The Ontario Securities Commission

OSC Bulletin

October 17, 2008

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Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

OCTOBER 17, 2008

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
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Carol S. Perry	—	CSP
Suresh Thakrar, FIBC	—	ST
Wendell S. Wigle, Q.C.	—	WSW

SCHEDULED OSC HEARINGS

October 21, 2008 10:00 a.m.	**Xi Biofuels Inc., Biomaxx Systems Inc., Ronald David Crowe and Vernon P. Smith** and **Xiiva Holdings Inc. carrying on Business as Xiiva Holdings Inc., Xi Energy Company, Xi Energy and Xi Biofuels** s. 127 M. Vaillancourt in attendance for Staff Panel: PJL/WSW/DLK
October 23, 2008 10:00 a.m.	**New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar, Paola Lombardi and Alan S. Price** s. 127 S. Kushneryk in attendance for Staff Panel: WSW/ST
October 27, 2008 10:00 a.m.	**Norshield Asset Management (Canada) Ltd., Olympus United Group Inc., John Xanthoudakis, Dale Smith and Peter Kefalas** s.127 P. Foy in attendance for Staff Panel: WSW/DLK
October 27, 2008 10:00 a.m.	**Adrian Samuel Leemhuis, Future Growth Group Inc., Future Growth Fund Limited, Future Growth Global Fund limited, Future Growth Market Neutral Fund Limited, Future Growth World Fund and ASL Direct Inc.** s. 127(5) K. Daniels in attendance for Staff Panel: ST/MCH

October 28, 2008 2:30 p.m.	**Goldbridge Financial Inc., Wesley Wa Weber and Shawn C. Lesperance** s. 127 J. Feasby in attendance for Staff Panel: TBA
November 3, 2008 10:00 a.m.	**Rene Pardo, Gary Usling, Lewis Taylor Sr., Lewis Taylor Jr., Jared Taylor, Colin Taylor and 1248136 Ontario Limited** s. 127 M. Britton/M. Boswell in attendance for Staff Panel: LER/ST
November 11, 2008 2:30 p.m.	**LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia** s. 127 M. Britton in attendance for Staff Panel: LER/ST
November 19, 2008 10:00 a.m.	**Sunwide Finance Inc., Sun Wide Group, Sun Wide Group Financial Insurers & Underwriters, Bryan Bowles, Robert Drury, Steven Johnson, Frank R. Kaplan, Rafael Pangilinan, Lorenzo Marcos D. Romero and George Sutton** s. 127 C. Price in attendance for Staff Panel: JEAT/CSP
November 25, 2008 2:30 p.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman** s. 127(7) and 127(8) M. Boswell in attendance for Staff Panel: DLK/CSP
November 27, 2008 2:00 p.m.	**Global Partners Capital, Asia Pacific Energy Inc., 1666475 Ontario Inc. operating as "Asian Pacific Energy", Alex Pidgeon, Kit Ching Pan also known as Christine Pan, Hau Wai Cheung, also known as Peter Cheung, Tony Cheung, Mike Davidson, or Peter McDonald, Gurdip Singh Gahunia also known as Michael Gahunia or Shawn Miller, Basis Marcellinius Toussaint also known as Peter Beckford, and Rafique Jiwani also known as Ralph Jay** s.127 M. Boswell in attendance for Staff Panel: DLK/MCH
November 28, 2008 10:00 a.m.	**Goldpoint Resources Corporation, Lino Novielli, Brian Moloney, Evanna Tomeli, Robert Black, Richard Wylie and Jack Anderson** s. 127(1) and 127(5) M. Boswell in attendance for Staff Panel: TBA
December 1, 2008 TBA	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: TBA
December 3, 2008 10:00 a.m.	**Global Energy Group, Ltd. and New Gold Limited Partnerships** s. 127 H. Craig in attendance for Staff Panel: TBA
December 4, 2008 11:00 a.m.	**Shane Suman and Monie Rahman** s. 127 & 127(1) C. Price in attendance for Staff Panel: TBA

December 8, 2008 10:00 a.m.	**John Illidge, Patricia McLean, David Cathcart, Stafford Kelley and Devendranauth Misir** S. 127 and 127.1 I. Smith in attendance for Staff Panel: WSW/CSP/DLK
December 9, 2008 2:30 p.m.	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s.127 H. Craig in attendance for Staff Panel: ST/MCH
January 5, 2009 TBA	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 M. Mackewn in attendance for Staff Panel: TBA
January 12, 2009 10:00 a.m.	**Franklin Danny White, Naveed Ahmad Qureshi, WNBC The World Network Business Club Ltd., MMCL Mind Management Consulting, Capital Reserve Financial Group, and Capital Investments of America** s. 127 C. Price in attendance for Staff Panel: TBA
January 26, 2009 10:00 a.m.	**Darren Delage** s. 127 M. Adams in attendance for Staff Panel: TBA
February 2, 2009 10:00 a.m.	**Biovail Corporation, Eugene N. Melnyk, Brian H. Crombie, John R. Miszuk and Kenneth G. Howling** s. 127(1) and 127.1 J. Superina/A. Clark in attendance for Staff Panel: TBA
February 9, 2009 10:00 a.m.	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 & 127(1) D. Ferris in attendance for Staff Panel: TBA
March 23, 2009 10:00 a.m.	**Imagin Diagnostic Centres Inc., Patrick J. Rooney, Cynthia Jordan, Allan McCaffrey, Michael Shumacher, Christopher Smith, Melvyn Harris and Michael Zelyony** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
April 6, 2009 10:00 a.m.	**Gregory Galanis** s. 127 P. Foy in attendance for Staff Panel: TBA
April 13, 2009 10:00 a.m.	**Matthew Scott Sinclair** s.127 P. Foy in attendance for Staff Panel: TBA
April 20, 2009 10:00 a.m.	**Al-Tar Energy Corp., Alberta Energy Corp., Drago Gold Corp., David C. Campbell, Abel Da Silva, Eric F. O'Brien and Julian M. Sylvester** s. 127 S. Horgan in attendance for Staff Panel: TBA

May 4, 2009 10:00 a.m.	**Borealis International Inc., Synergy Group (2000) Inc., Integrated Business Concepts Inc., Canavista Corporate Services Inc., Canavista Financial Center Inc., Shane Smith, Andrew Lloyd, Paul Lloyd, Vince Villanti, Larry Haliday, Jean Breau, Joy Statham, David Prentice, Len Zielke, John Stephan, Ray Murphy, Alexander Poole, Derek Grigor and Earl Switenky** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: TBA
September 21, 2009 10:00 a.m.	**Swift Trade Inc. and Peter Beck** s. 127 S. Horgan in attendance for Staff Panel: TBA
November 16, 2009 10:00 a.m.	**Sulja Bros. Building Supplies, Ltd. (Nevada), Sulja Bros. Building Supplies Ltd., Kore International Management Inc., Petar Vucicevich and Andrew DeVries** s. 127 & 127.1 M. Britton in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s.127 K. Daniels in attendance for Staff Panel: TBA
TBA	**Peter Sabourin, W. Jeffrey Haver, Greg Irwin, Patrick Keaveney, Shane Smith, Andrew Lloyd, Sandra Delahaye, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A.** s. 127 and 127.1 Y. Chisholm in attendance for Staff Panel: JEAT/DLK/CSP
TBA	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s.127 and 127.1 D. Ferris in attendance for Staff Panel: TBA
TBA	**Robert Kasner** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**First Global Ventures, S.A., Allen Grossman and Alan Marsh Shuman** s. 127 D. Ferris in attendance for Staff Panel: WSW/ST/MCH

TBA **Merax Resource Management Ltd. carrying on business as Crown Capital Partners, Richard Mellon and Alex Elin**

s. 127

H. Craig in attendance for Staff

Panel: JEAT/MC/ST

TBA **Roger D. Rowan, Watt Carmichael Inc., Harry J. Carmichael and G. Michael McKenney**

s. 127

J. Superina in attendance for Staff

Panel: PJL/ST/DLK

TBA **Limelight Entertainment Inc., Carlos A. Da Silva, David C. Campbell, Jacob Moore and Joseph Daniels**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: JEAT/ST

TBA **Rodney International, Choeun Chhean (also known as Paulette C. Chhean) and Michael A. Gittens (also known as Alexander M. Gittens)**

s. 127

M. Britton in attendance for Staff

Panel: WSW/ST

TBA **Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson**

s.127

J. Superina in attendance for Staff

Panel: LER/MCH

TBA **Irwin Boock, Svetlana Kouznetsova, Victoria Gerber, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**

s. 127(1) & (5)

P. Foy in attendance for Staff

Panel: JEAT/ST

TBA **Stanton De Freitas**

s. 127 and 127.1

P. Foy in attendance for Staff

Panel: JEAT/ST

TBA **David Watson, Nathan Rogers, Amy Giles, John Sparrow, Leasesmart, Inc., Advanced Growing Systems, Inc., The Bighub.com, Inc., Pharm Control Ltd., Universal Seismic Associates Inc., Pocketop Corporation, Asia Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, Nutrione Corporation and Select American Transfer Co.**

s. 127 and 127.1

P. Foy in attendance for Staff

Panel: JEAT/ST

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

Andrew Keith Lech

S. B. McLaughlin

Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein, Robert Topol

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow

ADJOURNED SINE DIE

Euston Capital Corporation and George Schwartz

Al-Tar Energy Corp., Alberta Energy Corp., Eric O'Brien, Bill Daniels, Bill Jakes, John Andrews, Julian Sylvester, Michael N. Whale, James S. Lushington, Ian W. Small, Tim Burton and Jim Hennesy

Global Partners Capital, WS Net Solution, Inc., Hau Wai Cheung, Christine Pan, Gurdip Singh Gahunia

1.1.2 Notice of Commission Approval of Memorandum of Understanding with the Autorité des marches financiers regarding Co-ordination and Information Sharing relating to TMX Group Inc., TSX Inc. and Bourse de Montréal Inc.

NOTICE OF COMMISSION APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH THE AUTORITÉ DES MARCHES FINANCIERS REGARDING CO-ORDINATION AND INFORMATION SHARING RELATING TO TMX GROUP INC., TSX INC. AND BOURSE DE MONTRÉAL INC.

The Commission has approved a memorandum of understanding (MOU) between the Commission and the Autorité des marches financiers (AMF). The MOU sets out a process for coordination between the Commission and the AMF in the event that a person or company proposes to own more than 10 percent of TMX Group. The MOU also provides for information sharing relating to the oversight of TMX Group Inc., TSX Inc. and Bourse de Montréal Inc.

The MOU is subject to the approval of the Minister of Finance. The MOU was sent to the Minister on October 8, 2008.

LETTER OF INTENT BETWEEN:

AUTORITÉ DES MARCHÉS FINANCIERS

AND

ONTARIO SECURITIES COMMISSION

REGARDING

CO-ORDINATION AND INFORMATION SHARING RELATING TO TMX GROUP INC., TSX INC. AND BOURSE DE MONTRÉAL INC.

TSX Group Inc., now TMX Group Inc. ("TMX Group"), and Bourse de Montréal Inc. ("Bourse") have combined their organizations resulting in the Bourse becoming a direct subsidiary of TMX Group ("Transaction"), effective May 1, 2008.

Under the "lead regulator" model of oversight of Canadian exchanges, the Ontario Securities Commission ("OSC") has recognized TSX Inc. ("TSX") as an exchange (OSC Recognition Order), and is the lead regulator responsible for the oversight of this entity and the Autorité des marchés financiers ("AMF") has authorized the Bourse as an exchange and recognized it as a self-regulatory organization (AMF Authorization and Recognition Order) and is the lead regulator of the Bourse. Moreover, the OSC has also recognized TMX Group Inc. as an exchange.

Both regulators recognize that this letter has the sole purpose of acknowledging the common intent to cooperate and to assist each other in a timely and co-ordinated response between the OSC and the AMF with regard to an application to own more than 10% of TMX Group and to share information.

PART I – Application to own more than 10% of TMX Group.

Following the Transaction, if a person or company or combination of persons or companies acting jointly or in concert seeks to beneficially own or exercise control or direction over more than 10% of any class or series of voting shares of TMX Group, approval of both the AMF and OSC is required. Approval of the AMF is required pursuant to written undertakings, dated April 9, 2008, given by TMX Group to the AMF, attached as Annexe 1 to AMF Authorization and Recognition Order. Approval of the OSC is required pursuant to section 21.11 of the *Securities Act* (Ontario), as amended by regulation, and an order of the OSC dated September 3, 2002.

Upon the OSC and/or the AMF receiving an application for approval to own more than 10% of TMX Group or any successor ("Application"), the OSC and the AMF will use best efforts to adhere to the following process:

1. The OSC shall promptly notify the Director, SRO Oversight of the AMF in writing of receipt of an Application and shall provide the Director, SRO Oversight of the AMF with any information it receives pertaining to the Application. The AMF shall likewise promptly notify the Manager, Market Regulation of the OSC in writing if it receives an Application and shall provide the Manager, Market Regulation of the OSC with any information it receives pertaining to the Application;

2. If either the OSC or the AMF determines that an Application should be published for comment, the OSC and the AMF will co-ordinate the publication date and the length of the consultation period;

3. AMF and OSC will agree on which entity will act as the "co-ordinating regulator" responsible for the process set out below;

4. Comments to the co-ordinating regulator will be provided in writing within 20 business days of receiving notice of the Application or if a Notice of the Application has been published for comment, 10 business days after the expiry of the comment period;

5. The co-ordinating regulator will send a comment letter on behalf of the OSC and AMF to the filer(s) of the Application within seven business days of receiving comments. In the event that OSC and AMF comments conflict, OSC and AMF will try to reach consensus;

6. Once a response to the initial comment letter from the filer(s) of the Application is received, any additional comments will be provided to the co-ordinating regulator in writing within 10 business days of receipt of the response. If no additional comments are received, the OSC and the AMF will proceed with any necessary approvals;

7. OSC and AMF will discuss and attempt to resolve any concern(s) raised regarding the filer(s)' response, including discussing with the filer(s) if necessary. If these concerns are not resolved to the satisfaction of both OSC and AMF,

the concerns will be escalated to the Chair of the OSC and the President and chief executive officer of the AMF or other OSC and AMF senior executives;

8. OSC and AMF will prepare documentation for approval of the Application within 14 business days of resolving comments under paragraph (6) or (7) and will notify each other once approval is obtained;

9. The co-ordinating regulator will promptly notify the filer(s) of the Application in writing after approval of the Application is granted by each of the OSC and AMF.

PART II – Information Sharing

For as long as the OSC recognizes TSX or TMX Group and for as long as the AMF authorizes and recognizes the Bourse:

1. The OSC will use best efforts to promptly advise the AMF in writing if the OSC:

   a. becomes concerned about the financial viability of TSX or TMX Group;

   b. is advised by TMX Group that it will not allocate sufficient financial and other resources to the Bourse to ensure that the Bourse can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the AMF Authorization and Recognition order;

   c. is advised by TMX Group that it will not allocate sufficient financial and other resources to the TSX to ensure that the TSX can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the OSC Recognition order;

   d. is considering revoking or revokes its recognition of TSX or TMX Group;

   e. becomes aware of an intention of TSX or TMX Group to cease its operations or dispose of all or substantially all of its assets.

2. The AMF will use best efforts to promptly advise the OSC in writing if the AMF:

   a. becomes concerned about the financial viability of the Bourse;

   b. is advised by the Bourse that it will not have sufficient financial and other resources to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of the AMF Authorization and Recognition order;

   c. is considering revoking or revokes its authorization and recognition of the Bourse;

   d. becomes aware of an intention of the Bourse to cease its operations or dispose of all or substantially all of its assets.

In addition, to the extent practicable, as appropriate in the particular circumstances and subject to applicable privacy laws, the OSC and the AMF endeavour to inform each other in advance of:

1. any material events that may have a significant impact on the operations or activities of either the Bourse, TSX or TMX Group; and

2. sanctions that could adversely impact the Bourse, TSX or TMX Group in the other regulator's jurisdiction.

Effective Date:

This letter of intent comes into effect on January 1st, 2009.

AUTORITÉ DES MARCHÉS FINANCIERS

Per:_____

Title:_____

Date:_____

ONTARIO SECURITIES COMMISSION

Per:_____

Title:_____

Date:_____

For purposes of An Act respecting the
Ministère du Conseil exécutif (R.S.Q., c. M-30),
Secrétaire général associé aux affaires intergouvernementales canadiennes

Per:_____

Date:_____

1.1.3 egX Group Inc. and egX Canada Inc. - Notice of Commission Order - Exemption from Recognition

egX GROUP INC. AND egX CANADA INC.

NOTICE OF COMMISSION ORDER
EXEMPTION FROM RECOGNITION

On October 14, 2008, the Commission granted an order exempting egX Group Inc. (egX Group) and egX Canada Inc. (egX Canada) (collectively, egX) from the requirement to be recognized as a stock exchange in Ontario.

egX Canada is recognized as an exchange by the British Columbia Securities Commission in March 2007. egX Group, the parent company of egX Canada, is a reporting issuer in British Columbia and Alberta and is listed on the TSX Venture Exchange.

The Commission published egX's application for the exemption and a draft exemption order for comment on July 11, 2008 at (2008) 31 OSCB 7060. One comment letter was received. A summary of the comments and egX's response follow this notice.

A copy of the exemption order is published in Chapter 2 of this Bulletin.

egX Group Inc. and egX Canada Inc.

RESPONSE TO PUBLIC COMMENTS RECEIVED ON APPLICATION BY EGX CANADA AND EGX GROUP FOR EXEMPTION FROM RECOGNITION

Response to REALpac's Comments

1.	**REALpac's motivation in commenting on the proposed Notice and Request is only to ensure the integrity of real property capital markets in Canada. At the current time, we are not aware of any particular demand from our public company Members for another exchange vehicle, as our Members appear to be adequately served by the TSX-V and the TSX Exchanges. We are not aware of any particular competitive differentiation that the egX Exchange will bring that would have any particular benefit to our Members. Of course, our public real estate Members would be interested in accessing new sources of capital, but it is unclear whether this particular exchange would be able to attract different sources of capital otherwise available to our Members under TSX-V and the TSX.**

We fully endorse REALpac's motivation to ensure the integrity of real property capital markets in Canada. We have developed **egX** Canada to provide a marketplace in which issuers and investors alike can have confidence. The recent turmoil in the markets caused by complex commercial paper structures based on sub-prime mortgage lending practices highlights the importance of full, true and plain disclosure. The Governor of the Bank of Canada remarked earlier this year in a speech to the Toronto Board of Trade that lack of transparency and inadequate disclosure were a cause of current market disruptions.[1] **egX** Canada will offer a transparent marketplace, with listings policies and standards designed to provide meaningful disclosure so that investors can make informed investment decisions, and experienced staff will ensure compliance with those policies and standards.

It may very well be that existing exchanges in Canada can adequately serve the public company Members of REALpac. However, securitization of real estate is a growing trend. No exchange in the world specializes in real estate issuers, despite the trend towards real estate securitization. Investors wishing to invest a portion of their investment portfolio in real estate have limited opportunities to acquire real estate based securities in the current markets, or must avail themselves of capital intensive direct investment in real property. We will offer a dedicated environment, designed to facilitate the securitization of real estate and related products. We will also offer specialized services as outlined in our application.

Technical Commentary

2.1	**The governance structure of the new exchange remains particularly unclear. As no Board Directors are proposed, it is unclear whether the Board Directors will include individuals with public real estate capital markets experience or public exchange experience, lawyers with governance expertise and/or accountants with experience in public real estate entities, all of whom would, in our view, be important to ensure effective oversight in the real estate marketplace.**

Section 2.1(c) of the application states that the additional members to be appointed to the **egX** Canada Board of Directors will be independent within the meaning of National Instrument 52-110 *Audit Committees*, be financially literate and have real estate and/or public exchange experience. The recognition order granted to **egX** Canada by the BCSC on March 14, 2007 (Recognition Order) requires **egX** Canada to ensure that its directors, among others, are fit and proper. Section 2.1(f) of the application sets out the tests we apply to determine that members of the board of **egX** Canada are fit and proper, including having relevant career experience and expertise. One of the current members of the **egX** Canada board, Geir Liland, has significant public exchange experience. Mr. Liland was a Regional Vice-President and held other key positions at the TSX Venture Exchange (formerly CDNX and VSE) and was involved in operations of the exchange from October 1982 to August 2002. Mr. Liland is also an independent director of **egX** Group.

As noted in section 2.1(c) of the application, **egX** Canada plans to have the same independent directors as on the **egX** Group board. Many of the independent directors currently serving on the **egX** Group board have the skills the commenter suggests are necessary. For example, the **egX** Group board includes:

- a lawyer with governance and public company expertise,
- an accountant with 30 years business experience, who has provided management and financial services to a number of public and private companies, and

[1] *Addressing Financial Market Turbulence* Remarks by Mark Carney, Governor of the Bank of Canada, to the Toronto Board of Trade, 13 March 2008.

- a real estate specialist with 26 years experience in the real estate development and finance industry.

2.2 As of 2010, public real estate entities in Canada must move to the IFRS accounting standard and, as it is, there is risk in the marketplace of initial confusion as investors come to terms with a different presentation of IFRS statements, as opposed to "historical cost" financial statements rendered under current Canadian GAAP. It would also have been helpful to see the proposed conflict of interest policy and what the "public interest mandate" is, as referred to in Section 2.1(b) of the submission. Particularly, it would be appropriate that no director or officer of egX owns or controls, directly or indirectly, any listed security on that exchange.

We do not understand the comment relating to the move to IFRS accounting standards. All public companies in Canada will have to move to IFRS by 2011, whether they are listed on the TSX or another marketplace. As reporting issuers, all entities listed on **egX** Canada will also have to move to IFRS.

It is a condition of the Recognition Order that **egX** Canada must regulate listed issuers and its market to serve the public interest in protecting investors and market integrity. **egX** Canada has articulated this mandate by incorporating it in our listings manual (Listings Manual) and trading rules (Trading Rules).

egX Canada's conflict of interest policies are included in the Code of Conduct and Ethics (the Code) which applies to employees, directors and officers of both **egX** Canada and **egX** Group. As **egX** Group is a reporting issuer, a copy of the Code is posted on SEDAR.

The Code includes a trading policy that applies to members of the Board of Directors as well as employees and consultants. The trading policy includes general restrictions on the trading of securities where an issuer is in the process of listings securities or has securities listed on the exchange. The trading policy will allow **egX** Canada to monitor trading by directors and officers.

The trading restrictions proposed by the commenter appear to be more restrictive than necessary. While it might be appropriate to provide that a director or officer should not be able to exercise control over an issuer listed on **egX**, the proposed restriction goes much farther and could even prevent a director or officer from holding units of a mutual fund if that mutual fund invested in any securities listed on **egX**.

2.3 As egX plans to trade in property, there may be requirements to register under provincial real estate brokerage acts. Also, regarding mortgage pool issuers, is egX required to register under provincial mortgage brokers acts as "a person who carries on business in dealing with mortgages"[1]? Will egX be required to pay land transfer tax on property trades? These issues have not been addressed.

1 Source: s 1(1) *Mortgage Brokers Act (Ontario)*, R.S.O. 1990, c.M.39

The commenter appears not to understand the application. **egX** Canada does not plan to trade in property. It is providing a marketplace so that **egX** Participants can trade in real estate related securities.

We have discussed with the Financial Institutions Commission of British Columbia (FICOM) the types of securities which we expect will be listed on **egX**. FICOM has confirmed that there is no requirement for **egX** Canada to register under British Columbia real estate or mortgage brokerage legislation.

We have also considered the legislation in Ontario. The source of the definition referred to in the comment appears to be out of date. The governing legislation in Ontario is the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, which came fully into force on July 1, 2008. **egX** Canada does not deal in mortgages, so does not require a brokerage licence under that Act.

In addition, as a marketplace, **egX** Canada will not be buying or selling securities or property. Accordingly, it is not clear why the commenter thinks that the exchange would be required to pay land transfer tax.

