S. The Filer is registered with and regulated by the SEC and FINRA as a broker-dealer and an ATS. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.
5. The Filer operates an electronic negotiation platform (the **NGT Platform**) that facilitates the negotiation of potential securities borrow and loan transactions in equities and fixed income securities, which fit into the broader category of securities financing transactions (**SFTs**) by providing secure access and connectivity between potential borrowers and lenders through a private network or the internet. All SFTs communicated through the NGT Platform are “potential SFTs” as the counterparties to a potential SFT must migrate off of the NGT Platform to complete or reject the prospective transaction under their respective bilateral or global securities lending agreements.
6. There is no obligation on the part of any counterparty to a potential SFT to ultimately settle the prospective transaction under the terms by which the potential SFT was communicated and matched on the NGT Platform. Rather, the counterparties may ultimately settle the prospective transaction in the over-the-counter market under those terms or the counterparties may cancel the prospective transaction after migrating off of the NGT Platform.
7. The Filer is informed of the ultimate status of the prospective transaction (i.e., whether the counterparties settle the prospective transaction under the terms through which it was communicated and matched on the NGT Platform or cancel the prospective transaction) through a feedback function in which the counterparties report back to the Filer on the status of the potential SFT after they have migrated off of the NGT Platform.
8. The NGT Platform is operated through EquiLend Holdings and its subsidiaries (the **Subsidiaries**), including the Filer, each which are separately regulated, registered or are otherwise exempt from registration in their respective jurisdictions, including the U.S., Canada, the United Kingdom, the Republic of Ireland and the European Union, Australia, Hong Kong and certain other jurisdictions in Asia.
9. EquiLend Canada operates the NGT Platform in Canada. EquiLend Canada is registered as an investment dealer in Ontario and Québec and is also a member of the Canadian Investment Regulatory Organization (**CIRO**) for the purposes of operating as an ATS in Ontario and Québec.
10. The NGT Platform facilitates the negotiation of potential SFTs in equities and fixed income securities.
11. The securities exchanged in the potential SFTs communicated and matched on the NGT Platform are as follows:
 - (a) “foreign exchange traded securities” within the meaning of NI 21-101;
 - (b) non-Canadian debt securities, including:
 - (i) high-grade and high-yield U.S. corporate bonds;
 - (ii) U.S. Government-sponsored agency bonds;
 - (iii) U.S. Government debt securities (e.g., Treasury Bonds, Treasury Notes, etc.);
 - (iv) emerging market bonds, which are defined as U.S. dollar or Euro-denominated bonds issued by sovereign entities or corporations domiciled in a developing country, including both high grade and non-investment grade debt;
 - (v) European high-grade and high-yield corporate bonds, which are defined as corporate bonds issued by entities domiciled in Europe; and
 - (vi) non-U.S. sovereign government bonds (e.g., UK gilts or German bundesbonds).
12. In addition, the Filer currently enables NGT Platform communication functionality involving potential SFTs referencing “exchange-traded securities”, “corporate debt securities” and “government debt securities” (collectively, **Canadian Securities**) with counterparties outside of Canada, and intends in the future to enable NGT Platform communication functionality involving potential SFTs referencing such securities with Canadian subscribers located in the Jurisdictions, each within the meaning of NI 21-101, as an incidental part of its business, which will constitute less than 10% of global NGT Platform attributed volume as measured across each twelve (12) month calendar year cycle.

13. The Filer does not have any offices or maintain other physical installations in Nova Scotia, Ontario, Québec or any other Canadian province or territory except for an office in Toronto, Ontario whose activities are limited to sales and marketing.
14. Prior to getting access to the NGT Platform, a subscriber (customer) must sign an EquiLend Global User Agreement (**User Agreement**) with the Filer that covers, among other things, obligations of the subscriber, and termination events.
15. The subscriber identifies to the Filer by name an authorized Administrator, who then permissions each employee or contractor of the subscriber to use the NGT Platform (**Named Users**). The Named Users are the only individuals within the subscriber licensed to access and use the NGT Platform.
16. Once a potential SFT is mutually agreed and completed outside the NGT Platform by the counterparties, and the Filer is informed of the completion by the counterparties through the Filer's feedback function, the NGT Platform will send trade details to the parties of the transaction via a pre-approved method (e.g., email). Subscribers, independently and in advance, notify the Filer that they are properly documented with and able to trade with specific counterparties prior to engaging in transactions with that counterparty. The Filer is not a party to the potential SFT and is not otherwise directly or indirectly involved in the execution, clearing or settlement of any potential SFT communicated on the NGT Platform.
17. The Filer proposes to offer direct access to the NGT Platform to prospective subscribers in the Jurisdictions (**Canadian Subscribers**) to facilitate transactions in potential SFTs. Access to the NGT Platform will be limited to Canadian Subscribers who meet the Filer's eligibility criteria. Subscribers generally fall into the following categories: "qualified institutional buyers", as such term is defined in Rule 144A under the U.S. *Securities Act of 1933*, as amended, "eligible contract participants", as such term is defined in Section 1a(18) of the U.S. *Commodity Exchange Act of 1936*, as amended; large multi-national banks; insurance companies; registered investment companies / investment funds; registered broker-dealers / investment dealers; derivatives dealers; and/or any other person (whether a corporation, partnership, trust or otherwise) with total assets of at least U.S.\$50 million which can include pension funds and hedge funds.
18. Before being provided direct access to the NGT Platform, the Filer will confirm that each Canadian Subscriber is a non-individual "permitted client" as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. Retail customers and natural persons will not be provided with access to the NGT Platform.
19. After a Canadian Subscriber demonstrates that it satisfies the eligibility criteria, the Canadian Subscriber must execute the User Agreement in which the prospective Canadian Subscriber represents to the Filer that the Canadian Subscriber's conduct of potential SFTs is subject to a level of regulation and oversight under applicable securities, banking or other appropriate laws that impose upon the Canadian Subscriber a combination of requirements such as audits, public disclosure of financial information, capital rules, collateral requirements, record keeping requirements or other similar safeguards, and agrees to use the NGT Platform and the related user documentation only in the ordinary course of its own business for its own internal use and be and remain at all times a non-individual "permitted client" as defined in NI 31-103.
20. Under the User Agreement, a Canadian Subscriber and its affiliates constitute a "Subscriber Group". The Subscriber Group will authorize Named Users, who are the only persons authorized to use the NGT Platform. The Subscriber Group's right to use the NGT Platform is conditioned upon the Subscriber Group obtaining and maintaining all government, legal and regulatory approvals, consents, authorizations, registrations, permits and licenses required for the conduct of its activities and its use of the NGT Platform, and using the NGT Platform only in compliance with applicable law.
21. The Filer has determined that it may be subject to dealer registration under applicable Canadian securities legislation and so it proposes to rely on the "international dealer exemption" under section 8.18 of NI 31-103 in the Jurisdictions and, subject to observing the volume ceiling in paragraph 10 above, on the "specified debt" exemption under section 8.21 of NI 31-103 and the "trades through or to a registered dealer" exemption under section 8.5 of NI 31-103.
22. The Filer will ensure that all applicants who become Canadian Subscribers satisfy the Filer's eligibility criteria, including, among other things, that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103.
23. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