We note that our Listings Manual requires each listed issuer to comply with all laws applicable to its business and its listed securities and to be in good standing with all regulators and regulatory bodies that regulate its business. Accordingly, if an issuer is required to register under real estate or mortgage broker legislation in the jurisdiction in which it carries on business, the issuer will not be in compliance with our requirements if it fails to do so. Similarly, we would expect **egX** dealer participants to be appropriately registered if legislation in a jurisdiction requires a securities dealer to also be registered under provincial real estate or mortgage brokerage acts in connection with the type of securities traded on **egX**. (We note that the *Real Estate and Business Brokers Act* in Ontario provides that registration under that Act is not required in connection with a trade in real estate by a person who is registered under the *Securities Act* where the trade is made in the course of and as part of the person's business in connection with a trade in securities. Regulations under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* provide exemptions for dealers registered under the *Securities Act* and for mortgage securitizations, meaning the creation

of securities, as defined in the *Securities Act*, that represent an interest in, or obligations backed by, a mortgage or a discrete pool of mortgages.)

2.4 How will investors on the exchange be assured that they will have access to sufficient information to allow them to assess the value of the underlying real estate interests being traded? (i.e. lease terms, mortgage terms, asset and property management fees, liquidity provisions and restrictions pertaining to partial interests, and restrictions on use or other encumbrances). Also, how, specifically will information concerning trades be made available to potential investors?

egX Canada will require a receipted prospectus or prospectus level disclosure for issuers applying to list securities on the exchange. The Listings Manual sets out the minimum standards a prospective issuer must meet for its securities to be considered for listing. The business must be commercially viable and have a tangible asset value of not less than $25 million. We will require an independent appraisal or valuation report of the real estate assets, or a due diligence report of the mortgage assets, prepared by a qualified expert in accordance with industry standards. In addition, depending on the business and assets of the issuer, we may require other reports which are customary in the industry. The issuer must have an acceptable business plan or investment policy statement and its management must demonstrate a successful track record in the industry sector in which it is applying for listing.

National Instrument 21-101 *Marketplace Operation* sets out the information transparency requirements for marketplaces dealing in exchange-traded securities. **egX** Canada will have arrangements in place to comply with its pre-trade and post-trade information requirements under the National Instrument.

2.5 What specific steps are being taken by egX to ensure transparency and fairness in order processing? How robust is the infrastructure to support the exchange?

Trade orders will be matched according to the Trading Rules. At the end of each trading day, the system will generate a standardized report to meet regulatory requirements. Section 8.2-1 of the Trading Rules sets out the requirements for the execution of trades at opening; section 8.2-2 deals with the execution of trades after opening; and section 8.3 deals with order priority.

To further ensure fairness in order processing, **egX** Canada has entered into an agreement with the Investment Industry Regulatory Organization of Canada (IIROC) to perform Market Surveillance. The functions that will be provided by IIROC include:

- real-time monitoring of trading activity on **egX**
- carrying out trading analysis
- ensuring trade desk compliance with the Universal Market Integrity Rules

The transparency and fairness of all aspects of **egX** Canada will also be reviewed on an ongoing basis by our principal regulator, the BCSC.

The network and hardware infrastructure were designed and are managed by OMX Technology AB, a subsidiary of NASDAQ OMX. As mentioned in the application, the trading system is expected to far exceed business capacity requirements. The initial hardware and network design will meet business growth projections for the next three to five years. Should the need arise, the complete technology platform is fully scalable to levels currently experienced in the busiest of global exchange environments.

2.6 It would be useful to have the opportunity to review the PricewaterhouseCoopers internal controls review as references in Section 8.1(a).

The PricewaterhouseCoopers review is being undertaken to satisfy a pre-operating condition under the recognition order granted to **egX** Canada by the British Columbia Securities Commission (BCSC) and is a review of OMX Technology's processes and controls. The results are not intended to be made public.

3. Of utmost importance is the integrity of the listings and the rules that will be applied to the listing entities. All real estate securities could be tarnished by any breach of public faith of an issuer listed on the new exchange or any breach by the new exchange to provide a transparent and robust trading vehicle.

The BCSC has reviewed the Listings Manual and Trading Rules and has not objected to them. Changes to those policies and rules are subject to a regulatory instrument review protocol with the BCSC. A breach of public faith by an issuer can occur

despite the policies and rules of an exchange and despite securities legislation. It is **egX** Canada's public mandate and in its best interests to ensure compliance with its policies and rules and to ensure that the Investment Industry Regulatory Organization of Canada performs its market regulation services, including the enforcement of the Universal Market Integrity Rules.

1.2 Notices of Hearing

1.2.1 Goldbridge Financial Inc. et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER,
AND SHAWN LESPERANCE

NOTICE OF HEARING
(s. 127 of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O., c. S.5., as amended (the "Act") at the offices of the Commission, 20 Queen Street West, Toronto, Ontario, 17th Floor, Large Hearing Room, commencing on October 28, 2008, at 2:30pm or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest for the Commission to make an order:

(a) to extend the temporary order made October 10, 2008, pursuant to s. 127(7) of the Act, until the final disposition of this matter or until such time as the Commission considers appropriate; and

(b) to make such further Orders as the Commission considers appropriate;

BY REASON of the facts cited in the Temporary Order and of such allegations and evidence as counsel may advise and the Commission may permit;

AND TAKE FUTHER NOTICE THAT any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE THAT, upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 14th day of October, 2008.

“John Stevenson”
Secretary to the Commission

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER,
AND SHAWN LESPERANCE**

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION
(In Support of Temporary Cease Trade Order)**

Staff of the Ontario Securities Commission ("Staff") make the following allegations in support of a Notice of Hearing to extend the Temporary Order dated October 10, 2008, pending completion of Staff's investigation:

I. THE RESPONDENTS

1. Goldbridge Financial Inc. ("Goldbridge") is a company incorporated pursuant to the laws of Ontario, with its head office in Toronto. Goldbridge is not registered to trade in securities or act as an advisor under s. 25(1) of the Securities Act, R.S.O. 1990, c. S.5 (the "Act").

2. Wesley Wayne Weber ("Weber") is a resident of Richmond Hill, Ontario, and the President, Corporate Secretary and a Director of Goldbridge. Weber is not registered to trade in securities or act as an advisor under s. 25(1) of the Act.

3. Shawn Lesperance ("Lesperance") is a resident of LaSalle, Ontario. He is the Treasurer and a Director of Goldbridge. Lesperance is not registered to trade in securities or act as an advisor under s. 25(1) of the Act.

II. OVERVIEW

4. Weber, through his company, Goldbridge, and with the assistance of Lesperance, has been trading in the Ontario markets without having registered under s. 25(1)(a) of the Act.

5. Weber has made false statements in online advertisements to investors, misrepresented himself as experienced in matters of finance and falsified his professional biography and the nature of his business in promotional materials.

6. Weber has used false names and assumed the identities of real persons to open online trading accounts at financial institutions.

7. Weber purports to offer free day trading lessons to aspiring investors and in doing so requires that they deposit $300,000 into "the corporate trading account" which he will then trade on behalf of the depositing party.

III. ALLEGATIONS

Unregistered Trading

8. Through advertisements on the internet website "gobignetwork" and the Toronto branch of the website known as "craigslist," Weber and Goldbridge offer unregistered trading services in "NASDAQ and NYSE Equities." The advertisements indicate that Weber and Goldbridge are "now accepting capital" and claim that if investors provide their money, Weber can "put it to work for you safely" generating returns of 15% or 18%, annually, depending on the amount invested.

9. Weber confirmed in an April 27, 2007, *Globe and Mail* interview article, entitled "Faking It", that at that time he was trading "about $1.4 million in my account, mainly from investors." He stated in a 2008 "gobignetwork" posting that "I finally incorporated last year and have started taking on others capital."

Acting as an Unregistered Investment Advisor

10. One of Weber's "craigslist" postings offers "free day trading lessons". The advertised condition of receiving the lessons is that the student must deposit $300,000 in "the corporate trading account." Weber indicates that "a rate can be negotiated" for students with less than $300,000 to deposit, but that nobody with less than $150,000 will be accepted as "Below this level of

capitalization it is simply not enough to sustain a standard of living. Which it is assumed you are trying to accomplish through these lessons."

11. One advertisement indicates that as part of the "free" lessons, Weber will "trade in real time right beside you and will provide insight and information" into a particular market area.

12. Another advertisement does not require the $300,000 deposit into the "the corporate trading account", but requires the prospective day trading student to hold $300,000 in his or her own account. As a term of the "lessons" Weber states in this posting, "You trust me to trade and not lose your money. I trust you to pay me." He promises to be able to make $5000 per week or "almost 90% per year . . . without losing a single dollar."

Misrepresentations to Potential Investors

13. Weber and Goldbridge attempt to attract investors by painting a false picture of Weber as a hardworking entrepreneur with years of self-taught experience in the financial markets and a "large trading desk," while omitting Weber's lengthy record of serious criminal conduct.

14. In an advertisement to potential investors on "gobignetwork," dated 2008, Weber claims that he has "traded NASDAQ and NYSE equities for 5 years, now. I began in an Internet cafe in downtown Toronto and now have a pretty large trading desk I pride myself on."

15. However, in the "Faking It" article in the Globe and Mail, Weber states that he learned about trading from talking to another inmate and watching television while incarcerated in the Bath Institution. He was at that time serving a five year sentence for counterfeiting and parole violations. In the same article, Weber specifically recounts his first experiences with trading, indicating how he did it over the phone from jail.

Misrepresentations to Financial Institutions

16. Weber has opened or attempted to open numerous online trading accounts using false names and the names of people other than himself.

17. Weber has attempted to open at least 32 separate online trading accounts at TDAmeritrade Inc. The applications used different email addresses and contact information and mailing addresses as diverse as the Ukraine, the Bahamas, Michigan, Hong Kong and the Barbados.

18. All of the account applications originated from Weber's internet (IP) address.

19. On August 3, 2008, alone, Weber attempted to open nine separate accounts, each in the name of James Kelly Cook, with an address in Chicago, Illinois, but using Weber's telephone number.

20. In telephone conversations with representatives of TD Ameritrade Inc., Weber confirmed that it was he who attempted to open multiple accounts in the name of James Cook.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

21. The Respondents are engaging in unregistered trading activity contrary to s. 25(1)(a) of the Act.

22. The Respondents are engaging in unregistered investment advisory activity contrary to s. 25(1)(b) of the Act.

23. The Respondents have misrepresented the expertise and professional background of the principal member of their business in a manner intended to deceive investors into entrusting them with large amounts of money.

24. The Respondents have intentionally communicated false information to financial institutions for the purpose of obtaining trading accounts in names other than that of Goldbridge or either of the individual Respondents.

25. The Respondents are using their misrepresentations to gain the trust of investors and obtain access to large amounts of money from people who aspire to learn day trading.

26. The Respondents' conduct is contrary to the public interest and harmful to the integrity of the Ontario capital markets.

27. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

1.3 News Releases

1.3.1 OSC Issues Reasons for Decision Related to Extension of Temporary Order Prohibiting Short Selling in Certain Financial Sector Issuers

FOR IMMEDIATE RELEASE
October 8, 2008

OSC ISSUES REASONS FOR DECISION RELATED TO EXTENSION OF TEMPORARY ORDER PROHIBITING SHORT SELLING IN CERTAIN FINANCIAL SECTOR ISSUERS

TORONTO – The Ontario Securities Commission (OSC) today issued Reasons For Decision related to a hearing that was held on October 3, 2008, whereby the OSC extended its Temporary Order under Section 127 of the *Securities Act* prohibiting short selling of certain financial sector issuers. The original, amended and extended Orders were issued parallel to short selling orders issued by the U.S. Securities and Exchange Commission (SEC). Both the SEC and OSC Orders will expire today, Wednesday, October 8, 2008 at 11:59 p.m.

In the meantime, the Investment Industry Regulatory Association of Canada will continue to monitor short sale activity and will report to the OSC any issues related to short selling in the securities of financial and non-financial sector issuers, as well as securities of issuers that are interlisted with other markets.

The Reasons for Decision are available on the OSC website at **www.osc.gov.on.ca**.

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For investor inquiries: OSC Contact Centre
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1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 In the Matter of Certain Financial Sector Issuers

FOR IMMEDIATE RELEASE
October 8, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CERTAIN FINANCIAL SECTOR ISSUERS

TORONTO – Following the hearing held on October 3, 2008 in the above noted matter, today the Commission released its oral Reasons For Decision to Extend the Temporary Cease Trade Order.

A copy of the Reasons For Decision dated October 8, 2008 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.2 AiT Advanced Information Technologies Corporation et al.

FOR IMMEDIATE RELEASE
October 10, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
AiT ADVANCED INFORMATION TECHNOLOGIES CORPORATION,
BERNARD JUDE ASHE AND
DEBORAH WEINSTEIN

TORONTO – The Commission issued its Oral Ruling and Reasons in the above matter pursuant to a hearing held on September 17, 2008.

A copy of the Oral Ruling and Reasons dated October 9, 2008 is available at **www.osc.gov.on.ca**.

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1.4.3 David Berry

FOR IMMEDIATE RELEASE
October 10, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
DAVID BERRY

TORONTO – The Ontario Securities Commission will hold a hearing to consider the Application made by David Berry for a review of a Market Regulations Services Inc. decision dated February 29, 2008.

The hearing will be held on October 29, 2008 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Application is available at **www.osc.gov.on.ca**.

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1.4.4 New Life Capital Corp. et al.

FOR IMMEDIATE RELEASE
October 10, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEW LIFE CAPITAL CORP.,
NEW LIFE CAPITAL INVESTMENTS INC.,
NEW LIFE CAPITAL ADVANTAGE INC.,
NEW LIFE CAPITAL STRATEGIES INC.,
1660690 ONTARIO LTD., L. JEFFREY POGACHAR,
PAOLA LOMBARDI ANDALAN S. PRICE

TORONTO – The Commission issued an Order today in the above named matter extending the Temporary Order to October 24, 2008.

The hearing scheduled to be held on October 14, 2008 is adjourned to October 23, 2008 at 10:00 a.m.

A copy of the Order dated October 10, 2008 is available at **www.osc.gov.on.ca**.

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1.4.5 Goldbridge Financial Inc. et al.

FOR IMMEDIATE RELEASE
October 15, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND
IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER,
AND SHAWN LESPERANCE

TORONTO – The Office of the Secretary issued a Notice of Hearing on October 14, 2008 setting the matter down to be heard on October 28, 2008 at 2:30 p.m. to consider whether it is in the public interest for the Commission (1) to extend the Temporary Order pursuant to subsections 127(7) of the Act until the final disposition of this matter or until such time as the Commission considers appropriate; and (2) to make such further orders as the Commission considers appropriate.

A copy of the Temporary Order dated October 10, 2008, Notice of Hearing dated October 14, 2008 and Statement of Allegations of Staff of the Ontario Securities Commission (In support of Temporary Cease Trade Order) are available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 BMO Capital Trust II and Bank of Montreal

Headnote

MI 11-102 and NP 11-203 as applicable – capital trust established by bank to issue trust subordinated notes as cost-effective means of raising capital for Canadian bank regulatory purposes exempted from eligibility requirements to file a short form prospectus, certain form requirements and permitted to abridge 10-day notice requirement – relief granted as disclosure regarding the bank is more relevant and bank has been reporting issuer for many years – relief subject to conditions – National Instrument 44-101 Short Form Prospectus Distributions – relief also granted for temporary confidentiality of decision

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.3, 2.8.
Form 44-101F1 Short Form Prospectus, items 6, 11.

October 1, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "JURISDICTION")

AND

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

AND

IN THE MATTER OF
BMO CAPITAL TRUST II (THE "TRUST") AND
BANK OF MONTREAL
(THE "BANK" AND, COLLECTIVELY WITH THE TRUST, THE "FILERS")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "**Application**") from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for a decision (the "**Requested Relief**") that:

A. The Trust be exempted from the following requirements of the Legislation in connection with offerings of trust subordinated notes of the Trust (the "**Trust Subordinated Notes**"):

(i) the qualification requirements (the "**Qualification Requirements**") of Part 2 of National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**"), such that the Trust is qualified to file a prospectus in the form of a short form prospectus; and

(ii) the disclosure requirements (the "**Disclosure Requirements**") in Item 6 (Earnings Coverage Ratios) and Item 11 (Documents Incorporated by Reference), with the exception of Item 11.1 (1) 5, of Form 44-101F1 of NI 44-101 ("**Form 44-101F1**") in respect of the Trust; and

B. The Application and this Decision be held in confidence by the principal regulator, subject to certain conditions.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Saskatchewan, Québec, and the Yukon, Northwest Territories and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Bank

1. The Bank is a Schedule 1 chartered bank subject to the provisions of the Bank Act (Canada). The principal executive offices are located at Bank of

Montreal, 100 King Street West, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1A1. The Bank's head office is located at 129 Rue St. Jacques, Montreal, Québec, Canada H2Y 1L6.

2. The authorized share capital of the Bank consists of an unlimited number of: (i) common shares ("**Bank Common Shares**"); and (ii) Class A and Class B preferred shares each issuable in series ("**Bank Preferred Shares**").

3. The Bank Common Shares are listed on the Toronto Stock Exchange and the New York Stock Exchange.

4. The Bank is a reporting issuer, or the equivalent, in each of the jurisdictions of Canada and is not in default of securities legislation in any jurisdiction.

5. The Bank is qualified to use the short form prospectus system provided under NI 44-101.

The Trust

6. The Trust will be a trust established under the laws of the Province of Ontario pursuant to a declaration of trust prior to the filing of a preliminary prospectus by the Trust.

7. The assets of the Trust will consist primarily of senior deposit notes issued by the Bank (each, a "**Bank Deposit Note**"), which Bank Deposit Notes will be acquired with the proceeds of the offerings of Trust Subordinated Notes. The Bank Deposit Notes will generate income to provide the Trust with funds to pay the interest payable on the Trust Subordinated Notes from time to time. In addition to the Trust Subordinated Notes, the Trust will issue voting trust units (the "**Voting Trust Units**") at an issue price of $1,000 per unit, which will be the only beneficial units issued by the Trust. The Voting Trust Units will be purchased by the Bank.

8. The Trust will be established solely for the purpose of offering securities to the public in order to provide the Bank with a cost effective means of raising capital for Canadian bank regulatory purposes. The Trust will offer Trust Subordinated Notes to the public from time to time. The initial public offering of Trust Subordinated Notes will be with respect to Trust Subordinated Notes – Series A. The Trust will not carry on any operating activity other than in connection with the offering of its securities to the public.

9. The Trust proposes to undertake a public offering of Trust Subordinated Notes – Series A (the "**Offering**").

10. Subject to approval by the Office of the Superintendent of Financial Institutions (Canada) (the "**Superintendent**"), the Trust Subordinated Notes will qualify as Tier 1 Capital of the Bank under the Innovative Capital Guidelines issued by the Superintendent.

Trust Subordinated Notes

11. The Trust Subordinated Notes will pay interest semi-annually (each semi-annual interest payment date, an "**Interest Payment Date**"), at a fixed rate for the first 10 years and, thereafter, at a rate to be reset every five years (each such interest reset date, an "**Interest Reset Date**"). Interest will be payable in cash, subject to a Deferral Event (as described below).

12. On the maturity date of the Trust Subordinated Notes, the Trust will be required to pay the principal amount of the Trust Subordinated Notes, together with any accrued and unpaid interest, in cash, subject to the deferral provisions described in the following paragraph.

13. During any period (a "**Deferral Period**") when (i) BMO fails to declare cash dividends on all of its outstanding preferred shares or, failing any preferred shares being outstanding, on all of its outstanding common shares, in accordance with its ordinary dividend practice in effect from time to time, in each case in the last 90 days preceding the commencement of the interest period ending on the day preceding the relevant Interest Payment Date (such a Deferral Period is referred to herein as an "**Automatic Deferral Period**"), or (ii) the Bank so elects, at its sole option, prior to the commencement of the interest period ending on the day preceding the relevant Interest Payment Date (such a Deferral Period is referred to herein as an "**Elected Deferral Period**"), holders of the Trust Subordinated Notes will be required to reinvest interest on the Trust Subordinated Notes in a series of non-cumulative perpetual Class B Preferred Shares of the Bank (the "**Deferral Period Preferred Shares**"). A new series of Deferral Period Preferred Shares will be issued in respect of each Deferral Period. The subscription price of each Deferral Period Preferred Share will be an amount equal to the face amount of the Deferral Period Preferred Share, and the number of Deferral Period Preferred Shares subscribed for on each Deferral Date will be calculated by dividing the amount of the interest payment on the Trust Subordinated Notes on the applicable Interest Payment Date (the "**Deferral Date**") by the face amount of each Deferral Period Preferred Share. A Deferral Period may not extend beyond the maturity of the Trust Subordinated Notes. There will be no other limit on the number of Deferral Periods or the duration of a Deferral Period.

14. During any Elected Deferral Period: (i) the Bank may not declare or pay dividends (except by way of stock dividend) on, or redeem or repurchase, any of the Bank's preferred shares or common

shares; and (ii) no subsidiary of the Bank may make any payment to holders of the Bank's preferred shares or common shares in respect of dividends not declared or paid by the Bank, and no subsidiary of the Bank may purchase any preferred shares or common shares of BMO, provided that any subsidiary of the Bank whose primary business is dealing in securities may purchase shares of the Bank in certain limited circumstances as permitted by relevant governing legislation or the regulations thereunder.

15. If the Trust fails to pay interest on the Trust Subordinated Notes in full, the Bank will not pay dividends on its preferred and common shares until the 12th month following the Trust's failure to pay interest in full on the Trust Subordinated Notes, unless the Trust first pays such interest or any unpaid portion thereof (the "**Dividend Stopper Undertaking**"). Accordingly, it is in the interest of the Bank to ensure, to the extent within its control, that the Trust complies with the obligation to pay interest on the Trust Subordinated Notes in full when due.

16. The Trust Subordinated Notes will be automatically exchanged, without the consent of the holder, for a new series of newly issued non-cumulative Class B preferred shares of the Bank (the "**Automatic Exchange Preferred Shares**") upon the occurrence of certain stated events relating to the solvency of the Bank or actions taken by the Superintendent in respect of the Bank (an "**Automatic Exchange**").

17. The Trust may, subject to regulatory approval, on a date to be described in the Prospectus not prior to 5 years following the date of issuance of the Trust Subordinated Notes, and on any date thereafter, redeem the Trust Subordinated Notes. The price payable in respect of any such redemption will include an early redemption compensation component (such price being the "**Premium Redemption Price**") in the event of a redemption on any date other than an Interest Reset Date (the "**Premium Redemption Date**"). The price payable in all other cases will be the principal amount of the Trust Subordinated Notes together with any accrued and unpaid interest thereon (the "**Redemption Price**").

18. Upon the occurrence of certain regulatory or tax events affecting the Bank or the Trust (a "**Special Event**") in each case on a date described in the Prospectus within 5 years following the date of issuance of the Trust Subordinated Notes, the Trust may, subject to the approval of the Superintendent, redeem at any time all but not less than all of the Trust Subordinated Notes at the Early Redemption Price.

19. The Trust may, after the date that is five years after the date of issuance of the Trust Subordinated Notes, purchase in whole or in part, subject to the approval of the Superintendent, in the open market or by tender or private contract at any price, the Trust Subordinated Notes. Trust Subordinated Notes purchased by the Trust shall be cancelled and not re-issued.

20. The Bank will covenant that it will maintain direct ownership of 100% of the outstanding Voting Trust Units.

21. As long as any Trust Subordinated Notes are outstanding, the Trust may only be terminated in certain limited circumstances with the approval of the Bank as the holder of the Voting Trust Units and with the approval of the Superintendent. The holders of Trust Subordinated Notes will not be entitled to initiate proceedings for the termination of the Trust and will not have any recourse to the Bank Deposit Note in connection with any payments in respect of the Trust Subordinated Notes.

22. The Voting Trust Units will entitle the Bank to vote with respect to certain matters regarding the Trust.

23. Pursuant to an administrative agreement to be entered into between the trustee of the Trust (the "**Trustee**") and the Bank, the Trustee will delegate to the Bank certain of its obligations in relation to the administration of the Trust. The Bank, as administrative agent, will provide advice and counsel with respect to the administration of the day-to-day operations of the Trust and other matters as may be requested by the Trustee from time to time.

24. It is expected that the Trust Subordinated Notes – Series A will receive an approved rating from an approved rating organization, as defined in NI 44-101.

25. At the time of the filing of any prospectus in connection with offerings of Trust Subordinated Notes (including the Offering):

    (i) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 other than the Disclosure Requirements, except as varied or permitted by the securities legislation in Canada;

    (ii) the Trust will comply with all of the filing requirements and procedures set out in NI 44-101 other than the Qualification Requirements, except as varied or permitted by the securities legislation in Canada;

    (iii) the prospectus will incorporate by reference the documents that would be required to be incorporated by reference

under Item 11 of Form 44-101F1 if the Bank were the issuer of such securities;

(iv) the Bank will satisfy the criteria in section 2.2 of NI 44-101 if the word "issuer" were replaced with "Bank"; and

(v) the prospectus disclosure required by Item 11 (other than Item 11.1(1)5) of Form 44-101F1 in respect of the Trust will be addressed by incorporating by reference the Bank's public disclosure documents referred to in paragraph 24(iv) above.

25. The Trust will file a notice declaring its intention to be qualified to file a short form prospectus concurrently with the filing of the preliminary prospectus for the Offering.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

(i) the Trust and the Bank, as applicable, will comply with paragraph 25 at the time a prospectus is filed in connection with any offering of Trust Subordinated Notes (including the Offering);

(ii) the Bank remains the direct or indirect beneficial owner of all of the outstanding Voting Trust Units;

(iii) the Bank, as holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding Trust Subordinated Notes offered and sold pursuant to a short form prospectus of the Trust filed under this decision that would result in such Trust Subordinated Notes being exchangeable for securities other than Bank Preferred Shares;

(iv) the Trust has minimal assets, operations, revenues or cash flows other than those related to the offering of its securities to the public and the issuance, administration and repayment of the Trust Subordinated Notes;

(v) the Trust issues a news release and files a material change report in accordance with Part 7 of NI 51-102, as amended, supplemented or replaced from time to time, in respect of any material change in the affairs of the Trust that is not also a material change in the affairs of the Bank;

(vi) the Trust is an electronic filer under NI 13-101;

(vii) the Trust is a reporting issuer in at least one jurisdiction of Canada;

(viii) the Trust has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction: (i) under all applicable securities legislation; (ii) pursuant to an order issued by the securities regulatory authority; or (iii) pursuant to an undertaking to the securities regulatory authority; and

(ix) the securities to be distributed: (i) have received an approved rating on a provisional basis; (ii) are not the subject of an announcement by an approved rating organization, which the Trust is or ought reasonably to be aware, that the approved rating given by the organization may be downgraded to a rating category that would not be an approved rating; and (iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

The further decision of the principal regulator under the Legislation is that the Application and this decision shall be held in confidence by the principal regulator until the earlier of the date that a preliminary short form prospectus is filed in respect of the offering of Trust Subordinated Notes – Series A and January 31, 2009.

"Erez Blumberger"
Manager, Corporate Finance

2.1.2 AXA S.A.

Headnote

Exemptive Relief Applications – Application for relief from the prospectus and the dealer registration requirements in respect of certain trades made in connection with an employee share offering by a foreign issuer – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus and registration Exemptions as the securities are not being offered to Qualifying Employees directly by the issuer, but through the special purpose entities – Number of Canadian employees is *de minimis* – Qualifying Employees will not be induced to participate in the offering by expectation of employment or continued employment – Qualifying Employees will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – No market for the securities of the issuer in Canada.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument- 45-106 Prospectus and Registration Exemptions, ss. 2.24, 2.28.
National Instrument 45-102 Resale of Securities, s. 2.14.

Translation

September 23, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO
(the "Jurisdictions")

AND

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

AND

IN THE MATTER OF
AXA S.A.
(the "Filer")

DECISION

Background

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

1. an exemption from the prospectus requirements of the Legislation[1] (the "Prospectus Relief") so that such requirements do not apply to

   a) trades in units ("Units") of

      i) AXA Shareplan Direct Global (the "Principal Classic Compartment"), a compartment of Shareplan AXA Direct Global (the "Fund") which is a *fonds communs de placement d'entreprise* or "FCPE"; a form of collective shareholding vehicle of a type commonly used in France for the conservation of shares held by employee-investors;

      ii) AXA Action Relais Global 2008 (the "Temporary Classic Fund"), a temporary FCPE which will merge with the Principal Classic Compartment following the Employee Share Offering (as defined below) as further described in paragraph 0 of the Representations; and

[1] Section 11 and 12 of the *Securities Act* (Québec) (the "QSA") and section 53 of the *Securities Act* (Ontario) (the "OSA").

iii) AXA Plan 2008 Global (the "Leveraged Compartment"), a compartment of the Fund, (the Principal Classic Compartment, the Temporary Classic Fund and the Leveraged Compartment, collectively, the "Compartments")

made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdictions who elect to participate in the Employee Share Offering (the "Canadian Participants");

b) trades of ordinary shares of the Filer (the "Shares") by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants;

c) the issuance of Units of the Principal Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the Canadian Participants' assets in the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);

2. an exemption from the dealer registration requirements of the Legislation[2] (the "Registration Relief") so that such requirements do not apply to

a) trades in Units of the Temporary Classic Fund or the Principal Classic Compartment made pursuant to the Employee Share Offering to or with Canadian Participants;

b) trades in Units of the Leveraged Compartment made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario or Manitoba;

c) trades of Shares by the Compartments to Canadian Participants upon the redemption of Units by Canadian Participants; and

d) the issuance of Units of the Principal Classic Compartment to holders of Leveraged Compartment Units upon the transfer of the Canadian Participants' assets in the Leveraged Compartment to the Principal Classic Compartment at the end of the Lock-Up Period (as defined below);

3. an exemption from the adviser registration requirements and dealer registration requirements of the Legislation[3] so that such requirements do not apply to the manager of the Compartments, AXA Investment Managers Paris (the "Management Company"), to the extent that its activities described in paragraphs 30 and 31 of the representations require compliance with the adviser registration requirements and dealer registration requirements (collectively, with the Prospectus Relief and the Registration Relief, the "Initial Requested Relief"); and

4. an exemption from the dealer registration requirements of the Legislation[4] so that such requirements do not apply to the first trade in any Units or Shares acquired by Canadian Participants under the Employee Share Offering (the "First Trade Relief").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application),

a) the Autorité des marchés financiers is the principal regulator for this application,

b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador, and

c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

[2] Section 148 and 149 of the QSA and section 25(1)(a) of the OSA.
[3] Section 148 and 149 of the QSA and section 25(1)(a) and (c) of the OSA.
[4] Section 148 and 149 of the QSA and section 25(1)(a) of the OSA.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not and has no current intention of becoming a reporting issuer (or equivalent) under the Legislation. The Shares are listed on Euronext Paris and on the New York Stock Exchange (in the form of American Depositary Receipts). The head office of the Filer is located in Paris, France.

2. The Filer carries on business in Canada through the following affiliated companies: AXA Assurances Inc., AXA Canada Inc., AXA Insurance (Canada) Ltd., AXA Pacific Insurance Company, AXA Assistance Canada Inc. and Anthony Insurance Inc. (collectively, the "Canadian Affiliates," together with the Filer and other affiliates of the Filer, the "AXA Group"). Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer (or equivalent) under the Legislation. The head office of the AXA Group in Canada is located in Montréal, Québec and the greatest number of employees of Canadian Affiliates are employed in Québec.

3. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Compartments on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

4. The Filer has established a global employee share offering for employees of the AXA Group (the "Employee Share Offering"). The Employee Share Offering is comprised of two subscription options:

   a) an offering of Shares to be subscribed through the Temporary Classic Fund, which will be merged with the Principal Classic Compartment following completion of the Employee Share Offering (the "Classic Plan"); and

   b) an offering of Shares to be subscribed through the Leveraged Compartment (the "Leveraged Plan").

5. Only persons who are employees of a member of the AXA Group during the subscription period for the Employee Share Offering and who meet other employment criteria (the "Employees"), as well as persons who have retired from Canadian Affiliates of the AXA Group and who continue to hold units in collective shareholding vehicles in connection with previous employee share offerings of the Filer (the "Retired Employees" and, together with the Employees, the "Qualifying Employees") will be allowed to participate in the Employee Share Offering.

6. The Compartments are established for the purpose of implementing the Employee Share Offering. There is no current intention for the Compartments to become reporting issuers under the Legislation.

7. As set forth above, the Temporary Classic Fund is, and the Principal Classic Compartment and the Leveraged Compartment are compartments of, a *fonds communs de placement d'entreprise*, or FCPE, which is a shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee investors. The Temporary Classic Fund, the Principal Classic Compartment and the Leveraged Compartment have been registered with and approved by the Autorité des marchés financiers in France (the "French AMF"). Only Qualifying Employees will be allowed to hold Units of the Compartments in an amount corresponding to their respective investments in each of the Compartments.

8. All Units acquired in the Employee Share Offering by Canadian Participants will be subject to a hold period of approximately five years (the "Lock-Up Period"), subject to certain exceptions prescribed by French law (such as a release on death or termination of employment).

9. Canadian Participants who subscribe under the Classic Plan will receive Units in the Temporary Classic Fund, which will subscribe for Shares using the Canadian Participants' contributions at a subscription price that is equal to the average of the opening price of the Shares on the 20 trading days preceding the date of fixing of the subscription price by the Management Board of the Filer (the "Reference Price"), less a 20% discount.

10. After completion of the Employee Share Offering, the Temporary Classic Fund will be merged with the Principal Classic Compartment (subject to the French AMF's approval). Units of the Temporary Classic Fund held by Canadian Participants will be replaced with Units of the Principal Classic Compartment on a pro rata basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (the "Merger"). The term "Classic Compartment" used herein means, prior to the Merger, the Temporary Classic Fund, and following the Merger, the Principal Classic Compartment.

11. Under the Classic Plan, at the end of the Lock-Up Period or in the event of an early redemption resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period prescribed by French law, a Canadian Participant may

    a) redeem Units in the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares; or

    b) continue to hold Units in the Classic Compartment and redeem those Units at a later date.

12. Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) of the Classic Compartment will be issued to participants.

13. Under the Leveraged Plan, Canadian Participants will subscribe for Units in the Leveraged Compartment, and the Leveraged Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Natixis (the "Bank"), which bank is governed by the laws of France.

14. Canadian Participants will subscribe for shares under the Leveraged Plan at a 14.15% discount on the Reference Price. Under the Leveraged Plan, a Canadian Participant effectively receives a share appreciation potential entitlement in the increase in value, if any, of the Shares subscribed on behalf of such Canadian Participant, including with respect to the Shares financed by the Bank Contribution (described below).

15. Participation in the Leveraged Plan represents a potential opportunity for Qualifying Employees to obtain significantly higher gains than would be available through participation in the Classic Plan by virtue of the Qualifying Employee's indirect participation in a financing arrangement involving a swap agreement (the "Swap Agreement") between the Leveraged Compartment and the Bank. In economic terms, the Swap Agreement effectively involves the following exchange of payments: for each Share which may be subscribed for by a Qualifying Employee's contribution (expressed in euros) (the "Employee Contribution") under the Leveraged Plan at the Reference Price less the 14.15% discount, the Bank will lend to the Leveraged Compartment (on behalf of the Canadian Participant) an amount sufficient to enable the Leveraged Compartment (on behalf of the Canadian Participant) to subscribe for an additional nine Shares (the "Bank Contribution") at the Reference Price less the 14.15% discount.

16. Under the terms of the Swap Agreement, at the end of the Lock-Up Period, the Leveraged Compartment will owe to the Bank an amount equal to:

    A – [B+C], where

    a) "A" is the market value of all the Shares at the end of the Lock-Up Period that are held in the Leveraged Compartment (as determined pursuant to the terms of the Swap Agreement),

    b) "B" is the aggregate amount of all Employee Contributions,

    c) "C" is an amount (the "Appreciation Amount") equal to

        i) 70% of the positive difference, if any, between

            1) the average price of the Shares based on weekly readings taken in the 6-month period beginning December 2012 (i.e., a total of 26 readings), (in the event this Share price is lower than the Reference Price, the Reference Price will be used instead),

            and

            2) the Reference Price,

            multiplied by

        ii) the number of Shares held in the Leveraged Compartment.

17. If, at the end of the Lock-Up Period, the market value of the Shares held in the Leveraged Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to a guarantee agreement, make a cash contribution to the Leveraged Compartment to make up such shortfall.

18. At the end of the Lock-Up Period, the Swap Agreement will terminate after the final swap payments are made and a Canadian Participant may elect to redeem his or her Leveraged Compartment Units in consideration for cash or Shares equivalent to

    a) a Canadian Participant's Employee Contribution, and

    b) the Canadian Participant's portion of the Appreciation Amount, if any,

    (the "Redemption Formula").

19. If a Canadian Participant does not redeem his or her Units in the Leveraged Compartment, his or her investment in the Leveraged Compartment will be transferred to the Principal Classic Compartment upon the decision of the supervisory board of the Fund and the approval of the French AMF. New Units of the Principal Classic Compartment will be issued to the applicable Canadian Participants in recognition of the assets transferred to the Principal Classic Compartment. The Canadian Participants may redeem the new Units whenever they wish. However, following a transfer to the Principal Classic Compartment, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement or the guarantee agreement.

20. At the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period, a Canadian Participant in the Leveraged Plan will, pursuant to the guarantee agreement, be entitled to receive at least 100% of his or her Employee Contribution.

21. The offering documents provided to Canadian Participants will confirm that under no circumstances will a Canadian Participant in the Leveraged Plan be liable to any of the Leveraged Compartment, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Leveraged Plan.

22. Under French law, the Compartments are compartments of an FCPE which is a limited liability entity. Each Compartment's portfolio will consist almost entirely of Shares of the Filer. The Classic Compartment's portfolio may, from time to time, include cash in respect of dividends paid on the Shares which will be reinvested in Shares. The Leveraged Compartment's portfolio will also include the Swap Agreement. From time to time, either portfolio may include cash or cash equivalents that the Compartments may hold pending investments in Shares and for the purpose of Unit redemptions.

23. During the term of the Swap Agreement, an amount equal to the net amounts of any dividends paid on the Shares held in the Leveraged Compartment will be remitted by the Leveraged Compartment to the Bank as partial consideration for the obligations assumed by the Bank under the Swap Agreement.

24. For Canadian federal income tax purposes, the Canadian Participants in the Leveraged Plan should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the Leveraged Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants by virtue of the terms of the Swap Agreement. Consequently, Canadian Participants will be required to fund the tax liabilities associated with the dividends without recourse to the actual dividends.

25. The declaration of dividends on the Shares is determined by the shareholders of the Filer. The Filer has not made any commitment to the Bank as to any minimum payment in respect of dividends.

26. To respond to the fact that, at the time of the initial investment decision relating to participation in the Leveraged Plan, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Canadian Affiliates will indemnify each Canadian Participant in the Leveraged Plan for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of euros per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Leveraged Compartment on his or her behalf under the Leveraged Plan.

27. At the time the Canadian Participant's obligations under the Swap Agreement are settled, the Canadian Participant should realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Leveraged Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Leveraged Compartment, on behalf of the Canadian Participant to the Bank. To the extent that an amount equal to the value of the dividends on Shares that are deemed to have been received by a Canadian Participant are paid by the Leveraged Compartment on behalf of the Canadian Participant to the Bank, such payments will reduce the amount of any capital gain (or increase the amount of any capital loss) to the Canadian Participant under the Swap Agreement. Capital losses (gains) realized by a Canadian Participant under the Swap Agreement may be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a

disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

28. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF to manage French investment funds and complies with the rules of the French AMF. The Management Company is not and has no current intention of becoming a reporting issuer under the Legislation.

29. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartments are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, and such activities as may be necessary to give effect to the Swap Agreement.

30. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each Compartment. The Management Company's activities in no way affect the underlying value of the Shares and the Management Company will not be involved in providing advice to any Canadian Participants.

31. Shares issued in the Employee Share Offering will be deposited in the relevant Compartment through BNP Paribas Securities Services (the "Depositary"), a large French commercial bank subject to French banking legislation.

32. Under French law, the Depositary must be selected by the Management Company from among a limited number of companies identified on a list by the French Minister of the Economy, Finance and Industry and its appointment must be approved by the French AMF. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each Compartment to exercise the rights relating to the securities held in its respective portfolio.

33. Participation in the Employee Share Offering is voluntary, and the Canadian resident Qualifying Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

34. The total amount invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of his or her estimated gross annual remuneration for the 2008 calendar year. A Retired Employee may contribute up to a maximum of 25% of his or her gross annual remuneration in the year before he or she retired. For the purposes of calculating these limits, a Canadian Participant's maximum "investment" in the Leveraged Compartment will include the additional Bank Contribution. Therefore, the total amount invested by a Canadian Participant in the Leveraged Plan cannot exceed 2.5% of his or her estimated gross annual remuneration for 2008, or, in the case of a Retired Employee, 2.5% of his or her gross annual remuneration in the year before he or she retired.

35. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Participants with respect to an investment in the Shares or the Units.

36. The Shares are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares so listed. As there is no market for the Shares in Canada, and as none is expected to develop, first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of Euronext Paris.

37. The Filer will retain a securities dealer registered as a broker/investment dealer (the "Registrant") under the securities legislation of Ontario and Manitoba to provide advisory services to Canadian Participants resident in Ontario or Manitoba who express interest in the Leveraged Plan and to make a determination, in accordance with industry practices, as to whether an investment in the Leveraged Plan is suitable for each such Canadian Participant based on his or her particular financial circumstances. The Registrant will establish accounts for, and will receive the initial account statements from the Leveraged Compartment on behalf of, such Canadian Participants. The Units of the Leveraged Compartment will be issued by the Leveraged Compartment to Canadian Participants resident in Ontario or Manitoba solely through the Registrant.

38. Units of the Leveraged Compartment will be evidenced by account statements issued by the Leveraged Compartment.

39. The Canadian Participants will receive an information package in the French or English language, as applicable, which will include a summary of the terms of the Employee Share Offering, a tax notice containing a description of Canadian income tax consequences of subscribing to and holding the Units in the Compartments and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package for Canadian Participants in the Leveraged Plan will include all the necessary information for general inquiry and support with respect to the Leveraged Plan and will also include a risk statement which will describe certain risks associated with an investment in Units pursuant to the

Leveraged Plan, and a tax calculation document which will illustrate the general Canadian federal income tax consequences of participating in the Leveraged Plan.

40. Upon request, Canadian Participants may receive copies of the Filer's annual report on Form 20-F filed with the United States Securities and Exchange Commission and/or the French Document de Référence filed with the French AMF in respect of the Shares and a copy of the relevant Compartment's rules (which are analogous to company by-laws). The Canadian Participants will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares.

41. There are approximately 2250 Employees resident in Canada, with the largest number of Employees in the Province of Québec (1363) and the second largest number of Employees in Ontario (486). There are approximately 27 eligible Retired Employees resident in Canada, with approximately 17 resident in Québec and six resident in Ontario. Qualifying Employees are also located in British Columbia, Alberta, Newfoundland and Labradour, New Brunswick, Nova Scotia and Manitoba. In total, there are approximately 2277 Qualifying Employees resident in Canada, who represent in the aggregate less than 3% of the number of Qualifying Employees worldwide.

42. The Filer is not, and none of the Canadian Affiliates are, in default under the Legislation.

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.

The decision of the Decision Makers under the Legislation is that the Initial Requested Relief is granted provided that

1. the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision in a Jurisdiction is deemed a distribution or a primary distribution to the public under the Legislation of such Jurisdiction unless the following conditions are met:

    a) the issuer of the security

        i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

        ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

    b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

        i) did not own directly or indirectly more than 10% of the outstanding securities of the class or series, and

        ii) did not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series; and

    c) the first trade is made

        i) through the facilities of an exchange, or a market, outside of Canada, or

        ii) to a person or company outside of Canada;

2. in Québec, the required fees are paid in accordance with Section 271.6(1.1) of the *Securities Regulation* (Québec).

It is further the decision of the Decision Makers under the Legislation that the First Trade Relief is granted provided that the conditions set out in paragraphs 1a), b) and c) under this decision granting the Initial Requested Relief are satisfied.

"Josée Deslauriers"
Director, Capital Market

"Claude Lessard"
Manager, Supervision of Intermediaries

2.1.3 Canadian Apartment Properties Real Estate Investment Trust

Headnote

MI 11-102 and NP 11-203 – relief from filing business acquisition report – using income from the continuing operations of the filer to determine the significance of certain acquisitions leads to anomalous results – filer permitted to exclude depreciation of income-producing properties from income when calculating significance under Part 8 of National Instrument 51-102 Continuous Disclosure Obligations.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 8.3.

October 7, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "JURISDICTION")

AND

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

AND

IN THE MATTER OF
CANADIAN APARTMENT PROPERTIES
REAL ESTATE INVESTMENT TRUST
(the "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") granting relief to allow the exclusion of depreciation of income producing properties when applying the Income Test (as defined below) for the REIT's continuous disclosure obligations under Part 8 of National Instrument 51-102 – Continuous Disclosure Obligations ("NI 51-102") in respect of (i) the July 31, 2008 acquisition of a 50% co-ownership interest in a 784 suite portfolio of properties referred to as the CST Property Portfolio; and (ii) the August 29, 2008 acquisition of a 137 suite apartment complex referred to as Tara Apartments (the "Exemption Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application (the "Principal Regulator"), and

(b) the Filer has provided notice that section 4.7 (1) of Multilateral Instrument 11-102 Passport System ("MI 11-102") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

Interpretation

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

Representations

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

1. The REIT is an internally managed unincorporated open-ended real estate investment trust owning interests in multi-unit residential properties including apartment buildings and townhouses located in major urban centres across Canada and two land lease communities.

2. The REIT was established under the laws of the Province of Ontario by a declaration of trust and its head office is located in Toronto, Ontario.

3. The REIT is a reporting issuer under the securities legislation of each of the provinces and territories of Canada.

4. The units of the REIT are listed and posted for trading on the Toronto Stock Exchange under the trading symbol CAR.UN.

5. The REIT completed its initial public offering on May 21, 1997 pursuant to its final long form prospectus dated May 12, 1997.

6. As at August 1, 2008, the REIT had ownership interests in 27,324 residential suites well diversified by geographic location and asset class and 1,267 land lease sites.

7. As at and for the year ended December 31, 2007 the REIT had assets in excess of $2.2 billion, income from continuing operations of approximately $531,000 and depreciation of income producing properties of $66.7 million.

8. As at and for the year ended December 31, 2006 the REIT had assets of approximately $2 billion, income from continuing operations of approximately $579,000 and depreciation of income producing properties of $56.9 million.

9. Under Part 8 of NI 51-102, the REIT is required to file a business acquisition report ("BAR") for any completed acquisition that is determined to be significant based on the acquisition satisfying any of the three significance tests set out in subsection 8.3 (2) of NI 51-102.

10. For the purposes of completing its quantitative analysis of the income test (the "Income Test") prescribed under Part 8.3 of NI 51-102, the REIT is required to compare its income from continuing operations against the proportionate share of income from continuing operations of each of the CST Property Portfolio and Tara Apartments.

11. The application of the Income Test produces an anomalous result for the REIT in comparison to the results of the other tests of significance set out in subsection 8.3 (2) of NI 51-102, which were not triggered by either of the acquisitions.

12. Excluding depreciation of income producing properties when applying the Income Test more accurately reflects the significance of these acquisitions from a business and commercial perspective and its results are generally consistent with the other tests of significance set out in subsection 8.3 (2) of NI 51-102.

13. The application of the Income Test with depreciation of income producing properties excluded results in the CST Property Portfolio and Tara Apartments representing approximately 1.65% and 0.78%, respectively, of the REIT's income from continuing operations for the fiscal year ended December 31, 2007. However, based on the application of the Income Test, pursuant to paragraph (1) of Part 8.2 of NI 51-102, the REIT is required to file a BAR with respect to its acquisition of the CST Property Portfolio on or before October 13, 2008 and Tara Apartments on or before November 11, 2008.

Decision

The Principal Regulator is satisfied that the decision meets the test set out in the Legislation for the Principal Regulator to make the decision.