B.11: CIRO, Marketplaces, Clearing Agencies and Trade Repositories

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that

- (a) in the case of the registration requirements that may otherwise apply to the Filer in connection with the trading of Canadian Securities, the Filer
 - (i) does not execute trades in Canadian Securities with or for its clients, except as permitted under applicable securities laws, and
 - (ii) complies with the conditions of the international dealer exemption in section 8.18 of NI 31-103 as if such securities were “foreign securities” as defined in section 8.18 of NI 31-103; and
- (b) the Filer complies with the terms and conditions attached hereto as Schedule A.

“●”

Director, Market Regulation
Ontario Securities Commission

SCHEDULE A

Terms and Conditions

Regulation and Oversight of the Marketplace

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;
2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;
3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a non-individual "permitted client" as that term is defined in NI 31-103;
5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as non-individual "permitted clients";
6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the NGT Platform;

Trading by Canadian Subscribers

7. The Filer will only offer potential SFTs (securities borrow and loan transactions) to Canadian Subscribers and in that context use only the collateral listed in accordance with representation numbers 11 to 12 of this Decision;
8. Potential SFTs communicated on the NGT Platform by Canadian Subscribers will be executed, cleared and settled outside the NGT Platform, by subscribers and without any direct facilitation or involvement on the part of the Filer;
9. The Filer will only permit Canadian Subscribers to communicate potential SFTs in securities that are permitted to be traded in the United States under applicable securities laws and regulations;

Reporting

10. The Filer will promptly notify staff of the Decision Makers of any of the following:
 - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
 - (i) changes to its regulatory oversight;
 - (ii) the access model, including eligibility criteria, for Canadian Subscribers;
 - (iii) systems and technology; and
 - (iv) its clearing and settlement arrangements;
 - (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction relevant to the products traded;
 - (c) any known investigations of, or regulatory action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;
 - (d) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
 - (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the NGT Platform, the Filer or any Canadian Subscriber;
11. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within thirty (30) days of the end of each six (6) month period), and at any time promptly upon the request of staff of the Decision Makers:

- (a) a current list of all Canadian Subscribers, presented on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access to the NGT Platform;
- (b) a list of all Canadian applicants for status as a Canadian Subscriber, presented on a per provincial basis, who were denied such status or access or who had such status or access revoked during the period;
 - (i) for those Canadian applicants for status as a Canadian Subscriber that were denied access, an explanation as to why access was denied;
 - (ii) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
- (c) for each product:
 - (i) the total volume and value of SFTs communicated and matched on the NGT Platform as originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis;
 - (ii) the proportion of worldwide volume and value of SFTs communicated and matched on the NGT Platform as conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers;
 - (iii) the volume and value of SFTs in Canadian Securities (as defined in representation 12 of this Decision) communicated and matched on the NGT Platform, and proportion of volume in such Canadian Securities relative to the total volume communicated and matched on the NGT Platform for the six (6) month period, calculated in a manner acceptable to the Decision Makers; and
- (d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the NGT Platform which were reported to the regulator in the home jurisdiction;

Disclosure

12. The Filer will provide to its Canadian Subscribers disclosure that states that:
- (a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
 - (b) the rules applicable to trading on the NGT Platform may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
 - (c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;
14. The Filer will file with the Decision Makers a valid and binding appointment of Osler, Hoskin & Harcourt LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the NGT Platform or the Filer's activities in Canada; and

Information Sharing

15. The Filer must, and must cause its affiliated entities, if any, to promptly provide to the Decision Makers, on request, any and all data, information, and analyses in the custody or control of the Filer or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:
- (a) data, information, and analyses relating to all of its or their businesses; and
 - (b) data, information, and analyses of third parties in its or their custody or control; and

B.11: CISO, Marketplaces, Clearing Agencies and Trade Repositories

16. The Filer must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, investor protection funds and other appropriate legal and regulatory bodies.