The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.4 Invesco Trimark Ltd.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to exchange-traded Fund for initial and continuous distribution of units, including: relief from dealer registration requirements to permit promoter to disseminate sales communications promoting the Fund subject to compliance with Part 15 of NI 81-102, relief to permit the Fund' prospectus to not contain an underwriter's certificate, and relief from take-over bid requirements in connection with normal course purchases of units on the Toronto Stock Exchange as the declaration of trust provides that no unitholder can exercise voting rights beyond the 20% threshold.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 59(1), 74(1), 95, 96, 97, 98, 100, 104(2)(c), 147.

Rules Cited

National Instrument 81-102 Mutual Fund – Part 15.

September 19, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
INVESCO TRIMARK LTD.
(the "Filer")

DECISION

Background

The principal regulator has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for exemptive relief from the Legislation so that:

1. the registration requirement of the Legislation does not apply to the Filer in connection with its dissemination of sales communications relating to the distribution of units ("**Units**") of PowerShares China ETF, PowerShares Emerging Markets Infrastructure ETF, PowerShares FTSE RAFI Developed Markets ETF, PowerShares FTSE RAFI Emerging Markets ETF, PowerShares

Global Agriculture ETF, PowerShares Global Clean Energy ETF, PowerShares Global Water ETF (the "**Existing Funds**") and any additional exchange-traded funds of which the Filer, or an affiliate of the Filer, may be the trustee and/or manager and which operate on a similar basis as the Existing Funds (the "**Future Funds**", which together with the Existing Funds are collectively referred to as the "**Funds**")(the "**Registration Relief**");

2. all holders of Units of the Funds be exempted from the requirements of the Legislation related to take-over bids, including the requirement to file a report of a take-over bid and the accompanying fee with each applicable Jurisdiction, (the "**Take-over Bid Relief"**) in respect of take-over bids for the Funds;

3. in connection with the distribution of securities of the Funds pursuant to a prospectus, the Funds be exempt from the requirement that the prospectus contain a certificate of the underwriter or underwriters who are in a contractual relationship with the issuer whose securities are being offered (the "**Underwriter Relief**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

1. the OSC is the principal regulator for this application; and

2. the filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

"Basket of Securities" means a group of securities determined by the Filer from time to time representing the constituents of the investment portfolio then held by the Funds.

"Designated Brokers" means registered brokers and dealers that enter into agreements with the Funds to perform certain duties in relation to the Funds.

"Prescribed Number of Units" means the number of Units of the Funds determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Underwriters" means registered brokers and dealers that have entered into underwriting agreements with the Funds and that subscribe for and purchase Units from the Funds, and "Underwriter" means any one of them.

"Unitholders" means beneficial and registered holders of Units.

Terms defined in National Instrument 14-101 – *Definitions*, Multilateral Instrument 11-102 – *Passport System* and NI 81-102 – *Mutual Funds* ("NI 81-102") 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 Funds are mutual funds trusts governed by the laws of Ontario and will be reporting issuers under the laws of all of jurisdictions in Canada.

2. Invesco Trimark has applied to list the Units of the Funds on the TSX. Invesco Trimark will not file a final prospectus for the Funds until the TSX has conditionally approved the listing of Units.

3. Units issued by the Funds will be index participation units within the meaning of NI 81-102. The Funds will be generally described as exchange-traded funds.

4. Invesco Trimark, a registered investment counsel and portfolio manager, is the trustee and manager of the Funds and is responsible for the administration of the Funds.

5. Each of the Funds will seek investment results that correspond generally to the price and yield performance of an index (the "**Index**") by replicating generally the portfolio of securities which constitutes such Index, net of fees and expenses.

6. Units may only be subscribed for or purchased directly from the Funds by Underwriters or Designated Brokers and orders may only be placed for Units in the Prescribed Number of Units (or an integral multiple thereof) on any day when there is a trading session on the TSX. Under Designated Broker and Underwriter agreements, the Designated Brokers and Underwriters agree to offer Units for sale to the public only as permitted by applicable Canadian securities legislation, which require a prospectus to be delivered to purchasers buying Units as part of a distribution. Therefore, first purchasers of Units in the distribution on the TSX will receive a prospectus from the Designated Brokers and Underwriters.

7. The Funds will appoint Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for Units of

the Funds for the purpose of maintaining liquidity for the Units.

8. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. In the discretion of Invesco Trimark, the Funds may also accept subscriptions for Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

9. The net asset value per Unit of the Funds will be calculated and published daily and the investment portfolio of the Funds will be made available daily on Invesco Trimark's website.

10. Upon notice given by Invesco Trimark from time to time and, in any event, not more than once quarterly, a Designated Broker will subscribe for Units in cash in an amount not to exceed 0.3% of the net asset value of the Funds, or such other amount established by Invesco Trimark and disclosed in the prospectus of the Funds, next determined following delivery of the notice of subscription to that Designated Broker.

11. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units to them. Invesco Trimark may, at its discretion, charge an administration fee on the issuance of Units to the Designated Brokers or Underwriters.

12. Except as described in paragraphs 6 through 11 above, Units may not be purchased directly from the Funds. Investors are generally expected to purchase Units through the facilities of the TSX. However, Units may be issued directly to Unitholders upon the reinvestment of distributions of income or capital gains and in accordance with a distribution reinvestment plan of the Funds, if such a plan is implemented.

13. Unitholders that wish to dispose of their Units may generally do so by selling their Units on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash; Unitholders may also redeem their Units for cash at a redemption price equal to 95% of the closing price of the Units on the TSX on the date of redemption.

14. As manager, Invesco Trimark receives a fixed annual fee from the Funds. Such annual fee is calculated as a fixed percentage of the net asset value of the Funds. As manager, Invesco Trimark is responsible for all costs and expenses of the Funds except the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107, fees and expenses related to the advisory board of the PowerShares ETFs, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

15. Unitholders will have the right to vote at a meeting of Unitholders in respect of the Funds in certain circumstances, including prior to any change in the, fundamental investment objective of the Funds, any change to their voting rights the introduction of a fee or expenses to be charged to the Funds or to Unitholders or a change in the basis of the calculation of a fee or expenses charged to the Funds or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the Funds or Unitholders.

16. Although Units will trade on the TSX and the acquisition of Units can therefore be subject to the Take-over Bid Requirements:

    (a) it will not be possible for one or more Unitholders to exercise control or direction over the Funds as the declaration of trust in respect of the Funds will ensure that there can be no changes made to the Funds which do not have the support of Invesco Trimark;

    (b) it will be difficult for purchasers of Units to monitor compliance with Take-over Bid Requirements because the number of outstanding Units will always be in flux as a result of the ongoing issuance and redemption of Units by the Fund; and

    (c) the way in which Units will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium, for outstanding Units because Unit pricing will be dependent upon the performance of the portfolio of the Fund as a whole.

17. The application of the Take-over Bid Requirements to the Funds would have an adverse impact upon Unit liquidity because they could cause Designated Brokers and other large Unitholders to cease trading Units once prescribed take-over bid thresholds are reached. This, in turn, could serve to provide conventional mutual Funds with a competitive advantage over the Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Registration Relief, the Take-over Bid Relief and the Underwriter Relief are granted provided that:

1. in respect of the Registration Relief, Invesco Trimark complies with Part 15 of National Instrument 81-102 – *Mutual Funds*; and

2. in respect of the Take-over Bid Relief, prior to making any take-over bid for Units that is not otherwise exempt from the Take-over Bid Requirements, the Unit Purchaser, and any person or company acting jointly or in concert with the Unit Purchaser (a "**Concert Party**"), provides the Filer with an undertaking not to exercise any votes attached to the Units held by the Unit Purchaser and any Concert Party which represent more than 20% of the votes attached to all outstanding Units.

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

"Paul K. Bates"
Commissioner
Ontario Securities Commission

2.1.5 Invesco Trimark Ltd.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions - Exemptive relief granted to exchange traded fund offered in continuous distribution from certain mutual fund requirements and restrictions on: transmission of purchase or redemption orders, issuing units for cash or securities, calculation and payment of redemptions and date of record for payment of distributions – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 9.1, 9.4(2), 10.2, 10.3, 14.1, 19.1.

September 30, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
INVESCO TRIMARK LTD.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for exemptive relief from the following provisions of NI 81-102 (the "**Requested Relief**"):

1. Sections 9.1 and 10.2 to permit purchases and sales of units ("**Units**") of PowerShares China ETF, PowerShares Emerging Markets Tnfrastructure ETF, PowerShares FTSE RAFI Developed Markets ETF, PowerShares FTSE RAFI Emerging Markets ETF, PowerShares Global Agriculture ETF, PowerShares Global Clean Energy ETF, PowerShares Global Water ETF (the "**Existing Funds**") and any additional exchangetraded funds of which the Filer, or an affiliate of the Filer, -may be the trustee and/or manager and which operate on a similar basis as the Existing Funds (the "**Future Funds**", which together with the Existing Funds are collectively referred to as the "**Funds**") on the Toronto Stock Exchange ("**TSX**");

2. Section 9.4(2) to permit the Funds to accept a combination of cash and securities as subscription proceeds for Units;

3. Section 10.3 to permit the Funds to redeem less than the Prescribed Number of Units at a discount to their market price, instead of at their net asset value; and

4. permission under Section 14.1 to permit the Funds to establish a record date for distributions in accordance with TSX Rules.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

5. the OSC is the principal regulator for this application; and

6. the filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

"Basket of Securities" means, a group of securities determined by the Filer from time to time representing the constituents of the investment portfolio then held by the Funds.

"Designated Brokers" means registered brokers and dealers that enter into agreements with the Funds to perform certain duties in relation to the Funds.

"Prescribed Number of Units" means the number of Units of a Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Underwriters" means registered brokers and dealers that have entered into underwriting agreements with the Funds and that subscribe for and purchase Units from the Funds, and "Underwriter" means any one of them.

"Unitholders" means beneficial and registered holders of Units.

Section references set out in this decision are references to NI 81-102, unless otherwise indicated.

Terms defined in National Instrument 14-101 - *Definitions*, Multilateral Instrument 11-102 - *Passport System* and NI 81-102 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 Funds are mutual funds trusts governed by the laws of Ontario and will be reporting issuers under the laws of all of the Jurisdictions.

2. Invesco Trimark has applied to list the Units of the Funds on the TSX. Invesco Trimark will not file a final prospectus for the Funds until the TSX has conditionally approved the listing of Units.

3. Units issued by the Funds will be index participation units within the meaning of NI 81102. The Funds will be generally described as exchange-traded funds.

4. Invesco Trimark, a registered investment counsel and portfolio manager, is the trustee and manager of the Funds and is responsible for the administration of the Funds.

5. Each of the Funds will seek investment results that correspond generally to the price and yield performance of an index (the "**Index**") by replicating generally the portfolio of securities which constitutes such Index, net of fees and expenses.

6. Units may only be subscribed for or purchased directly from the Funds by Underwriters or Designated Brokers and orders may only be placed for Units in the Prescribed Number of Units (or an integral multiple thereof) on any day when there is a trading session on the TSX.

7. The Funds will appoint Designated Brokers to perform certain functions which include standing in the market with a bid and ask price for Units of the Funds for the purpose of maintaining liquidity for the Units.

8. Each Underwriter or Designated Broker that subscribes for Units must deliver, in respect of each Prescribed Number of Units to be issued, a Basket of Securities and cash in an amount sufficient so that the value of the Basket of Securities and cash delivered is equal to the net asset value of the Units subscribed for next determined following the receipt of the subscription order. In the discretion of Invesco Trimark, the Funds may also accept subscriptions for Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

9. The net asset value per Unit of the Funds will be calculated and published daily and the investment

portfolio of the Funds will be made available daily on Invesco Trimark's website.

10. Upon notice given by Invesco Trimark from time to time and, in any event, not more than once quarterly, a Designated Broker will subscribe for Units in cash in an amount not to exceed 0.3% of the net asset value of the Funds, or such other amount established by Invesco Trimark and disclosed in the prospectus of the Funds, next determined following delivery of the notice of subscription to that Designated Broker.

11. Neither the Underwriters nor the Designated Brokers will receive any fees or commissions in connection with the issuance of Units to them. Invesco Trimark may, at its discretion, charge an administration fee on the issuance of Units to the Designated Brokers or Underwriters.

12. Except as described in paragraphs 6 through 11 above, Units may not be purchased directly from the Funds. Investors are generally expected to purchase Units through the facilities of the TSX. However, Units may be issued directly to Unitholders upon the reinvestment of distributions of income or capital gains and in accordance with a distribution reinvestment plan of the Funds, if such a plan is implemented.

13. Unitholders that wish to dispose of their Units may generally do so by selling their Units on the TSX, through a registered broker or dealer, subject only to customary brokerage commissions. A Unitholder that holds a Prescribed Number of Units or an integral multiple thereof may exchange such Units for Baskets of Securities and cash; Unitholders may also redeem their Units for cash at a redemption price equal to 95% of the closing price of the Units on the TSX on the date of redemption.

14. As manager, Invesco Trimark receives a fixed annual fee from the Funds. Such annual fee is calculated as a fixed percentage of the net asset value of the Funds. As manager, Invesco Trimark is responsible for all costs and expenses of the Funds except the management fee, any expenses related to the implementation and on-going operation of an independent review committee under National Instrument 81-107, brokerage expenses and commissions, income taxes and withholding taxes and extraordinary expenses.

15. Unitholders will have the right to vote at a meeting of Unitholders in respect of the Funds in certain circumstances, including prior to any change in the, fundamental investment objective of the Funds, any change to their voting rights the introduction of a fee or expenses to be charged to the Funds or to Unitholders or a change in the basis of the calculation of a fee or expenses charged to the Funds or Unitholders where such change could result in an increase in the amount of fees or expenses payable by the Funds or Unitholders.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted on the following conditions:

1. Sections 9.1 and 10.2 - to enable the purchase and sale of Units of the Funds on the TSX, which precludes the transmission of purchase or redemption orders to the order receipt offices of the Funds.

2. Section 9.4(2) - to permit payment for the issuance of Units of the Funds to be made partially in cash and partially in securities, provided that the acceptance of securities as payment is made in accordance with Section 9.4(2)(b).

3. Section 10.3 - to permit the redemption of less than the Prescribed Number of Units of the Funds at a price equal to 95% of the closing price of the Units on the TSX; and

4. Section 14.1 - to relieve the Funds from the requirement relating to the record date for the payment of distributions, provided that the Funds comply with applicable TSX requirements.

"Darren McKall"
Assistant Manager
Ontario Securities Commission

2.1.6 VenGrowth II Capital Management Inc. and VenGrowth II Investment Fund Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to mutual fund no longer in distribution from certain prospectus disclosure requirements in National Instrument 81-102 Mutual Funds in connection with fund mergers and changes of auditor – Relief subject to conditions including that disclosure will be provided in fund's AIF instead.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.1, 5.3(2)(d), 5.3.1(b), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds.

October 8, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
VENGROWTH II CAPITAL MANAGEMENT INC.
(the Fund Manager and the Filer)

AND

IN THE MATTER OF
VENGROWTH II INVESTMENT FUND INC.
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for an exemption from the disclosure requirements contained in sections 5.3(2)(d) and 5.3.1(b) of National Instrument 81-102 *Mutual Funds* (NI 81-102) (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission (OSC) is the principal regulator for this application, and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the other provinces and territories of Canada (the Other Jurisdictions).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 Fund is a corporation incorporated under the laws of Canada by articles of incorporation dated October 18, 1999. The Fund is registered as a labour-sponsored investment fund corporation (LSIF Corporation) under Part II of the *Community Small Business Investment Funds Act* (Ontario) and as a labour-sponsored venture capital corporation as defined in the *Income Tax Act* (Canada). Its head office is in Toronto.

2. The Fund Manager is a corporation incorporated under the laws of Ontario by articles of incorporation dated September 3, 1999. Its head office is in Toronto.

3. The Fund's authorized capital consists of an unlimited number of Class A Shares and 25,000 Class B Shares.

4. All of the issued Class B Shares are owned by the Association of Canadian Financial Officers, the sponsor of the Fund.

5. The Class A Shares were distributed under a prospectus until November 2004 at which time the Fund was closed to new fund raising.

6. The Class A Shares are not listed on an exchange.

7. The Fund's strategy for meeting its investment objectives has been to invest the net proceeds raised from the Class A Shares in globally competitive small and medium sized businesses with proven and experienced management and strong track records. The Fund focuses on broadly diversified, predominantly later-stage venture companies and has a dominant focus on technology firms.

8. The strategy for meeting the Fund's investment objective is now being implemented by seeking to maximize the profitability of the existing portfolio companies and assisting them towards successful exits. To that end, the Fund may continue to

provide follow on funding to existing portfolio companies in order to finance expansion.

9. The Fund will comply with the *Canada Business Corporations Act* in obtaining the requisite shareholder and committee approvals.

10. The Fund has an Independent Review Committee that complies with National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107).

11. Section 5.1 of NI 81-102 requires that securityholder approval must be obtained before specified fundamental changes are made to a mutual fund.

12. Paragraph 5.1(f) of NI 81-102 deals with a reorganization by a mutual fund with, or a transfer of assets by a mutual fund to another mutual fund, if the mutual fund ceases to continue after the transaction and the transaction results in securityholders of the mutual fund becoming securityholders of the other mutual fund.

13. Sub-section 5.3(2) of NI 81-102 provides that securityholder approval is not required in connection with a reorganization under paragraph 5.1(f) if certain conditions are met. The conditions include paragraph 5.3(2)(d) of NI 81-102 that requires the Fund's simplified prospectus to disclose that, although the approval of securityholders may not be obtained before making the change, security holders will be sent a written notice at least 60 days before the change.

14. The Fund may enter into a reorganization or sale of assets in the future to effect an orderly wind-down or disposition of assets.

15. Section 5.3.1 of NI 81-102 sets out the requirements for a mutual fund to change its auditor. Sub-section 5.3.1(b) requires that the Fund's simplified prospectus disclose that, although the approval of securityholders will not be obtained before making the change, security holders will be sent a written notice at least 60 days before the change.

16. The Fund may propose to change its auditor at the next annual general meeting of the Fund, which is expected to be held on or about January 26, 2009.

17. The Fund does not file a prospectus as it has ceased public distribution.

18. The Fund is required to file an Annual Information Form (AIF) under Part 9 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) on or before the 90th day after the end of the Fund's most recently completed financial year. The Fund's year end is August 31. The next AIF will be filed on or before the end of November, 2008. The Fund will include disclosure in the AIF that although shareholders will not be entitled to vote on the change of auditor, they will be sent notice at least 60 days prior to the effective date of any such change. The Fund will include disclosure in the AIF that although shareholders may not be entitled to vote on a reorganization, they will be sent notice at least 60 days prior to the effective date of such a change.

19. Without the Exemption Sought, the Fund is unable to comply with the requirements in paragraph 5.3(2)(d) or sub-section 5.3.1(b) of NI 81-102. The Fund will comply with each of the other requirements in sub-section 5.3(2) and section 5.3.1 of NI 81-102 including obtaining IRC approval of the changes.

20. The Fund is not in default of securities legislation in any jurisdiction.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted so long as the Fund is not in public distribution and the Fund's AIF includes the disclosure referenced in paragraph 18 above.

"Vera Nunes"
Assistant Manager, Investment Funds Branch

2.1.7 Commerce Split Corp. et al.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to exchange traded funds from certain investment restrictions on National Instrument 81-102 Mutual Funds – Filers enter into Forward Agreements when the net asset value declines below a specified level – Forward Agreements are an integral feature of the public offering.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds , ss. 2.6(a)(ii), 2.7(1)(a)(ii), 2.7(4).

October 3, 2008

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

aND

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

AND

IN THE MATTER OF
COMMERCE SPLIT CORP., M SPLIT CORP.,
AND TDB SPLIT CORP.
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filers from:

(a) the prohibition contained in section 2.6(a)(ii) of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) to permit the Filers to borrow cash or provide a security interest over its portfolio assets in accordance with industry practice with respect to this type of transaction;

(b) the prohibition contained in section 2.7(1)(a)(ii) of NI 81-102 to permit the Filers to enter into the forward contracts that have a remaining term to maturity of greater than five years; and

(c) the prohibition contained in section 2.7(4) of NI 81-102 to permit the Filers to each have the mark-to-market value of its exposure to any one counterparty in respect of its specified derivative positions in excess of 10% of the net assets of the mutual fund for a period of 30 days or more.

(collectively, the **Exemption Sought**)

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces of Canada.

Interpretation

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

Representations

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

The Filers

1. Each Filer is a mutual fund corporation incorporated under the laws of the Province of Ontario, and was created to provide exposure to common shares of a Canadian financial institution (Canadian Imperial Bank of Commerce in the case of Commerce Split Corp., Manulife Financial Corporation in the case of M Split Corp. and the Toronto-Dominion Bank in the case of TDb Split Corp.) through its two classes of securities: Priority Equity Shares and Class A Shares.

2. Holders of the Priority Equity Shares are provided with a stable yield and downside protection on the return of their initial investment. Holders of Class A Shares are provided with leveraged exposure to shares of the applicable financial institution (the **Portfolio Shares**) including exposure to increases or decreases in the value of the Portfolio Shares and the benefit of increases in the dividends paid on those shares.

3. Quadravest Inc. (the **Manager**) is the manager of the Filers within the meaning of that term in NI 81-102. Quadravest Capital Management Inc. (**Quadravest**), an affiliate of the Manager, is the portfolio adviser of the Filers within the meaning of that term in NI 81-102. RBC Dexia Investor Services Trust, a trust company meeting the requirements of section 6.2 of NI 81-102, acts as the custodian of the assets of the Filers.

4. The Priority Equity Shares and Class A Shares of each Filer are listed on the Toronto Stock Exchange.

Priority Equity Portfolio Protection Plan

5. Each Filer has adopted a strategy (the **Priority Equity Portfolio Protection Plan**) intended to provide that the amount owing to the holders of the Priority Equity Shares (the **Priority Equity Share Repayment Amount**) will be paid in full to holders of the Priority Equity Shares on the date on which the Filers are scheduled to terminate, being December 1, 2014 (the **Termination Date**).

6. The Priority Equity Portfolio Protection Plan provides that if the net asset value of a Filer declines below a specified level, Quadravest must liquidate a portion of the Portfolio Shares held by the Filer and use the net proceeds to implement the Priority Equity Share Portfolio Protection Plan. Each prospectus filed by the Filers contemplated that the principal way in which the Priority Equity Share Portfolio Protection Plan would be implemented would be through a forward agreement (a **Forward Agreement**).

7. The counterparty to the Forward Agreements (the **Counterparty**) will agree to pay to the applicable Filer on the Termination Date an amount (the **Forward Amount**) in exchange for the Filer agreeing to deliver to the Counterparty on the Termination Date certain equity securities (the **Capital Repayment Portfolio**) agreed upon by the Filer and the Counterparty (all of which constitute "Canadian securities" as defined in subsection 39(6) of the *Income Tax Act* (Canada)) and purchased by the Filer with the net proceeds of the sale of Portfolio Shares held by the Filer. The long term debt of the Counterparty, or of a guarantor of its obligations to such Filer, will have an approved credit rating from an approved credit rating organization, within the meaning of those terms in NI 81-102.

8. The Filers will either pledge to the Counterparty the securities sold to the Counterparty under the Forward Agreements or deposit other acceptable securities with the Counterparty as security for the obligations of the Filers under the Forward Agreements in accordance with industry practice for this type of transaction.

9. A Forward Agreement will provide for partial dispositions of the securities subject to the Forward Agreement so as to permit the Filers to unwind the Priority Equity Portfolio Protection Plan when permitted to do so by its terms, or in the case of retractions of Priority Equity Shares and Class A Shares occurring prior to the Termination Date.

10. As a result of declines in the values of banks and other companies operating in the Canadian financial services sector, Quadravest must now enter into a Forward Agreement with respect to Commerce Split Corp., and may in the future need to enter into similar agreements with respect to the other two Filers.

11. The Filers will pledge the Capital Repayment Portfolio securities, or deposit other acceptable collateral (the **Pledged Securities**) in support of their obligations under the Forward Agreements. The pledge or deposit will be in accordance with the industry practice for this type of transaction.

12. Each Forward Agreement will be entered into for hedging purposes as defined in NI 81-102, since its purpose is to protect holders of the Priority Equity Shares from the risk of loss of their original investment as a result of diminution in value of the Filers' assets over its life. The terms of the Forward Agreements will be specifically negotiated to support this purpose.

13. Although they will not have this exposure at the date a Forward Agreement is entered into, it is possible that, as a result of fluctuations in the value of the Filers' assets, (including the Forward Agreement), the Forward Agreement could at a future date represent more than 10% of a Filer's net assets. Accordingly, it is possible that the Filers could at a future date have exposure to a single counterparty in excess of 10% of the Filers' net assets.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the mark-to-market value of a Filer's exposure to any single Counterparty under a Forward Agreement does not exceed 30% of a Filer's net assets for a period of 60 days.

"Vera Nunes"
Assistant Manager, Investment Funds
Ontario Securities Commission

2.1.8 CIBC World Markets Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Coordinated Review – Registered investment dealer exempted from section 228 of Regulation 1015 made under the Securities Act (Ontario) (the Regulation) for recommendations in respect of securities of its parent bank, subject to conditions – Decision permits the registrant to make recommendations in the circumstances contemplated by subsection 228(2) of the Regulation, but without having to comply with the requirement for (comparative) information, similar to that set forth in respect of the bank, for a substantial number of other persons or companies that are in the industry or business of the bank, to the extent that such comparative information is not known, or ascertainable, by the registrant – By incorporating other requirements from subsection 228(2), the decision also provides that the space and prominence restrictions in clause 228(2)(d) only relate to the information for which there is such comparative information.

Applicable Ontario Statutory Provisions

Ontario Regulation 1015, R.R.O. 1990, as am., ss. 228, 233.

October 10, 2008

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

AND

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

AND

IN THE MATTER OF
CIBC WORLD MARKETS INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the provisions (the **Recommendation Prohibition**) in the Legislation which provide that no registrant shall, in any medium of communication, recommend or cooperate with any person [or company] in the making of any recommendation, that the securities of the registrant or a related issuer of the registrant or, in the course of a distribution, that the securities of a connected issuer of the registrant, be purchased, sold or held, shall not, in certain circumstances, apply to the Filer, in respect of securities of its parent bank, the Canadian Imperial Bank of Commerce (the **Bank**) (the **Exemptive Relief Sought**).

Under the 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* 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 corporation incorporated under the laws of Ontario and has its head office in Toronto, Ontario. To the best of its knowledge, the Filer is not in default of securities legislation in any jurisdiction.

2. The Bank is a Canadian chartered bank named in Schedule I of the *Bank Act* (Canada) (the **Bank Act**) and has its head office in Toronto, Ontario.

3. The Filer is a wholly-owned subsidiary of the Bank and, as such, the Bank is a "related issuer" of the Filer for the purposes of the Recommendation Prohibition.

4. The Filer is registered under the Legislation of each of the Jurisdictions as a dealer in the category of "broker" and/or "investment dealer," or the equivalent(s).

5. The Filer is a full-service investment bank and securities brokerage that provides equity research report coverage on a large number of securities issuers.

6. As a member of the Investment Industry Regulatory Organization of Canada (**IIROC**), the Filer is obliged to comply with IIROC Rule 3400 *Research Restrictions and Disclosure Requirements* (**IIROC Rule 3400**).

7. Guideline No. 3 of IIROC Rule 3400 states:

   Dealer Members should adopt standards of research coverage that include, at a minimum, the obligation to maintain and publish current financial estimates and recommendations on securities followed, and to revisit such estimates and recommendations within a reasonable time following the release of material information by an issuer or the occurrence of other relevant events.

8. In each of the Jurisdictions, the Legislation provides an exemption (the **Statutory Exemption**) from the Recommendation Prohibition for a recommendation to purchase, sell or hold securities of an issuer (**Recommendation**), that is contained in a circular, pamphlet or similar publication (**Report**) that is published, issued or sent by a registrant and is of a type distributed with reasonable regularity in the ordinary course of its business, provided that the Report:

   a) includes in a conspicuous position, in type not less legible than that used in the body of the Report:

      *(i) a full and complete statement (a **Relationship Statement**) of the relationship or connection between the registrant and the issuer of the securities; and*

      (ii) a full and complete statement of the obligations of the registrant under the Recommendation Prohibition and the Statutory Exemption;

   *b) includes information (**Comparative Information**) similar to that set forth in respect of the issuer of the securities in respect of a substantial number of other persons or companies (**Competitors**) that are in the industry or business of the issuer of the securities; and*

   c) does not give materially greater space or prominence to the information set forth in respect of the issuer of the securities than to the information set forth in respect of any other person or company described therein.

9. So long as the Filer remains a related issuer of the Bank, the Filer cannot rely on the Statutory Exemption from the Recommendation Prohibition to publish in any Report any Recommendation with respect to securities of the Bank, including a revision to a previous Recommendation, in response to:

   a) the release of interim financial statements of the Bank or information concerning such financial statements; or

   b) the release of information, or the occurrence of any event, that might reasonably be interpreted to have, or possibly have, a significant effect on the value of any securities issued by the Bank, or the continued validity of previously published financial estimates or Recommendation issued by the Filer in respect of any securities issued by the Bank;

unless, at the relevant time, the Filer has been able to ascertain, and is able to include in the Report, Comparative Information for a substantial number of Competitors of the Bank, and also satisfy the requirements of the Statutory Exemption relating to space and prominence of information, referred to in paragraph 8(c) above.

10. The Filer will be precluded from including in any Report Comparative Information for a substantial number of Competitors of the Bank if, at the relevant time:

    a) there is no Comparative Information for any Competitors that is known, or ascertainable, by the Filer, or

    b) there is no Comparative Information for a substantial number of Competitors of the Bank that is known or ascertainable, by the Filer.

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.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted, subject to the following conditions. The Recommendation Prohibition shall not apply to Recommendations of the Filer in respect of securities of the Bank that are made by the Filer in a Report in response to:

    i) the release of interim financial statements of the Bank or information concerning such financial statements; or

    ii) the release of information, or the occurrence of any event, that might reasonably be interpreted to have, or possibly have, a significant effect on the value of securities issued by the Bank, or the continued validity of previously published financial estimates or Recommendation issued by the Filer in respect of any securities issued by the Bank;

if, at the relevant time, Comparative Information for a substantial number of Competitors of the Bank is not known, or ascertainable, by the Filer, provided that:

    A) the Report includes in a conspicuous position, in type not less legible than that used in the body of the Report:

        I) a Relationship Statement of the relationship or connection between the Filer and the Bank; and

        II) a full and complete statement of the obligations of the Filer under the Recommendation Prohibition and this Decision;

    B) for any information in respect of the Bank that is included in the Report, for which there is Comparative Information for any Competitors that is known, or ascertainable, by the Filer, the Report includes such Comparative Information;

    C) for any information referred to paragraph (b) above, the Report does not give materially greater prominence to the information in respect of the Bank than to Comparative Information for any Competitors of the Bank that is included in the Report; and

    D) this Decision shall terminate on the day that is two years after the date of this Decision.

“Margot C. Howard”
Commissioner
Ontario Securities Commission

“Paulette L. Kennedy”
Commissioner
Ontario Securities Commission

2.1.9 Cordero Energy Inc. - s. 1(10)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

Citation: Cordero Energy Inc., 2008 ABASC 582

October 14, 2008

Heenan Blaikie LLP
12th Floor, Fifth Avenue Place
425 - 1st Street SW
Calgary, AB T2P 3L8

Attention: Nicole Bacsalmasi

Dear Madam:

Re: Cordero Energy Inc. (the Applicant) - Application for a decision under the securities legislation of Alberta, Ontario and Québec (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the **Decision Make**r) in each of the Jurisdictions for a decision under the securities legislation (the **Legislation**) of the Jurisdictions to be deemed to have ceased to be a reporting issuer in the Jurisdictions.

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is deemed to have ceased to be a reporting issuer and that the Applicant's status as a reporting issuer is revoked.

"Blaine Young"
Associate Director, Corporate Finance

2.1.10 Electrohome Limited - s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

October 14, 2008

Electrohome Limited
c/o Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto, ON M5H 3Y4

Dear Sirs/Mesdames:

Re: Electrohome Limited (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.1.11 Arius Research Inc. - s. 1(10)

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

October 14, 2008

Arius Research Inc.
c/o Alex Kilgour
Gowling Lafleur Henderson LLP
555 Legget Drive
Tower B, Suite 740
Kanata, ON K2K 2X3

Dear Sirs/Mesdames:

Re: Arius Research Inc. (the Applicant) – application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer,

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Erez Blumberger"
Manager, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 Citigroup Global Markets Inc. - s. 38

The Applicant will offer to certain of its clients in Ontario (Designated Institutions) the ability to trade in futures contracts that trade on exchanges located outside Canada through the Applicant. The Designated Institutions are the same as "designated institutions" as that term is defined in section 204(1) of Ont. Reg. 1015 General Regulation made under the Securities Act (Ontario) (OSA).

Relief granted to permit the Applicant to execute trades in exchange-traded futures for its own account as well as those placed by its Designated Institutions in Ontario on a basis that it is exempt from registration, except that the Applicant is, and will continue to be, registered as an international dealer under the OSA.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 38.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20
(the Act)

AND

IN THE MATTER OF
CITIGROUP GLOBAL MARKETS INC.

ORDER
(Section 38 of the Act)

UPON the application (the **Application**) of the Citigroup Global Markets Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**), in connection with trades (**Futures Trades**) in commodity futures contracts and options on commodity futures contracts (collectively, **Futures Contracts**) that trade on certain exchanges located outside Canada (**Exchange-Traded Futures**) for its own account and by certain of its clients who are "designated institutions" as such term is defined under subsection 204(1) of Ont. Reg. 1015 *General Regulation* made under the *Securities Act* (Ontario) (the **OSA**) (**Designated Institutions**), for an order pursuant to section 38 of the Act;

A**ND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant is a corporation incorporated under the laws of the State of New York. Its head office is located at 388 Greenwich Street, New York, New York, 10013.

2. The Applicant is a wholly owned subsidiary of Citigroup Financial Products Inc., which in turn is indirectly wholly owned by Citigroup Inc. The Applicant is affiliated with the following entities that are registered with the Commission:

   (a) Citigroup Global Markets Canada Inc., which is registered under the OSA as an investment dealer;

   (b) PFSL Investments Canada Ltd., which is registered under the OSA as a mutual fund dealer; and

   (c) Citibank Canada Investment Funds Limited, which is registered under the OSA as an investment counsel and portfolio manager, mutual fund dealer and limited market dealer.

3. The Applicant is registered as a securities broker-dealer with the U.S. Securities and Exchange Commission (**U.S. SEC**), a member of the Financial Industry Regulatory Authority (**FINRA**), and a member of the National Association of Securities Dealers, Inc. (**U.S. NASD**).

4. The Applicant is registered as a Futures Commission Merchant with the U.S. Commodity Futures Trading Commission (**U.S. CFTC**), and is a member of the National Futures Association (**U.S. NFA**). Pursuant to these registrations, the Applicant is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S. Rules of the CFTC and NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules.

5. The Applicant is a member of major securities exchanges, including the American Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, and the Philadelphia Stock Exchange. The Applicant is a Foreign Approved Participant of the Montreal Exchange and a Registered Futures Commission Merchant of ICE Futures Canada, Inc. The Applicant is also a member of the CME Group (including the Chicago Board of Trade), ICE Futures U.S., Inc., the New York Mercantile Exchange (including COMEX) and other principal U.S. commodity exchanges, and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.

6. The Applicant is registered as an international dealer and international adviser in Ontario.

7. The Applicant proposes to (a) trade in Exchange-Traded Futures for its own account, (b) offer Designated Institutions in Ontario the ability to trade in Exchange-Traded Futures through the

Applicant, and (c) conduct Exchange-Traded Futures execution and clearing services for Designated Institutions resident in Ontario.

8. The Applicant will solicit business only from persons in Ontario who qualify as Designated Institutions.

9. The Applicant will only offer the ability to these Designated Institutions to trade Exchange-Traded Futures trading on exchanges located outside Canada (the "**Recognized Exchanges**").

10. The Applicant may execute a client's order on the relevant Recognized Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. The Applicant will remain responsible for the execution of each such trade.

11. The Applicant may perform both execution and clearing functions for Futures Trades or may direct that a trade executed by it be cleared through a clearing broker if the Applicant is not a member of the Recognized Exchange on which the trade is executed. Alternatively, the client will be able to direct that trades executed by the Applicant be cleared through clearing brokers not affiliated with the Applicant in any way (each a "**Non-CGMI Clearing Broker**").

12. If the Applicant performs only the execution of a client's Futures Contract order and "gives-up" the transaction for clearance to a Non-CGMI Clearing Broker, such clearing broker will also be required to comply with the rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the Act as applicable. Each such Non-CGMI Clearing Broker will represent to the Applicant in a give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant client's Futures Contract orders will be executed and cleared. The Applicant will not enter into a give-up agreement with any Non-CGMI Clearing Broker located in the United States unless such clearing broker is registered with the U.S. CFTC and/or U.S. SEC, as applicable.

13. Clients that direct the Applicant to give up transactions in Exchange-Traded Futures for clearance and settlement by Non-CGMI Clearing Brokers will execute the give-up agreements.

14. Clients will pay commissions for trades to the Applicant or the Non-CGMI Clearing Broker or such commissions may be shared with the Non-CGMI Clearing Broker.

AND UPON considering the Application and the recommendation of the Staff of the Commission;

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to grant the order requested;

IT IS ORDERED pursuant to section 38 of the Act that the Applicant be exempted from the dealer registration requirements set out in the Act in connection with Exchange-Traded Futures for its own account and by certain of its clients who fall within the category of "designated institutions" as such term is defined under subsection 204(1) of Ont. Reg. 1015 – *General Regulation* made under the *Securities Act* (Ontario), provided that:

(a) at the time trading activity is engaged in:

  (i) the Applicant is registered with the U.S. SEC as a securities broker-dealer and with the U.S. CFTC as futures commission merchant and is a member of FINRA and the U.S. NFA in good standing; and

  (ii) the Applicant is registered as an international dealer under the OSA; and

(b) each client in Ontario effecting Futures Trades is a Designated Institution and, if using a non-CGMI Clearing Broker, has represented and covenanted that the broker is or will be appropriately registered or exempt from registration under the Legislation;

(c) the Applicant only executes Futures Trades for Ontario clients on exchanges located outside Canada, unless such Futures Trades are routed through an agent that is a dealer registered in Ontario under the Act; and

(d) each client in Ontario effecting Futures Trades receives disclosure upon entering into the agreement by which it establishes an account with the Applicant that includes:

  (i) a statement that there may be difficulty in enforcing any legal rights against the Applicant or any of its directors, officers or employees because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and

  (ii) a statement that the Applicant is not registered under Ontario

commodity futures legislation and, accordingly, the protection available to clients of a dealer registered under such commodity futures legislation will not be available to clients of the Applicant.

October 3, 2008

"Margot Howard"
Commissioner
Ontario Securities Commission

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

2.2.2 Dexia Asset Management Luxembourg S.A. - 218 of the Regulation

Application for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be incorporated, or otherwise formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer.

Regulation Cited

R.R.O. 1990, Regulation 1015, am. to O. Reg. 500/06, ss. 213, 218.

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990,
CHAPTER S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
R.R.O. 1990, REGULATION 1015,
AS AMENDED
(the Regulation)

AND

IN THE MATTER OF
DEXIA ASSET MANAGEMENT LUXEMBOURG S.A.

ORDER
(Section 218 of the Regulation)

UPON the application (the **Application**) of Dexia Asset Management Luxembourg S.A. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order, pursuant to section 218 of the Regulation, exempting the Applicant from the requirement in section 213 of the Regulation that the Applicant be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada, in order for the Applicant to be registered under the Act as a dealer in the category of limited market dealer;

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a company formed under the laws of Luxembourg. The head office of the Applicant is located in Luxembourg.

2. The Applicant is regulated by and registered with the Commission de Surveillance du Secteur Financier in Luxembourg (the **CSSF**) as a Luxembourg management company for the conduct of investment business.

3. The Applicant is not presently registered in any capacity under the Act. However, the Applicant is in the process of applying to the Commission for registration under the Act as a dealer in the category of limited market dealer (non-resident).

4. The Applicant's primary business is managing funds and portfolios on a discretionary basis. The Applicant's licence from the CSSF (the Applicant's securities regulator in its home jurisdiction) allows the Applicant to market products from its primary business, as well as products of other Dexia Asset Management entities. As such, the Applicant advertises its products and solicits potential institutional clients, as well as high net-worth individuals. As a UCITS III management company, the Applicant is not permitted to execute orders directly on the market. The Applicant places orders to a broker who will execute the trade on the market. Any orders to purchase fund units or shares will be made by the client with the Applicant's distributor.

5. In Ontario, the Applicant intends to, among other things, market to accredited investors and other exempt purchasers units, shares, limited partnership interests and other securities or funds that are primarily offered outside of Canada. The clients would primarily include large institutional investors. These limited market activities may be undertaken directly, or in conjunction with or through another registered dealer, including providing and receiving referrals to and from such dealer.

6. Section 213 of the Regulation provides that a registered dealer that is not an individual must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

7. The Applicant is not resident in Canada and does not require a separate Canadian company in order to carry out its proposed limited market dealer activities in Ontario. It is more efficient and cost-effective to carry out those activities through the existing company.

8. Without the relief requested, the Applicant would not meet the requirements of the Regulation for registration as a dealer in the category of limited market dealer as the Applicant is not a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada.

AND UPON being satisfied that to make this order would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 218 of the Regulation, and in connection with the registration of the Applicant as a dealer under the Act in the category of limited market dealer, section 213 of the Regulation shall not apply to the Applicant for a period of three years, provided that:

1. The Applicant appoints an agent for service of process in Ontario.

2. The Applicant shall provide to each client resident in Ontario a statement in writing disclosing the non-resident status of the Applicant, the Applicant's jurisdiction of residence, the name and address of the agent for service of process of the Applicant in Ontario, and the nature of risks to clients that legal rights may not be enforceable.

3. The Applicant will not change its agent for service of process in Ontario without giving the Commission thirty (30) days prior notice of such change by filing a new Submission to Jurisdiction and Appointment of Agent for Service of Process.

4. The Applicant and each of its registered salespersons, directors, officers and partners irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial, and administrative tribunals of Ontario and any administrative proceedings in Ontario, in any proceedings arising out of or related to or concerning its registration under the Act or its activities in Ontario as a registrant.

5. The Applicant will not have custody of, or maintain customer accounts in relation to, securities, funds, and other assets of clients resident in Ontario.

6. The Applicant will inform the Director immediately upon the Applicant becoming aware:

   (a) that it has ceased to be regulated by and registered with the CSSF;

   (b) of its registration in any other jurisdiction not being renewed or being suspended or revoked;

   (c) that it is the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-regulatory authority;

   (d) that the registration of its salespersons, officers, directors, or partners who are registered in Ontario have not been renewed or have been suspended or revoked in any Canadian or foreign jurisdiction; or

   (e) that any of its salespersons, officers, directors, or partners who are registered in Ontario are the subject of a regulatory proceeding, investigation or disciplinary action by any financial services or securities regulatory authority or self-

regulatory authority in any Canadian or foreign jurisdiction.

7. The Applicant will pay the increased compliance and case assessment costs of the Commission due to the Applicant's location outside Ontario, including the cost of hiring a third party to perform a compliance review on behalf of the Commission.

8. The Applicant will make its books and records outside Ontario, including electronic records, readily accessible in Ontario, and will produce physical records for the Commission within a reasonable time if requested.

9. If the laws of the jurisdiction in which the Applicant's books and records are located prohibit production of the books and records in Ontario without the consent of the relevant client the Applicant shall, upon a request by the Commission:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the production of books and records.

10. The Applicant will, upon the Commission's request, provide a representative to assist the Commission in compliance and enforcement matters.

11. The Applicant and each of its registered salespersons, directors, officers or partners will comply, at the Applicant's expense, with requests under the Commission's investigation powers and orders under the Act in relation to the Applicant's dealings with Ontario clients, including producing documents and witnesses in Ontario, submitting to audit or search and seizure process or consenting to an asset freeze, to the extent such powers would be enforceable against the Applicant if the Applicant were resident in Ontario.

12. If the laws of the Applicant's jurisdiction of residence that are otherwise applicable to the giving of evidence or production of documents prohibit the Applicant or the witnesses from giving the evidence without the consent or leave of the relevant client or any third party, including a court of competent jurisdiction, the Applicant shall:

   (a) so advise the Commission; and

   (b) use its best efforts to obtain the client's consent to the giving of the evidence.

13. The Applicant will maintain appropriate registration and regulatory organization membership, in the jurisdiction of its principal operations and if required, in its jurisdiction of residence.

September 26th, 2008.

"James E. A. Turner"
Commissioner
Ontario Securities Commission

"Mary G. Condon"
Commissioner
Ontario Securities Commission

2.2.3 New Life Capital Corp. et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
NEW LIFE CAPITAL CORP.,
NEW LIFE CAPITAL INVESTMENTS INC.,
NEW LIFE CAPITAL ADVANTAGE INC.,
NEW LIFE CAPITAL STRATEGIES INC.,
1660690 ONTARIO LTD., L. JEFFREY POGACHAR,
PAOLA LOMBARDI AND ALAN S. PRICE

ORDER
(Section 127)

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary cease trade order on August 6, 2008 (the "Temporary Order") in respect of New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., L. Jeffrey Pogachar ("Pogachar"), Paola Lombardi ("Lombardi") and Alan S. Price ("Price") (collectively, the "Respondents");

AND WHEREAS the Temporary Order ordered that (1) pursuant to clause 2 of section 127(1) and section 127(5) of the Act, trading in securities of and by the Respondents shall cease; (2) pursuant to clause 3 of section 127(1) and section 127(5) of the Act, any exemptions contained in Ontario securities law not do not apply to any of the Respondents; and (3) the Order shall not prevent or prohibit any future payments in the way of premiums owing from time to time in respect of insurance policies which were purchased by the Respondents on or before the date of the Order;

AND WHEREAS the Commission further ordered that the Temporary Order is continued until the hearing scheduled for August 21, 2008;

AND WHEREAS the Commission issued a Direction on August 6, 2008 to TD Canada Trust, Branch 2492 in Grimsby, Ontario directing TD Canada Trust to retain all funds, securities or property on deposit in the names or under the control of New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc. and/or 1660690 Ontario Ltd. (the "Direction");

AND WHEREAS a Notice of Hearing was issued by the Commission and a Statement of Allegations was filed and delivered to the Respondents by Staff on August 7, 2008;

AND WHEREAS the Commission varied the Direction on August 11, 2008 to permit the release of $87,743.54 from the funds that are the subject of the Direction for the purpose of certain immediate and urgent expenses (the "Varied Direction");

AND WHEREAS on August 12, 2008 the Ontario Superior Court of Justice ordered that the Varied Direction, as varied or revoked by the Commission, is continued until final resolution of this matter by the Commission or further order of the Court;

AND WHEREAS on August 15, 2008, the Commission ordered the following exemptions to the Temporary Order: (1) Pogachar, Lombardi and Price may each hold one account to trade securities; (2) each account must be held with a registered dealer to whom this Order and any preceding Orders in this matter must be given at the time of opening the account or before any trading occurs in the account; and (3) the only securities that may be traded in each account are: (a) those listed and posted for trading on the TSX, TSX Venture Exchange, Bourse de Montreal or New York Stock Exchange; (b) those issued by a mutual fund which is a reporting issuer; or (c) a fixed income security;

AND WHEREAS the Respondents are represented by counsel and have been served with the Temporary Order, the Notice of Hearing dated August 7, 2008, the Statement of Allegations dated August 7, 2008 and the Affidavit of Stephanie Collins sworn August 7, 2008 (the "Collins Affidavit");

AND WHEREAS Staff of the Commission ("Staff") have filed the Collins Affidavit in support of Staff's request to extend the Temporary Order;

AND WHEREAS Staff and the Respondents requested an adjournment to permit Staff to continue the investigation and to permit the Respondents to respond to the Statement of Allegations dated August 7, 2008;

AND WHEREAS on August 21, 2008, Staff and counsel for the Respondents appeared before the Commission;

AND WHEREAS on August 21, 2008, the Commission ordered that the Temporary Order is continued until September 22, 2008 and that this hearing is adjourned to September 19, 2008, at 2:30 p.m.;

AND WHEREAS the Respondents requested a variance to the Direction to permit outstanding expenses to be paid and additional expenses to be paid going forward and Staff consented to the Respondents' request but only with respect to certain outstanding expenses and certain minimal expenses to be paid going forward (the "Consent Expenses");

AND WHEREAS the Respondents were only moving on September 19, 2008 to seek a variance with respect to the Consent Expenses;

AND WHEREAS Staff delivered to counsel for the Respondents and filed a Supplementary Affidavit of Stephanie Collins sworn September 19, 2008 detailing the expenses included in the variance requested by the Respondents and consented to by Staff;

AND WHEREAS Staff and the Respondents requested a further adjournment to permit Staff to continue the investigation and to permit the Respondents to respond to the Statement of Allegations dated August 7, 2008;

AND WHEREAS on September 19, 2008, Staff and counsel for the Respondents appeared before the Commission;

AND WHEREAS on September 19, 2008, the Commission ordered: (i) that the Varied Direction is further varied in order to permit the release of $46,891.35, and (ii) that the Temporary Order is continued until October 15, 2008 and the hearing is adjourned to October 14, 2008 p.m. or such other date as is agreed by Staff and the Respondents and determined by the Office of the Secretary;

AND WHEREAS Staff and counsel for the Respondents have requested a brief adjournment to permit further discussions with respect to next steps and to permit the Respondents to file any required materials in a reasonable time prior to the hearing;

IT IS ORDERED that the Temporary Order is continued until October 24, 2008, and the hearing is adjourned to October 23, 2008 at 10:00 a.m., or such other date as is agreed by Staff and the Respondents and determined by the Office of the Secretary.

DATED at Toronto this 10th day of October, 2008.

"Wendell S. Wigle"

"Suresh Thakrar"

2.2.4 ING Investment Management, Inc. - s. 121(2)(a)(ii)

Headnote

Relief from self-dealing prohibition of the Act to allow in specie transfers of securities between managed accounts of related parties and pooled fund - relief from requirement that management report transactions between related companies and pooled fund - ss. 117(1)(a), 118(2)(b) and 121(2)(a)(ii) of Securities Act , R.S.O. 1990, c.S.5, as amended.

Applicable Legislative Provisions

Securities Act , R.S.O. 1990, c. S.5, as am., ss. 117(1)(a), 118(2)(b), 121(2)(a)(ii).

October 10, 2008

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED

AND

IN THE MATTER OF
ING INVESTMENT MANAGEMENT, INC.

ORDER
(clause 121(2)(a)(ii))

WHEREAS the Ontario Securities Commission has received an application (the "Application") from ING Investment Management, Inc. (the "Filer") for an order pursuant to clause 121(2)(a)(ii) of the *Securities Act* (Ontario) (the "Securities Act") for relief from the prohibition in paragraphs 117(1)(a) and 118(2)(b) of the Securities Act in connection with certain contributions to be made by ING Insurance Company of Canada, ING Novex Insurance Company of Canada, The Nordic Insurance Company of Canada, Trafalgar Insurance Company of Canada and Belair Insurance Company (each an "Existing Company" and collectively, the "Existing Companies") to a limited partnership formed under the laws of Ontario (the "Partnership") and possible contributions to be made to the Partnership by other insurance subsidiaries of ING Canada Inc. (the "Future Companies") in the future (the Existing Companies and the Future Companies are collectively referred to herein as the "Companies");

AND WHEREAS it has been represented by the Filer that:

1. The Filer, a wholly-owned subsidiary of ING Canada Inc. ("ING Canada"), is registered as, inter alia, an adviser under the categories of investment counsel and portfolio manager with the Ontario Securities Commission.

2. The Filer currently manages the investment portfolios of the Existing Companies, each of which is a wholly-owned subsidiary of ING

Canada, and in the future the Filer may manage the investment portfolios of the Future Companies.

3. The Existing Companies are insurance companies that are regulated by either the Office of the Superintendent of Financial Institutions ("OSFI") or l' Autorité des marchés financiers (the "AMF"). The Existing Companies have received authorization from OSFI and the AMF to proceed with the restructuring step set out below.

4. Pursuant to a restructuring, each Existing Company proposes to contribute over time a part of its investment portfolio to the Partnership. The general partner of the Partnership is a wholly-owned subsidiary of ING Canada.

5. The Partnership is a mutual fund in Ontario as that term is defined in the Securities Act.

6. The Partnership does not intend to become a reporting issuer, as such term is defined in the *Securities Act*, and its securities will not be listed on any stock exchange.

7. It is intended that the Existing Companies will be the initial limited partners of the Partnership and that Future Companies may become additional limited partners of the Partnership.

8. At any time, one or more Companies could be related persons or companies of the Partnership as they may be substantial securityholders of the Partnership and because ING Canada, a substantial securityholder of the Filer, has or will have a significant interest in each of them. In addition, the Companies may be responsible persons as such term is defined in subsection 118(1) of the *Securities Act*.

9. The Filer will be retained as the investment manager of the Partnership and will have discretionary authority to manage the assets of the Partnership.

10. The proposed contributions to the Partnership from the Companies will be consistent with the investment objectives and strategies of the Partnership and will be eligible investments for the Partnership.

11. The proposed contributions to the Partnership will take place at the prevailing market price of the securities of the portfolios based on public quotations in common use for the market facilities through which the portfolio securities are traded.

12. In the absence of an exemption from the Filing Requirements, the Filer would be required to file a report for every contribution to the Partnership by a Company if the Company is a related person or company of the Partnership at the time of the contribution.

13. In the absence of an exemption from the Responsible Person Requirements, the Filer would not be permitted to cause each Company and the investment portfolio of the Partnership to purchase or sell the securities of any issuer from or to the account of the Partnership or a Company, respectively;

AND WHEREAS the Commission is satisfied that the test contained in the Securities Act that provides the Commission with the jurisdiction to make the Order has been met;

IT IS ORDERED pursuant to clause 121(2)(a)(ii) that paragraph 118(2)(b) of the Securities Act shall not apply so as to prevent contributions to the Partnership by the Companies and that paragraph 117(1)(a) of the *Securities Act* shall not apply so as to require the reporting by the Filer of the contributions to the Partnership to the extent otherwise required.

"Wendell S. Wigle"
Commissioner
Ontario Securities Commission

"Suresh Thakrar"
Commissioner
Ontario Securities Commission

2.2.5 Goldbridge Financial Inc. et al. - ss. 127(1), (5)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC.,
WESLEY WAYNE WEBER,
AND SHAWN LESPERANCE

TEMPORARY ORDER
Section 127(1) & 127(5)

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. Goldbridge Financial Inc. ("Goldbridge") is an Ontario company registered under the *Business Corporations Act*;

2. Wesley Wayne Weber ("Weber") is the President of Goldbridge;

3. Shawn C. Lesperance ("Lesperance") is an officer of Goldbridge;

4. Weber has made statements to the media to the effect that he is actively managing investors' funds;

5. Weber has placed advertisements on the internet holding himself and Goldbridge out as investment advisors and providers of training in day trading;

6. There is no record of Goldbridge, Weber or Lesperance having been registered under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

7. Weber has used false names to open and attempt to open online trading accounts in the United States;

8. No exemptions from the registration and prospectus requirements under the Act apply to Goldbridge, Weber or Lesperance; and,

9. Staff of the Commission are conducting an investigation into the activities of Goldbridge, Weber and Lesperance who may be trading without complying with the registration requirements under s. 25 of the Act.

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in s. 127(5) of the Act;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

AND WHEREAS by Authorization Order made April 1, 2008, pursuant to subsection 3.5(3) of the Act, the Commission authorized each of W. David Wilson, James E. A. Turner, Lawrence E. Ritchie, Paul K. Bates and David L. Knight, acting alone, to exercise the powers of the Commission to make Orders under section 127 of the Act;

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by Goldbridge, Weber, and Lesperance shall cease;

IT IS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act that the exemptions contained in Ontario securities law do not apply to Goldbridge, Weber and Lesperance;

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the Act this order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission.

Dated at Toronto this 10th day of October, 2008

"David Wilson"

2.2.6 egX Group Inc. and egX Canada Inc. - s. 147

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED (Act)

AND

IN THE MATTER OF
egX GROUP INC.

AND

egX CANADA INC.

ORDER
(Section 147 of the Act)

WHEREAS egX Group Inc. (egX Group) and egX Canada Inc. (egX Canada) have filed an application dated June 23, 2008 (the Application) with the Ontario Securities Commission (Commission) requesting that the Commission make an order pursuant to section 147 of the Act exempting egX Group and egX Canada from the requirement to be recognized as a stock exchange under section 21 of the Act;

AND WHEREAS egX Group and egX Canada have represented to the Commission as follows:

1. egX Group was incorporated on December 12, 1977 under the *Companies Act* (British Columbia) and maintains its head office in British Columbia;

2. egX Canada was incorporated on November 15, 2004 under the Canada Business Corporations Act and is a wholly owned subsidiary of egX Group;

3. egX Group is a public company and is listed on the TSX Venture Exchange;

4. egX Canada will operate a stock exchange for real estate-related securities;

5. The British Columbia Securities Commission (BCSC) has recognized egX Canada as an exchange under section 24 of the Securities Act (British Columbia) pursuant to an order dated March 14, 2007, as amended by order dated May 28, 2008 (collectively, BCSC Order), attached as Appendix B to this exemption order;

6. egX Canada is subject to regulatory oversight by the BCSC which includes:

   (i) reviewing Form 21-101F1 and the information filed by egX Canada on financial and operational matters,

   (ii) reviewing and approving changes to egX Canada's regulatory instruments, procedures and practices pursuant to the Regulatory Instrument Review Protocol between egX Canada and the BCSC (Rule Protocol), and

   (iii) conducting an oversight program of egX Canada to ensure that it meets appropriate standards for market operation and regulation;

7. egX Canada has retained Market Regulation Services Inc., now the Investment Industry Regulatory Organization of Canada (IIROC) as a regulation services provider under National Instrument 23-101 Trading Rules (NI 23-101) to provide certain market regulation services to egX Canada under a regulation services agreement executed on February 28, 2008 (the Regulation Services Agreement);

8. egX Canada has established a regulatory oversight committee (ROC) whose mandate is to oversee the performance of regulatory functions, ensure the adequacy of resources allocated to these functions, and review regulatory policy proposals;

9. CDS Clearing and Depository Services is the clearing agency for all trades on the exchange;

AND WHEREAS egX Group and egX Canada have agreed to the terms and conditions applicable to each one of them as set out in Appendix A;

AND WHEREAS based on the Application and subject to the representations and undertakings made by egX Group and egX Canada, the Commission is satisfied that exempting egX Group and egX Canada will not be prejudicial to the public interest;

The Commission hereby exempts egX Group and egX Canada from recognition as a stock exchange pursuant to section 147 of the Act on the terms and conditions set out in Appendix A to this order.

DATED October 14, 2008.

"Carol S. Perry"

"Paulette L. Kennedy"

APPENDIX A

Terms and Conditions

PART I GENERAL

Criteria

1. egX Group and egX Canada must continue to meet the criteria attached as Schedule 1 and will notify the Commission of material changes to the facts included in the Application.

Information Sharing

2. Upon request by the Commission to the BCSC, egX Group and egX Canada will provide to the Commission through the BCSC any information in the possession of egX Group or egX Canada, or over which egX Group or egX Canada has control, relating to egX participants as defined in egX Canada's Trading Rules (egX Participants), listed issuers as defined in egX Canada's Listings Manual (egX Listed Issuers), shareholders and the market operations of egX Canada, including but not limited to shareholder and egX Participant lists, products, trading information and disciplinary decisions.

Submission to Jurisdiction and Agent for Service

3. For greater certainty, egX Group and egX Canada will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of egX Group and egX Canada in Ontario.

4. egX Group and egX Canada will file with the Commission a valid and binding appointment of agent for service in Ontario upon whom may be served 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 egX Group and egX Canada's activities in Ontario.

PART II egX GROUP

Regulation of egX Group

5. egX Group will maintain its reporting issuer status in British Columbia and in the event that at any time, egX Group ceases to be a reporting issuer in British Columbia, it will immediately notify the Commission.

Governance

6. egX Group will ensure that at least fifty percent (50%) of its directors will be independent. A director is independent if he or she is independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time. For greater certainty, an associate, director, officer or employee of an egX Participant will not be considered independent.

Allocation of Resources and Financial Viability

7. (a) egX Group will, subject to paragraph 7(b) and for so long as egX Canada carries on business as a stock exchange, allocate sufficient financial and other resources to egX Canada to ensure that egX Canada can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part III of this Appendix A.

   (b) egX Group will notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to egX Canada to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part III of this Appendix A. egX Group will also advise the Commission of the steps being taken to rectify the situation.

8. egX Group must continue to report to the BCSC, on a quarterly basis, its capital that is available to fund cash flow requirements for egX Group and its subsidiaries for the subsequent six-month period and its plans to deal with any cash flow deficiency for the six-month period (financial viability report). egX Group will provide the Commission with copies of the financial viability reports filed with the BCSC and notify the Commission of any changes to the format or content of these reports.

9. egX Group must file with the Commission audited annual consolidated financial statements within 120 days of each year end and unaudited quarterly consolidated financial statements within 60 days of each quarter end, or such shorter period as is mandated for reporting issuers to file such financial statements under applicable securities legislation.

Compliance

10. egX Group must carry out its activities as a stock exchange exempted under section 21 of the Act. egX Group will do everything within its control to cause egX Canada to carry out its activities as an exchange exempted from recognition under section 21 of the Act, and to comply with the terms and conditions in Part III of this Appendix A.

PART III egX CANADA

Regulation of egX Canada

11. egX Canada must continue to be recognized as an exchange by the BCSC in accordance with the terms and conditions set out in the BCSC Order attached as Appendix B to this exemption order.

12. egX Canada must continue to be subject to any joint regulatory oversight as may be established and prescribed by the BCSC and the Commission from time to time.

Governance

13. egX Canada must ensure that at least fifty percent (50%) of its directors will be independent. A director is independent if he or she is independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time. For greater certainty, an associate, director, officer or employee of an egX Participant will not be considered independent.

14. The ROC must be composed of at least 50% of independent members as defined in term and condition 13 above.

Access

15. egX Canada will not provide direct access to persons or companies in Ontario unless they are appropriately registered to trade in securities in Ontario. egX Canada must require them to notify it immediately if their registration has been revoked, suspended or amended by the Commission and following such notice, egX Canada will promptly and appropriately restrict access.

Regulation of Participants on egX Canada

16. egX Canada must continue to retain IIROC as a regulation services provider to provide to egX Canada certain regulation services which have been approved by the BCSC.

17. As set out in the Regulation Services Agreement, IIROC will be entitled to exercise all the authority of egX Canada with respect to the administration and enforcement of the Universal Market Integrity Rules (UMIR) and other related rules, policies and guidance.

18. egX Canada shall continue to perform all other regulation functions not performed by IIROC.

19. egX Canada must provide the Commission through the BCSC with copies of the following documents provided to the BCSC under the BCSC Order:

    (a) the list of regulatory services provided by IIROC and services carried out directly by egX Canada and any updates made thereto, and

    (b) the report of egX Canada's assessment of IIROC's performance and recommendations for improvements, and egX Canada's proposed actions to take as a result.

Regulation of Issuers on egX Canada

20. Three years after the date of this order, egX Canada must self-assess its performance with respect to monitoring and enforcing its timely disclosure requirements on egX Listed Issuers. Such self-assessment must include an assessment of the effectiveness of the Regulatory Co-operation Protocol with IIROC. egX Canada must file its self-assessment, together with any recommendations for improvements, with the Commission within 90 days following the completion of the assessment.

Rules and Rule-Making

21. egX Canada must concurrently provide the Commission with copies of all rules, policies and other regulatory instruments that it files for review and approval with the BCSC under the Rule Protocol. Once the BCSC has approved the rules, egX Canada will provide copies of all final rules, policies and other regulatory instruments to the Commission within two weeks of approval by the BCSC.

Financial Viability

22. egX Canada must file with the Commission all financial reports and financial statements that it provides to the BCSC.

23. If egX Canada does not have sufficient working capital to meet its projected capital expenditures and operating costs for the subsequent six months, egX Canada will file with the Commission a copy of the letter delivered by its President to the BCSC advising the BCSC of the reason for the deficiency, and the steps being taken to rectify the problem.

Information Transparency

24. Prior to the launch of the exchange in Ontario, egX Canada will execute an agreement with an information vendor in order to satisfy its obligation under Part 7 of National Instrument 21-101.

Outsourcing

25. egX Canada must obtain the approval of the BCSC prior to making any material amendments to any outsourcing arrangement of a key regulatory function.

Filing Requirements

26. egX Canada shall file with the Commission, concurrently with filing the information with the BCSC, any related information concerning egX Canada that is required pursuant to National Instrument 21-101 *Marketplace Operation*, including the report relating to the independent systems review.

Reporting Issuer Status

27. egX Canada must require any egX Listed Issuer that has a significant connection to Ontario to make application to become a reporting issuer in Ontario.

Conflicts of Interest

28. egX Canada must require any egX Listed Issuer that is not a reporting issuer in Ontario or Quebec to comply with Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

Restricted Securities

29. egX Canada shall not list restricted securities, as defined in National Instrument 41-101 *General Prospectus Requirements*, unless the constating documents of the issuer of the restricted securities:

    (a) provide a mechanism to require that holders of restricted securities will have the opportunity to participate in any take-over bid for any class of equity securities on equal terms with holders of the equity securities, and

    (b) provide holders of restricted securities with equal rights relating to take-over bids as the holders of the equity securities have under applicable securities legislation,

    notwithstanding the fact that the restricted securities are a separate class of securities with different rights than the class of equity securities subject to the take-over bid.

SCHEDULE 1

Criteria for Exemption of egX Canada and egX Group from Recognition as a Stock Exchange in Ontario

PART 1 REGULATION OF THE EXCHANGE

egX Canada is recognized by another securities commission or similar regulatory authority in Canada and is, and will continue to be, in compliance with NI 21-101 and NI 23-101, each as amended from time to time.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of egX Group and egX Canada ensure:

(a) effective oversight of egX Canada,

(b) egX Group and egX Canada's business and regulatory decisions are in keeping with their public interest mandate,

(c) fair, meaningful and diverse representation on the Board and any committees of the Board, including a reasonable proportion of independent directors,

(d) a proper balance among the interests of the different persons or companies accessing the facilities and/or services of egX Canada,

(e) egX Group and egX Canada have policies and procedures to appropriately identify and manage conflicts of interest,

(f) each director or officer, and each person or company that owns or controls, directly or indirectly, more than 10% of egX Group and egX Canada is a fit and proper person, and

(g) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

PART 3 FEES

3.1 Fees

(a) All fees imposed by egX Canada are equitably allocated and fees do not have the effect of creating unreasonable barriers to access.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 4 ACCESS

4.1 Fair Access

(a) egX Canada has established appropriate written standards for access to its services including requirements for participants to be appropriately registered under Ontario securities laws or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 5 REGULATION OF PARTICIPANTS AND ISSUERS ON egX CANADA

5.1 Regulation

egX Canada has the authority, capacity, systems and processes to undertake its regulation functions by setting requirements governing the conduct of its participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of egX Canada requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) egX Canada's rules, policies or other similar instruments (Rules) are designed to govern the operations and activities of participants and issuers.

(b) In addition to meeting the requirements in section 5.3 of NI 21-101, the Rules are designed to

(i) provide a framework for disciplinary and enforcement actions, and

(ii) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by egX Canada that affects a participant or issuer, including a decision related to access, listing, exemptions, or discipline, egX Canada ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) egX Canada keeps a record, gives reasons and provides for appeals of its decisions.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Systems and Technology

Each of egX Canada's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and in addition, has sufficient capacity and business continuity plans to enable egX Canada to properly carry on its business. Critical systems are those that support the following functions listed in Part 12 of NI 21-101:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting, and

(e) trade comparison,

and, the following additional functions:

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

8.2 Information Technology Risk Management Procedures

egX Canada has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 9 FINANCIAL VIABILITY AND REPORTING

9.1 Financial Viability

egX Canada has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 CLEARING AND SETTLEMENT

10.1 Clearing Arrangements

egX Canada has appropriate arrangements for the clearing and settlement of transactions through a clearing agency that is appropriately regulated by a securities regulatory authority.

PART 11 TRANSPARENCY

11.1 Transparency

egX Canada has adequate arrangements for satisfying its pre-trade and post-trade information transparency obligations under Part 7 of NI 21-101. This information is provided to all participants on an equitable basis.

PART 12 OUTSOURCING

12.1 Outsourcing

Where egX Group and egX Canada have outsourced any of their key functions including to an affiliate, each has appropriate, formal arrangements and processes in place that permit each to meet its obligations, and are in accordance with industry best practices.

PART 13 INFORMATION SHARING AND REGULATORY COOPERATION

13.1 Information Sharing and Regulatory Cooperation

egX Group and egX Canada have mechanisms in place to ensure that each is able to cooperate, by sharing information or otherwise, with the Commission and its staff, self-regulatory organizations, other exchanges, investor protection funds, and other appropriate regulatory bodies.

APPENDIX B

COR#07/022

Recognition Order

egX Canada Inc.

Section 24 of the *Securities Act*, RSBC 1996, c. 418

¶1 egX Canada Inc., a subsidiary of Global Financial Group Inc. (GFG), has applied for recognition as an exchange in British Columbia under section 24 of the Act.

¶2 egX represents that it will operate an exchange for real estate related securities, will maintain its head office in British Columbia, and will:

(a) provide listing and corporate finance services;

(b) perform listed issuer regulation functions;

(c) provide trading services to its participants; and

(d) perform market regulation functions.

¶3 In addition to being required to comply with the requirements of the Act, National Instrument 21-101 Marketplace Operations (NI 21-101), and National Instrument 23-101 Trading Rules (NI 23-101), egX has agreed to comply with Schedules A and B to this order.

¶4 Based on the application and the representations, acknowledgements, and undertakings made by egX and GFG, the Commission is satisfied that recognizing egX will not be prejudicial to the public interest.

¶5 The Commission recognizes egX as an exchange under section 24 of the Act and does not object to the egX Trading Rules and Listings Manual so long as egX

(a) before operating as an exchange, complies with Schedule A, and

(b) complies with Schedule B, the Act, NI 21-101 and NI 23-101.

¶6 This recognition will continue until the Commission, after giving egX an opportunity to be heard, revokes or varies it.

¶7 March 14, 2007

“Douglas M. Hyndman”
Chair

Schedule A – Pre-operating conditions

egX's recognition is conditional on egX, before it begins operating as an exchange:

(a) confirming to the Commission that its connectivity with Market Regulation Services Inc. is complete and it has entered into an agreement with RS for market regulation services;

(b) confirming to the Commission that its connectivity with CDS is complete and that it has entered into an agreement with CDS for clearing and settlement services;

(c) filing with the Commission an audit review report of egX's trading systems;

(d) filing with the Commission an external and internal vulnerability test report on egX's non-trading systems; and

(e) confirming to the Commission that all steps necessary to begin exchange operations have been taken, as set out in the business plan egX filed with its application for recognition.

Schedule B – Conditions of Recognition

Public interest

1. egX must regulate listed issuers and its market to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.

Corporate governance

2. egX's corporate governance system must ensure effective oversight of egX's management and regulatory functions.

3. egX must ensure that each director, officer, and significant security holder[1] is a fit and proper person[2] for that role.

Conflicts of interest

4. egX must effectively identify and manage conflicts of interest.

Access

5. egX must have fair access criteria for its trading and listing services, and apply them fairly and transparently.

Financial viability and reporting

6. egX must have sufficient financial resources to perform its functions and meet its responsibilities.

7. egX must:

   (a) report quarterly to the Commission what capital is available and why that capital is sufficient to ensure egX can perform its functions and meet its responsibilities for the next six months;

   (b) report immediately to the Commission when it does not have sufficient capital for the next six months, setting out the reasons for the deficiency and the steps egX will take to rectify the deficiency; and

   (c) file unaudited quarterly financial statements within 60 days of each quarter's end prepared according to generally accepted accounting principles.[3]

Compliance and control systems

8. egX must maintain an effective system for compliance with the securities legislation and this recognition order, as well as its own internal policies and procedures.

9. egX must maintain controls to manage the risks associated with its business, including an annual review of its contingency and business continuity plans.

Outsourcing

10. egX must obtain the Commission's consent before entering into an outsourcing arrangement.

Clearing and settlement

11. egX must make appropriate arrangements for clearing and settlement through a recognized clearing agency.

Regulation

12. egX must regulate its marketplace effectively.

Regulatory instrument review process

13. egX must follow the regulatory instrument review process established by the Commission from time to time.

---

1 A significant security holder holds 10% or more beneficial ownership or voting control.
2 A fit and proper person is (a) appropriately qualified for that role by education and experience, and (b) of good character and integrity.
3 egX must also file annual audited financial statements (section 5.6, NI 21-101).

Accountability

14. At least quarterly, egX must report to the Commission all significant issuer non-compliance, with information acceptable to the Commission about the issuers and other persons involved, the nature of the deficiencies, and the action taken or planned to deal with the issues.

15. At least quarterly, egX must, directly or through RS, report to the Commission all significant market non-compliance, with information acceptable to the Commission about the participants or other persons involved, the nature of the deficiencies, and the action taken or planned to deal with the issues.

16. At least quarterly, egX must, directly or through RS, report to the Commission all significant exemptions from, or waivers of, its requirements, including information about the issuers or participants involved, the nature of the waivers or exemptions, and the reasons for granting them.

17. At least annually, egX must assess RS's performance and report to egX's board of directors with any recommendations for improvements. egX must provide a copy of the report to the Commission and advise what actions it proposes to take as a result.

18. Annually, egX must provide a self-assessment to the Commission, including reporting against this recognition order and other securities regulation requirements.

19. Annually, egX must provide to the Commission, for its approval, a current list of regulatory services provided by RS and services carried out directly by egX and any proposed amendments to it.

20. Annually, egX must:

    (a) review and report on each technology system's and each data centre's computer operation's vulnerability to internal and external threats; and

    (b) report on its review of its contingency and business continuity plans under paragraph 9.

21. egX must promptly report to the Commission any possible significant violations of securities legislation.

22. egX must promptly notify the Commission of any material systems failures and changes.

23. egX must comply with any additional accountability requirements the Commission sets from time to time.

Information sharing and regulatory cooperation

24. To assist other regulatory authorities in regulatory matters, egX must share information and cooperate with

    (a) the Commission and other Canadian securities regulatory authorities,

    (b) recognized exchanges,

    (c) recognized regulation services providers,

    (d) recognized self-regulatory organizations,

    (e) recognized clearing agencies, and

    Section 1 other regulatory authorities responsible for supervising or regulating securities firms or financial institutions,

    subject to privacy or other laws about the collection, use, and disclosure of personal and business information.

COR #08/147

Variation Order

egX Canada Inc.

Section 171 of the *Securities Act*, RSBC 1996, c. 418

Background

¶1 The Commission issued an order on March 14, 2007 under section 24 of the Act (Recognition Order) recognizing egX Canada Inc. (egX) as an exchange, subject to certain conditions.

¶2 The conditions, attached to the Recognition Order as Schedules A and B, refer to Market Regulation Services Inc. (RS) in several clauses.

¶3 Effective June 1, 2008, RS will combine its operations with the Investment Dealers Association of Canada to form the Investment Industry Regulatory Organization of Canada (IIROC). After the combination, IIROC will assume RS's function as a regulation services provider.

Order

¶4 Because it is not prejudicial to the public interest, the Commission orders under section 171 of the Act, that Schedules A and B of the Recognition Order are varied as follows:

1. each reference to Market Regulation Services Inc. is replaced with a reference to Investment Industry Regulatory Organization of Canada;

2. each reference to RS is replaced with a reference to IIROC.

¶5 May 28, 2008 effective June 1, 2008

"Brent W. Aitken"
Vice Chair

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 In the Matter of Certain Financial Sector Issuers Set Forth in Schedule A - ss. 127(1), (2) and (7), 144(1)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
CERTAIN FINANCIAL SECTOR ISSUERS
set forth on Schedule A attached (the Respondents)

REASONS FOR DECISION TO EXTEND THE
TEMPORARY CEASE TRADE ORDER
(subsections 127(1), (2) and (7) and subsection 144(1) of the Act)

HEARING:	October 3, 2008		
REASONS:	October 8, 2008		
PANEL:	Lawrence E. Ritchie	-	Vice-Chair and Chair of the Panel
	Paul K. Bates	-	Commissioner
APPEARANCES:	Kathryn Daniels Jane Waetcher	-	for Staff of the Ontario Securities Commission
	Dunniel Medina	-	for Kingsway Financial Services Inc.

REASONS FOR DECISION TO EXTEND THE
TEMPORARY CEASE TRADE ORDER

Background

[1] This matter relates to the continuation of a cease trade order issued by the Ontario Securities Commission (the "Commission") on September 19, 2008 with respect to certain financial sector issuers set forth in Schedule A attached (the "Respondents").

[2] On October 3, 2008 we convened a hearing in this matter. We were advised that all the Respondents listed in Schedule A were served with the Notice of Hearing in this matter. We heard submissions from Staff of the Commission ("Staff") and one of the Respondents, Kingsway Financial Services Inc. In particular, we found Staff's detailed and thorough submissions to be a great help to the Panel.

[3] At the end of the hearing, we extended the order until 11:59 p.m. on October 8, 2008 and gave oral reasons. The following text has been prepared based on our oral reasons for the purpose of providing a public record of the decision.

The Action of the S.E.C.

[4] It is perhaps trite to say that we are living in interesting times. The global events over the past number of months have been extraordinary. We have witnessed liquidity challenges, wild fluctuations in the value of securities traded on exchanges across the world and insolvencies of major financial institutions in the United States and other countries in the world. Our financial markets and economies around the world are interconnected and interdependent.

[5] As stated in its press release issued October 1, 2008, the United States Securities and Exchange Commission (the "S.E.C.") has:

> … taken steps during recent weeks to address concerns regarding short sales in light of the ongoing credit crisis. These efforts relating to short sales have focused particularly on the securities of financial institutions whose health may have an impact on financial stability. The steps the [S.E.C.] has taken are designed to ensure the continued smooth operation of orderly markets. [The S.E.C.'s] actions have been taken in consultation with regulators of the major developed securities markets around the world, with whom [the S.E.C. has] coordinated in monitoring market reactions.

[6] One of the steps taken by the S.E.C. was to issue an order temporarily prohibiting short selling in certain securities of financial institutions trading in the U.S. markets. The shares of some of those firms, 12 in number, are interlisted on the TSX.

The Public Interest Jurisdiction of the Commission

[7] The Commission has a public interest jurisdiction under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and we have the statutory obligation to perform our duties assigned to us under the Act to: (a) provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (see section 1.1 of the Act). As Ms. Daniels pointed out, the Act also states that in pursuing the purposes of our mandate, we are to have regard to the principle that the "integration of capital markets be supported and promoted by sound and responsible harmonization and co-ordination of securities regulation" (see section 2.1 of the Act).

The Chronology of Events

[8] On September 19, 2008, in the exercise of its public interest jurisdiction, the Commission issued a temporary order with respect to shares of those financial sector issuers which were interlisted in the United States (and in one case had outstanding securities that were exchangeable into securities of a certain financial issuer in the United States) (the "Ontario Short Selling Order"). That order was amended pursuant to section 144 of the Act on September 22, 2008.

[9] In an order issued on October 1, 2008, the S.E.C. clarified that each of the emergency orders it issued on September 17 and September 18, 2008, prohibiting short selling of shares of financial companies trading on exchanges in the United States (the "S.E.C. Short Selling Orders"), would be extended to allow time for the completion of a political and legislative initiative in the United States. By this order on October 1, 2008, the S.E.C. Short Selling Orders were extended to expire at 11:59 p.m. Eastern time on the third business day after the enactment of the resulting legislation, but in any case no later than 11:59 p.m. Eastern time on October 17, 2008.

The Importance of Avoiding Regulatory Arbitrage

[10] The Ontario Short Selling Order was issued in response to the S.E.C. Short Selling Orders, as a precautionary matter to prevent regulatory arbitrage with respect to short selling in Ontario of the common equity securities of certain financial sector issuers, and to promote fair and orderly markets in Ontario for those issuers.

[11] Staff has asked us to extend the Ontario Short Selling Order to parallel the extensions of the S.E.C. Short Selling Orders granted by the S.E.C.

[12] In light of the temporary nature of the S.E.C. Short Selling Orders, and to continue to avoid regulatory arbitrage with respect to the short selling in Ontario of the common equity securities of those financial institutions affected by the S.E.C. Short Selling Orders, we find that it is in the public interest to grant the extension as requested with the amendments proposed by Staff.

Terms of Order Issued on October 3, 2008

[13] For the record, our order issued October 3, 2008 under subsections 127(1), (2) and (7) and subsection 144(1) of the Act states the following:

> **IT IS ORDERED** pursuant to subsections 127 (1), (2) and (7) and subsection 144(1) of the Act that the prohibition on trading in common equity securities that constitutes a short sale (as defined in section 1.1 of the Investment Industry Regulatory Organization of Canada's Universal Market Integrity Rules (UMIR) which is attached as Schedule B) is extended until 11:59 p.m. on October 8, 2008 only with respect to those financial sector issuers listed in the attached Schedule A (the Financial Sector Issuers) and only with the exception of a short sale:
>
> (i) conducted in accordance with UMIR Rule 3.1 *Restrictions on Short Selling*, sections 2(a), (b), (d) and (g); provided that, however, a dealer fulfilling market maker obligations (market maker) may not effect a short sale in the common equity securities of the Financial Sector Issuers if the market maker ought

reasonably to know that the client's or counterparty's transaction will result in the client or counterparty establishing or increasing an economic net short position (i.e. through actual positions, derivatives, or otherwise) in the issued share capital of a Financial Sector Issuer covered by the Temporary Order;

(ii) conducted by a registered dealer acting as principal to facilitate with a client or counterparty (a) a securities transaction that has a current market value of $200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible; or (b) a derivatives transaction that has a notional value of $200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible; provided, however, that with respect to (a) and (b) a dealer facilitating the transactions in paragraphs (a) and (b) may not effect a short sale in the common equity securities of the Financial Sector Issuers if the dealer ought reasonably to know that the transaction will result in the client or counterparty establishing or increasing an economic net short position (i.e. through actual positions, derivatives, or otherwise) in the issued share capital of a Financial Sector Issuer covered by this order (the "Extension Order");

(iii) conducted in order to comply with UMIR Rule 5.2 *Best Price Obligation*;

(iv) conducted by a person or company as a result of the automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, held prior to the effectiveness of the Temporary Order due to expiration of the option or futures contract;

(v) that is a sale of a security identified in paragraph (g) of Schedule B, where the security is beneficially owned by the seller and the sale is made under an exemption from the prospectus requirements in accordance with applicable securities legislation;

(vi) conducted to adjust a hedged derivative position in order to maintain the risk exposure either hedged under paragraph (ii) above or that existed at the time the Temporary Order became effective; or

(vii) conducted by a writer of a call option that effects a short sale in a common equity security of a Financial Sector Issuer as a result of assignment following exercise by the holder of the call.

IT IS FURTHER ORDERED that pursuant to section 127(7) of the Act this order shall expire at 11:59 p.m. on October 8, 2008, unless further extended by order of the Commission, varied or revoked.

[14] Finally, as a postscript, we note that the events leading up to this proceeding have required significant effort on the part of Staff to move promptly and coordinate its activities with other regulators, including our Canadian Securities Administrators partners, staff of the Investment Industry Regulatory Organization of Canada and staff of the S.E.C. Their impressive efforts are acknowledged and appreciated.

Dated at Toronto, this 8th day of October, 2008.

"Lawrence E. Ritchie"

"Paul K. Bates"

Schedule A

List of Financial Sector Issuers

Name	Root Ticker
Bank of Montreal	BMO
Bank of Nova Scotia (The)	BNS
Canadian Imperial Bank of Commerce	CM
Fairfax Financial Holdings Limited	FFH
Kingsway Financial Services Inc.	KFS
Manulife Financial Corporation	MFC
Quest Capital Corp.	QC
Royal Bank of Canada	RY
Sun Life Financial Inc.	SLF
Thomas Weisel Partners Group Inc.	TWP
Toronto-Dominion Bank (The)	TD
Merrill Lynch & Co., Canada Ltd.[1]	MLC

[1] This company is not interlisted in the US. However, it is included on this list because its securities are exchangeable into securities of Merrill Lynch & Co. Inc. (listed in the US), which is subject to the S.E.C. Order.

3.1.2 AiT Advanced Information Technologies Corporation et al. - s. 144

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
AiT ADVANCED INFORMATION TECHNOLOGIES CORPORATION,
BERNARD JUDE ASHE AND DEBORAH WEINSTEIN

HEARING HELD PURSUANT TO SECTION 144 OF THE ACT

REQUEST FOR AN ORDER PURSUANT TO SECTION 144 OF THE ACT
RE: AiT ADVANCED INFORMATION TECHNOLOGIES AND BERNARD JUDE ASHE SETTLEMENT AGREEMENTS

HEARING:	Wednesday, September 17, 2008		
PANEL:	Patrick J. LeSage, Q.C.	-	Commissioner and Chair of the Panel
	Wendell S. Wigle, Q.C.	-	Commissioner
	Carol S. Perry	-	Commissioner
APPEARANCES:	Jane Waechter	-	for Staff of the Ontario Securities Commission
	Jessica Kimmel	-	for AiT
	John Fabello	-	for Bernard Jude Ashe

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This matter is an application by Staff pursuant to section 144 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") to revoke two earlier orders of the Ontario Securities Commission ("the Commission") and the results of those orders. Those orders issued following the 'settlement agreements' between the Staff of OSC, AiT and Ashe. Section 144 permits the Commission to make an order revoking or varying a decision of the Commission on the application of the Executive Director or a person or company affected by the decision if, in the Commission's opinion, the order would not be prejudicial to the public interest.

[2] First, let me say I commend Staff and the Executive Director for bringing this matter forward. The basis of the 'settlement agreements' was certain acts that occurred transgressed and violated section 75 of the Act. At a subsequent contested hearing, a learned panel, two members of whom are here with me today, Commissioner Wigle and Commissioner Perry, found on identical facts (there was never any difference in the facts upon which the original acknowledgments and orders were based and the subsequent facts), after a full hearing, that AiT was not in breach of section 75 of the Act and was not required to make timely disclosure of its negotiations with 3M for the purchase by 3M of all of the shares of AiT at the time specified in the allegations. That conclusion is found at paragraph 266 of the Reasons and Decision in *Re AiT Advanced Information Technologies Corp.* (2008), 31 O.S.C.B. 712 of the tribunal dated the 14th day of January, 2008. The subsequent paragraph, paragraph 267, repeats the conclusion in the sense that it says 'having reached the conclusion that AiT did not breach section 75 of the Act, the allegations against Weinstein must be dismissed'.

[3] There are many reasons why this matter – the earlier settlements – should be set aside, notwithstanding that they were settlements and not hearings. First and foremost, as Mr. Fabello submitted, is logic and fairness. One can never go wrong using logic and fairness. Logic and fairness certainly dictates that the settlement agreements entered into by AiT and by Mr. Ashe ought to be revoked pursuant to section 144 of the Act. Notwithstanding that everyone, in good faith, at the time believed it to be a violation of the Act, the basis for that conclusion has subsequently been found not to have been a violation.

[4] The learned tribunal, having heard all of competing arguments on the issue, has determined there was not a violation of the Act. Mr. Ashe therefore could not be a party to AiT's being in violation of the Act because there was no violation of the Act. So it is absolutely not contrary to the public interest and, in fact, it is very strongly in the public interest that the order go as requested.

[5] I regret that Mr. Ashe has suffered personal and financial consequences. It is one of those things that happens and to the extent it can be righted, corrected, that is now being done. Thank you all very much. The order will go as per the consent order filed. Thank you, counsel, for your succinct, logical and persuasive submissions.

[6] For the record, our order issued September 17, 2008 pursuant to section 144 of the Act states the following:

> **IT IS HEREBY ORDERED** pursuant to section 144 of the Act, on consent, that the Commission Orders dated February 26, 2007 in respect of Ashe and AiT be revoked.
>
> **IT IS HEREBY ORDERED** pursuant to s. 144 of the Act, on consent, that the Commission's approval of the Settlement Agreements in its orders dated February 26, 2007 is revoked.
>
> **IT IS HEREBY ORDERED** pursuant to s. 144 of the Act, on consent, that Ashe's reprimand by the Commission is revoked.
>
> **IT IS HEREBY DIRECTED**, on consent, that the Commission pay to AiT the sum of $60,000.00 in respect of costs and the sum of $40,000.00 that was paid for allocation to or for the benefit of third parties pursuant to the AiT Agreement.
>
> **IT IS HEREBY DIRECTED**, on consent, that the Commission pay to Ashe the sum of $25,000.00 in respect of costs and the sum of $15,000.00 that was paid for allocation to or for the benefit of third parties pursuant to the Ashe Agreement

Approved by the Panel on October 9, 2008.

"Patrick J. LeSage"

"Wendell S. Wigle"

"Carol S. Perry"

3.1.3 GMP Investment Management L.P. (as amended October 10, 2008) - s. 26(3)

[Editor's Note: This decision was first published at (2008), 31 OSCB 5460.]

IN THE MATTER OF
GMP INVESTMENT MANAGEMENT L.P.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SUBSECTION 26(3) OF THE SECURITIES ACT

Date: May 26, 2008 (as amended October 10, 2008)

Director: Marrianne Bridge, CA
Manager, Compliance
Ontario Securities Commission

Submissions: Isabelita Chichioco — for Ontario Securities Commission staff

Krista Coburn — for GMP Investment Management L.P.
Goodmans LLP

Overview

By letter dated April 22, 2008, staff advised GMP Investment Management L.P. (GMP) that it was deficient in meeting the minimum capital requirements in Regulation 107(3) under the *Securities Act* (Ontario) (Act) by $154,054 based on annual audited financial statements as at December 31, 2007. The capital deficiency was rectified as at January 31, 2008.

As a direct consequence of the capital deficiency, staff recommended to the Director that terms and conditions be imposed on GMP's registration for a minimum period of six months. The terms and conditions require the filing of monthly year-to-date unaudited financial statements (including a balance sheet and an income statement prepared in accordance with generally accepted accounting principles) and monthly capital calculations.

Prior to a decision being made by the Director, GMP had the option to oppose staff's recommendation for terms and conditions by requesting an opportunity to be heard under section 26(3) of the Act. GMP had two options – it could either be heard through written submissions or through a personal appearance before the Director. By letter dated May 6, 2008, Goodmans LLP (on behalf GMP) requested an opportunity to be heard through written submissions.

This is the Director's decision based on staff's and GMP's written submissions.

Submissions

Staff submissions

Staff submits that maintaining adequate minimum capital by registrants is one of the most serious regulatory requirements in the Act. Financial solvency is one of the essential components of a portfolio adviser's continued suitability for registration. A capital deficiency, particularly a large capital deficiency such as in this case, raises potential serious regulatory concerns and needs to be addressed in a serious fashion.

For these reasons, staff uniformly recommends terms and conditions when registrants are capital deficient. It does this notwithstanding the wide variety of reasons provided by registrants for capital deficiencies including inadvertence/oversight, changes in staffing (either at the registrant or its auditors), misclassifications of accounts, or errors. Only in extremely rare circumstances would staff consider not recommending terms and conditions. Staff argues that these circumstances are not present in this case.

Submissions on behalf of GMP

GMP was registered as a portfolio adviser and limited market dealer in December 2007. It was capitalized with a non-interest bearing inter-company loan from an affiliate. The loan had no specified term. The capital deficiency of $154,054 arose as a result of the reclassification of the loan to a current liability in GMP's annual audited financial statements as at December 31, 2007. As at December 31, 2007, the amount of the loan was $157,761. The loan was repaid in February 2008 following a sale by GMP of its securities.

GMP argues that for internal purposes, GMP viewed the loan as long-term financing. It also argues that GMP was in a "pre-operation" period as at December 31, 2007 and that it was not actively engaged in providing advisory services to clients until early April 2008.

Decision and reasons

My decision is to impose the recommended terms and conditions on the registration of GMP for a minimum six month period. These terms and conditions are as follows:

> GMP Investment Management L.P. shall file on a monthly basis with the Compliance team of the Ontario Securities Commission, attention Financial Analyst, starting with the month ending May 31, 2008 the following information:
>
> (1) year-to-date unaudited financial statements including a balance sheet and an income statement, both prepared in accordance with generally accepted accounting principles; and
>
> (2) month end calculation of minimum required capital;
>
> no later than three weeks after each month end.

I concur with staff's argument that the rare and unusual circumstances that would result in terms and conditions not being imposed following a capital deficiency (in this case a significant capital deficiency) do not exist in this case. As a relatively new registrant, I would have expected GMP to be particularly careful to ensure that it was meeting the requirements of its registration, particularly the capital requirements.

I was also concerned with GMP's argument that, notwithstanding that GMP (with the concurrence of its auditors) recorded the loan as a current liability in its annual audited financial statements, GMP "viewed the [affiliate] loan as a long-term financing". Despite GMP's view of the loan, it was shown as a current liability in GMP's annual audited financial statements and the result was the large capital deficiency that is the subject of this decision and reasons.

October 10, 2008

"Marrianne Bridge, CA"

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date ofPermanent Order	Date of Lapse/Revoke
Goldnev Resources Inc.	02 Oct 08	14 Oct 08	14 Oct 08	
OceanLake Commerce Inc.	02 Oct 08	14 Oct 08	14 Oct 08	
Canmine Resources Corporation	30 Sept 08	10 Oct 08	10 Oct 08	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

**** NOTHING TO REPORT THIS WEEK.**

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
CoolBrands International Inc.	30 Nov 06	13 Dec 06	13 Dec 06		
Hip Interactive Corp.	04 July 05	15 July 05	15 July 05		
EnGlobe Corp.	18 Aug 08	29 Aug 08	29 Aug 08		

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Chapter 6

Request for Comments

6.1.1 Notice of Proposed Amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules

NOTICE OF PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION* AND
NATIONAL INSTRUMENT 23-101 *TRADING RULES*

I. INTRODUCTION

The Canadian Securities Administrators (CSA or we) are publishing for comment proposed amendments (the Proposed Amendments) to National Instrument 21-101 *Marketplace Operation* (NI 21-101), National Instrument 23-101 *Trading Rules* (NI 23-101) (together, the ATS Rules) and the related companion policies.

The key part of the Proposed Amendments deals with trade-through protection (Proposed Trade-through Protection Rule). It proposes a framework to require all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered. Other parts of the Proposed Amendments include proposals relating to clock synchronization, technology requirements for marketplaces, information processor requirements, and best execution reporting requirements.

II. BACKGROUND

On July 22, 2005, the CSA published Discussion Paper 23-403 *Market Structure Developments and Trade-through Obligations* (2005 Discussion Paper).[1] The purpose of the Discussion Paper was to discuss evolving market developments and the consequential implications for the Canadian capital market, and in particular the obligation to avoid trade-throughs (trade-through obligation).

The 2005 Discussion Paper asked a number of questions to get feedback on what values and rules were important to Canadian market participants. Because of the importance of the issues relating to the trade-through obligation and their impact on the Canadian capital market, the CSA held a public forum on October 14, 2005 to permit all interested parties to participate in discussions relating to trade-through protection.[2]

The CSA received feedback on a number of issues identified in the 2005 Discussion Paper where there was often no clear majority opinion and the views on either side of a given issue were split. However, the majority of commenters stated that they believed that all visible orders at a better price should trade before inferior-priced orders.

On April 20, 2007, the CSA along with Market Regulation Services Inc. or RS (now the Investment Industry Regulatory Organization of Canada or IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).[3] The Joint Notice:

- outlined a proposal for a trade-through protection regime,
- proposed rule changes regarding access to marketplaces, and
- proposed rule changes regarding best execution.

The CSA published the amendments to best execution in their final form on June 20, 2008, and again on September 5, 2008, to be effective on September 12, 2008. We intend to re-examine the proposed rule amendments relating to direct market access and republish them for comment in 2009.

The Proposed Trade-through Protection Rule that is being published along with this Notice is based largely on the proposal outlined in the Joint Notice and the responses of the commenters who, for the most part, expressed support for the initiative.

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[1] See (2005) 28 OSCB 6333 for background.
[2] The transcript of the trade-through forum is published on the OSC website at: http://www.osc.gov.on.ca/Regulation/Rulemaking /Current/Part2/rule_20051014_23-403_trade-through-forum.pdf.
[3] (2007) 30 OSCB (Supp-3).

We received nineteen comment letters in response to the request for comments published in April 2007. We have considered the comments received and thank all commenters for their submissions. A list of those who submitted comments, as well as a summary of comments pertaining to the trade-through proposal and our responses, are attached as Appendix A to this Notice.

For the CSA's cost-benefit analysis of the proposed amendments, please see Appendix B – "Cost Benefit Analysis – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*" (CBA).

III. TRADE-THROUGH PROTECTION

1. What is Trade-through Protection?

Trade-through protection ensures that all immediately accessible, visible, better-priced limit orders are executed prior to inferior-priced limit orders. Commenters generally agreed that the obligation not to "trade-through" (i.e. bypass better-priced limit orders in favour of inferior-priced limit orders) is an obligation owed by all marketplace participants to the market as a whole. Unlike the obligation for best execution, the obligation not to trade-through is not a fiduciary duty and cannot be waived.[4] It is proposed that trade-through protection would apply whenever two or more marketplaces with displayed protected orders are open for trading.

2. Why is Trade-through Protection Important?

Trade-through protection is considered to be important to maintain investor confidence and fairness in the market, especially where there is a high degree of retail participation and a historical expectation of trade-through protection. Without it, it can be argued that there may not be sufficient incentive to contribute to the price discovery process because investors who disclose their intentions will not be assured of the benefit of having their better-priced orders filled while others will be able to use that information to help in determining the prices at which they transact. This confidence encourages more liquidity in the market and a more efficient price discovery process.

3. The Current Regulatory Regime

Currently in Canada, trade-through protection is addressed as part of the best price obligation imposed by IIROC in its Universal Market Integrity Rules (UMIR), Rule 5.2 *Best Price Obligation* (UMIR Best Price Rule). The rule imposes a requirement on dealers that trade on marketplaces that have retained IIROC to use reasonable efforts to obtain the best price available. There are a number of exemptions available and the factors to be considered in determining if reasonable efforts have been used are broadly outlined.[5]

In the past, no issues arose under the UMIR Best Price Rule because:

- there had not been multiple marketplaces trading the same securities in Canada,
- the technology systems of marketplaces enforced the "best price" or trade-through obligation, and
- only dealers had direct access to the existing marketplaces.

The existence of multiple marketplaces trading the same security has refocused attention on the current rules relating to trade-through protection.

The UMIR Best Price Rule currently applies only to dealers, which results in different requirements for dealers and non-dealers who are subscribers of ATSs. In addition, the rule as it exists does not provide the necessary infrastructure to effectively prevent trade-throughs. For example, it does not provide for an inter-market sweep order that would allow marketplace participants to simultaneously route orders to various marketplaces.

When multiple marketplaces began trading TSX-listed securities, the dealers in Canada had difficulty complying with the UMIR Best Price Rule. Technology was not yet at a point where dealers could monitor multiple marketplaces and effectively route orders to where the best price was displayed. In addition, order data was not consolidated. In response, RS at the time, proposed an approach whereby the factors to be considered in determining if a dealer used "reasonable efforts" to obtain the best price were broadened. RS introduced an immediate implementation rule, effective on May 16, 2008[6], that broadened these factors to include:

[4] For a discussion about trade-through and best execution please see Part III 4(f) of this Notice.
[5] See UMIR Rule 5.2 *Best Price Obligation* and the related policy.
[6] The UMIR Best Price Rule was published for comment on May 16, 2008, MIN 2008-009.

- whether the dealer has used an order router offered by it or a marketplace,
- whether the dealer relies on another dealer to route its orders,
- the timing of the launch of the marketplace,
- whether the marketplace has had a material malfunction or interruption of services,
- whether the data being transmitted by the marketplace is easily and readily used by dealers, and
- whether the marketplace executes an inordinate proportion of orders at an inferior price or there is no fill at all.

Under the UMIR Best Price Rule, dealers are required to introduce and comply with policies and procedures outlining how they will meet their best price obligations. It was intended that this solution be an interim solution until the CSA developed and implemented a trade-through protection rule. In the coming weeks, IIROC will publish its proposed amendments to the UMIR Best Price Rule in response to the CSA's proposal of a trade-through protection rule.

4. The Proposed Trade-through Protection Rule

At this time, the CSA are proposing to amend the ATS Rules to create a full depth-of-book trade-through obligation on marketplaces. We have considered the comment letters received in response to the Joint Notice and the 2005 Discussion Paper and have also reviewed international developments in the area of trade-through. Particularly, we have looked at the Order Protection Rule in Regulation NMS developed by the U.S. Securities and Exchange Commission (SEC) and its implementation, and have examined the Markets in Financial Instruments Directive (MiFID) in Europe.

(a) Key Aspects of the Proposed Trade-through Protection Rule

(i) Marketplace Obligation

The Proposed Trade-through Protection Rule would require each marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that marketplace. Marketplaces would be required to regularly review and monitor the effectiveness of these policies and procedures and act promptly to remedy any identified deficiencies. The purpose of this approach is to require marketplaces to eliminate trade-throughs that can reasonably be prevented, but also provide them with flexibility about how to do so. Marketplaces may choose how to implement the obligation in various ways including, for example, voluntarily establishing direct linkages to other marketplaces, or designing specific trade execution algorithms. However, marketplaces would not be able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

Marketplaces would be required to provide their policies and procedures, and any amendments thereto, to the securities regulatory authority and their regulation services provider 45 days prior to implementation. It is expected that marketplaces would also maintain relevant information so that the effectiveness of its policies and procedures could be adequately evaluated by regulatory authorities.[7]

Placing the obligation on marketplaces was supported by a majority of the commenters to the 2005 Discussion Paper and the Joint Notice.

(ii) Protected Orders

Trade-through protection would only be applicable to certain orders ("protected orders"). A protected order would be defined as a "protected bid or protected offer." A "protected bid" or "protected offer" would be an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or information vendor.[8] The CSA do not consider special terms orders that are not immediately executable or that trade in a special terms book, such as all-or-none, minimum fill, or cash or delayed delivery, to be orders that are protected.[9] However, those executing against these types of orders are required to execute against all better-priced orders first. A marketplace that is considered to have "automated functionality" would have the ability to immediately and automatically:

[7] Proposed section 6.1 of NI 23-101.
[8] Proposed definition in section 1.1 of NI 23-101.
[9] See subsection 5.1(3) of 21-101CP.

- permit an incoming order entered on the marketplace electronically to be marked as fill-or-kill,
- execute a fill-or-kill order,
- cancel unexecuted portions of that order,
- transmit a response to the sender indicating the action taken, and
- display information that updates the displayed order.[10]

A marketplace would also be required to have policies and procedures relating to the handling and display of these orders (to be included in their policies and procedures required under section 6.1 of the Instrument) and would be required to immediately inform all regulation services providers and other marketplaces when it experiences a failure, malfunction or material delay of its systems or equipment.[11]

(iii) Full Depth-of-book

The Proposed Trade-through Protection Rule would be applicable to all visible parts of orders entered into the book (i.e. full depth-of-book). This means that in order to execute an order at an inferior price, the marketplace would have to ensure that all protected orders that are visible at price levels better than that price have been executed. This approach is different from the one adopted in Regulation NMS in the United States, which provides protection only to the best bid and offer on each marketplace (top-of-book). In the 2005 Discussion Paper and the Joint Notice, commenters were asked for their views on whether to impose the obligation only at the top-of-book. The majority of commenters responded by supporting trade-through protection that would apply to all visible orders regardless of where they are in the book, which is consistent with the current UMIR Best Price Rule.

(iv) Visible Orders

The Proposed Trade-through Protection Rule would only apply to orders or parts of orders that are visible. In other words, the orders would have to be displayed by the marketplace and information about them would have to have been provided to an information processor or information vendor.

In addition, hidden orders or those parts of iceberg orders that are not visible would not be protected. Currently, the manner by which "dark" portions of orders in an otherwise transparent order book would be avoided is by using the "bypass" marker introduced by IIROC.[12] The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity. It is intended that this marker will evolve into the marker used for an inter-market sweep order discussed below.

(b) "Permitted" Trade-throughs

The overall purpose of trade-through protection is to promote confidence and fairness in the marketplace where the visible portions of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new types of orders and other developments in market structure in Canada.

As a result, we have proposed a number of circumstances where trade-throughs would be permitted.[13] These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market trade-through protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition.

Although trade-though protection is an obligation owed by all marketplace participants to the market as a whole, in certain circumstances, the marketplace can trade through better-priced orders on other marketplaces where a marketplace participant has taken certain action (for example, routing an inter-market sweep order). In these circumstances, it is important that marketplace participants create policies and procedures that will reasonably prevent trade-throughs and maintain relevant information so that the effectiveness of section 6.1 of NI 23-101 can be adequately evaluated by regulatory authorities.[14]

[10] Proposed amendment to section 1.1 of NI 23-101.
[11] Proposed section 6.4 of NI 23-101.
[12] Market Integrity Notice 2008-008 approving amendment to UMIR regarding "Provisions Respecting Off Marketplace Transactions" was published on May 16, 2008.
[13] The list of "permitted" trade-throughs is set out in proposed section 6.2 of NI 23-101.
[14] Proposed subsection 6.1(3) of 23-101CP.

(i) Failure, Malfunction or Material Delay of Systems or Equipment

We are proposing an exception for any failure or malfunction of a marketplace's systems as well as any material delay (systems issues).[15] If a marketplace repeatedly fails to respond immediately after receipt of an order, under the Proposed Trade-through Protection Rule, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing a systems problem (either of a temporary nature or a longer term issue). The marketplace that is experiencing the failure, malfunction, or delay is responsible for informing all other marketplaces, its marketplace participants, and any regulation services providers when the failure, malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by the marketplace that may be experiencing systems issues, a routing marketplace or a marketplace participant may rely on paragraph 6.2(a) of NI 23-101, in accordance with its policies and procedures that outline processes for dealing with these systems issues. The marketplace or marketplace participant must immediately notify the marketplace that may be having systems issues, its own marketplace participants (where applicable) and all regulation services providers. This notification will enable the marketplace that may be experiencing systems issues to assess whether it is in fact experiencing systems issues.

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

(ii) Inter-market Sweep Order

We are proposing an exception to allow the execution of inter-market sweep orders. An inter-market sweep order (ISO) is an order that is marked to inform the receiving marketplace that it can be immediately executed without delay or regard to any other better-priced orders displayed by another marketplace.[16] It may be marked "ISO" by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one ISO in order to execute against protected orders. In addition, marketplace participants may send a single ISO to execute against the best protected bid or best protected offer. An ISO may enable participants to execute large block orders, provided that they simultaneously route one or more ISO's to execute against better-priced orders. This would facilitate compliance with the trade-through obligation.

(iii) Flickering Orders

With the growth of algorithmic and computer-generated trading, there has been a substantial increase in the number of short term orders generated (often generated and cancelled within seconds) for every trade executed. This has subsequently increased the number of times a better-priced order may be displayed. Given the speed with which orders change, there may be technical occurrences of trade-throughs, even though all reasonable precautions were taken and there was a legitimate attempt to execute a trade at the best available price. As a result, we are allowing for a transaction that occurs when the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of a trade that resulted in a trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction.[17]

(iv) Non-Standard Orders

Non-standard orders have been included on the list of "permitted" trade-throughs. A non-standard order refers to an order for the purchase or sale of a security that is subject to non-standard terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted.[18] A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order so that it qualifies for an exception from the Proposed Trade-through Protection Rule.

(v) Calculated Price Order

We are proposing to include an exception for orders where the price is not known at the time of order entry and is to be calculated based on, but will not necessarily be equal to, the price of the security at the time of execution.[19] Orders that would be included under this definition are:

- call market orders – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace,
- volume-weighted average price orders – where the price of a trade is determined by a formula that measures a weighted average price on one or more marketplaces,

[15] Proposed paragraph 6.2(a) of NI 23-101.
[16] Proposed paragraphs 6.2(b) and (c) of NI 23-101.
[17] Proposed paragraph 6.2(d) of NI 23-101.
[18] Proposed subparagraph 6.2(e)(i) of NI 23-101.
[19] Proposed subparagraph 6.2 (e)(ii) of NI 23-101.

- opening orders – where each marketplace may establish its own formula for the determination of opening prices,

- closing orders – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known, and

- basis orders – an order that must be approved by a regulation services provider to ensure that the price of the order is based on one or more derivative transactions executed in conjunction with securities where the securities transaction comprises at least 80% of the underlying interest of the derivative instruments.[20]

(vi) Closing Price Order

We are proposing to also include an exception for an order entered on a marketplace for the purchase or sale of an exchange-traded security that would execute at the established closing price on that marketplace for that trading day for that security.[21] Some marketplaces provide an after-hours trading session at a price established by that marketplace during its regular hours for marketplace participants who are required to benchmark to a certain closing price. Therefore, we propose to allow for trade-throughs resulting from the execution of transactions in these circumstances so that a better-priced order on another marketplace would not need to be accessed.

(vii) Crossed Market

We are proposing an exception for a transaction that occurred where the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer (crossed market).[22] Without this exception, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. The CSA recognize that crossed markets may occur as a result of trade-through protection only applying to displayed orders or parts of orders, and not to hidden or reserve orders. Intentionally crossing the market to take advantage of this exception would be a violation of proposed section 6.5 of NI 23-101.

Question 3: Are any additional exceptions necessary?

(c) Access to Marketplaces

The Joint Notice asked a number of questions on the issue of access, including:

- whether there should be a threshold that would require ATSs to permit access to all groups of marketplace participants, and

- whether specialized marketplaces should not prohibit access to non-members/subscribers or should provide direct order access to non-members/subscribers if members/subscribers do not provide this service.

Many commenters were supportive of a threshold that would require marketplaces to provide access. Rather than setting a threshold for ATSs to permit access to all marketplace participants, we have proposed amendments to 21-101CP to enhance the fair access provisions in NI 21-101.[23] These provisions require marketplaces to provide fair access to all of their services. As well, marketplaces should permit fair and efficient access to their services for the purpose of complying with the proposed trade-through requirements. At this time, we think that the provisions relating to fair access and the proposed amendments to 21-101CP are sufficient to address fair access to a marketplace whether directly or indirectly. We will continue to monitor this issue.

With respect to issues relating to access to marketplaces by non-members/subscribers to a marketplace, we do not believe that a marketplace should be required to provide direct access to non-members/subscribers. It would be left to the marketplaces to determine how best to meet their trade-through obligations. We intend to further discuss access issues with the industry implementation committee (described below).

[20] Proposed section 2.3 of NI 23-101CP.
[21] Proposed subparagraph 6.2(e)(iii) of NI 23-101.
[22] Proposed paragraph 6.2(f) of NI 23-101.
[23] Proposed amendments to sections 7.1 and 8.2 of 21-101CP.

Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

(d) Trading Fee Limitation

In the Joint Notice, we considered whether there should be a specified limit that a marketplace could charge for trade-through purposes. A number of commenters expressed concern about proposing a specified trading fee limit imposed on a trade-by-trade basis. They preferred a principle-based approach that would require marketplaces to set reasonable trading fees.

The CSA think it is important to prevent marketplaces from raising their fees substantially to try to take advantage of the trade-through protection regime. Consequently, we are proposing a rule that would prohibit a marketplace from imposing (i) a fee charged for the execution of an order to comply with the trade-through requirement that is equal to or greater than the minimum price increment that is described in IIROC Universal Market Integrity Rule 6.1, as amended, or (ii) terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace.

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

(e) Locked and Crossed Markets

A "locked market" occurs when there are multiple marketplaces trading the same security and a bid (offer) on one marketplace is at an identical price level to an offer (bid) on another marketplace. Had both orders been entered onto the same marketplace the bid and the offer would have matched and a trade would have been executed. In a locked market situation, there are two ways to unlock the markets:

- typically, more buyers and sellers appear resulting in subsequent trades and immediate correction; or
- one of the participants involved in the lock removes their order and places the order on another marketplace to immediately execute the trade.

A "crossed market" occurs when one participant's bid (offer) on one marketplace is higher (lower) than another participant's offer (bid) on a different marketplace. A crossed market condition between marketplaces usually does not last for a long period of time as someone will usually take advantage of the arbitrage opportunity.

Proposed section 6.5 of NI 23-101 prohibits a marketplace participant from intentionally locking or crossing a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order intentionally to lock or cross a particular marketplace or the market as a whole. It is not intended to prohibit the use of marketable limit orders. An exception from the Proposed Trade-through Protection Rule has been provided to allow for the resolution of crossed markets that occur unintentionally. An exception is not necessary to resolve locked markets.

Question 6: Should there be a prohibition against intentionally creating a "locked market"?

(f) Trade-through and Best Execution

There has long been debate about the interplay between the obligations of best execution and "best price" or trade-through protection. In addition, there is some concern that trade-through and best execution obligations may conflict. This section addresses these issues.

The rationale for a dealer's best execution obligation and the obligation to prevent trade-throughs is different. The obligation of best execution is based on the fiduciary duty that a dealer or adviser has to its client. This duty has its origins in common law and is codified in securities laws and UMIR. As discussed above, trade-through protection is based on the obligation of a participant to the market as a whole. It is grounded in the desire to protect visible and accessible limit orders and to ensure that those who decide to display the prices they are willing to pay or receive for a particular security will obtain the benefit of that decision. The requirement to achieve best execution can be waived or overwritten by direction of a client, however the trade-through obligation would always have to be met except in the specific circumstances outlined in Part III 4(b) above.

Having a trade-through obligation does not diminish the obligation to achieve best execution, including having policies and procedures to look at data from multiple marketplaces to determine whether or not to access to those marketplaces. The decision of how and where to trade (best execution) is determined by the particulars of the order and needs of the client. However, all better-priced orders must be honoured at the time of execution (trade-through obligation).

The Proposed Trade-through Protection Rule does not propose to address trading on foreign markets. However, we reiterate that marketplace participants should consider foreign markets when addressing best execution. We have also included an anti-avoidance provision that prohibits a person or company from routing orders to foreign marketplaces only for the purpose of avoiding the trade-thorough protection regime in Canada.[24]

There may be some additional costs associated with trading on multiple marketplaces and dealers may determine to take on those costs or pass them onto their clients as part of their commissions. These commissions are part of the factors considered in obtaining best execution. We think that these costs are balanced against the need to protect displayed limit orders and the need to ensure that the risks taken by those that display those limit orders are rewarded.

(g) Other Jurisdictions

(i) U.S. Approach

On April 6, 2005, the SEC implemented the Order Protection Rule in Regulation NMS.[25] It requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs, and, if relying on one of the exceptions, these policies and procedures must be reasonably designed to assure compliance with the exception. To be protected, a quotation must be immediately and automatically accessible. Trade-through protection will apply to the best bid and offer from every type of participant on all marketplaces. One of the impacts of this order protection is increased linkages between trading centers. Regulation NMS includes a number of exceptions from "order protection" obligations, such as exemptions for opening or closing orders, crossed markets, benchmark orders where the material terms are not known, inter-market sweep orders, delays in responses caused by systems problems, and flickering quotes.

(ii) European developments

The European Union (EU) implemented MiFID on November 1, 2007 to replace the existing Investment Services Directive as part of its Financial Services Action Plan designed to create a single market in financial services for EU member states. [26] MiFID does not impose a trade-through obligation that prohibits the by-passing of better priced quotes when executing transactions. Instead, MiFID introduces a best execution standard that requires firms to take "all reasonable steps to obtain the best possible result" for their clients, taking into consideration not only execution price, but also the cost, speed, size and nature of the order, the likelihood of execution and settlement when trading and any other factors deemed relevant to the execution of the order.

(h) Next Steps

Upon the publication of this Notice and the Proposed Amendments, we will establish an industry committee to discuss the implementation issues relating to the introduction of the Proposed Trade-through Protection Rule. The role of the committee will be to raise operational issues associated with implementing this rule and develop recommendations to be considered by the CSA and where appropriate, IIROC. The committee will be chaired by an industry representative and facilitated by the Investment Industry Association of Canada. It will be an open committee, made up of interested parties representing marketplaces, dealers, and buy-side investors.

If you are interested in participating on the committee, please send an e-mail to: **marketregulation@osc.gov.on.ca.**

IV. ADDITIONAL AMENDMENTS

Along with the Proposed Trade-through Protection Rule, we are also proposing some additional amendments to NI 21-101 and NI 23-101.

1. Reporting Requirements for Marketplaces and Dealers

In April 2007, we proposed reporting requirements for marketplaces and dealers that would require:

- a marketplace to report certain information on a monthly basis, including: number of orders, number of trades, and speed of execution, and

[24] Proposed section 6.7 of NI 23-101.
[25] "SEC Adopts Regulation NMS and Provisions Regarding Investment Advisers Act of 1940", online: U.S. Securities and Exchange Commission, http://www.sec.gov/news/press/2005-48.htm on July 15, 2008.
[26] "Markets in Financial Instruments Directive – Background Information", online: Financial Services Authority, http://www.fsa.gov.uk/pages/about/what/international/pdf/MiFID.pdf on July 8, 2008.

- a dealer to report certain information on a quarterly basis: percentage of orders executed at a location determined by the dealer, identity of marketplaces and percentage of orders routed to each marketplace, and disclosure of any material arrangements with a marketplace.

The comments that we received on the proposed requirements published in April 2007 were generally mixed. There was some feedback on specific aspects of the reporting requirements, such as spread-based statistics and securities traded on only one marketplace. A summary of the comments received on the best execution reporting requirements and our responses is included in Appendix A of this Notice.

When finalizing the best execution amendments in June 2008, the CSA decided to postpone the implementation of the proposed best execution reporting requirements for marketplaces and dealers due to intervening market developments. However, we are of the view that it is appropriate to republish them for comment with this package of amendments. A cost-benefit analysis of the implementation of reporting requirements for marketplaces and dealers was published with the Joint Notice.

The CSA continue to be of the view that this information is important to provide tools for assessing and complying with the best execution obligation. With respect to the proposed marketplace reporting requirement, we think this information would be useful for a dealer or adviser to assess best execution based on marketplace quality (for example, speed and certainty of execution). For the proposed dealer reporting, we think the reports would provide useful information to clients about order execution.

We have made a number of changes to the best execution reporting requirements from when they were published in April 2007, based on the comments received to further streamline the requirements. Specifically, we have removed the requirement for dealers to provide the percentage of total client orders and percentages that were market orders, limit orders and other order types as part of their report. In addition, we are proposing that marketplaces report by security only and not also by order type.

As the CSA understand that technology changes will be necessary to comply with these requirements, we are proposing that there would be a six month transition period after the instrument becomes effective.

We have set out below some questions on which we are specifically requesting feedback.

Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?

Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?

Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?

Question 10: Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?

Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States?[27] What price increment away from the quote would be appropriate to use for the Canadian market?

Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?

Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?

Question 14: In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:

(a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);

(b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;

[27] A "near-the-quote order" is defined by the SEC as non-marketable buy orders with limit prices that are lower by $0.10 or less than the consolidated best bid at the time of order receipt, and non-marketable sell orders with limit prices that are higher by $0.10 or less than the consolidated best offer at the time of order receipt.

(c) the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?

2. Marketplace Systems

A number of changes are proposed to the systems requirements for a marketplace in Part 12 of NI 21-101. Most update the technical descriptions of the requirements and modify the requirements to better reflect what is taking place in practice.

Currently, Part 12 of NI 21-101 requires a marketplace to address specific issues related to capacity management, system development and testing, system vulnerabilities and business continuity. The defined scope of the annual independent systems review (ISR) is to provide assurance on these same issues. The proposed amendments broaden the requirement for a marketplace to develop and maintain and, for an independent review, assess the more comprehensive and integrated concept of a system of internal control.

Currently, NI 21-101 provides for an exemption from the independent review of an ATS that is below a certain trading volume threshold. The proposed amendments remove this threshold. ATSs will now be required to perform an ISR in accordance with established audit standards, unless granted an exemption under Part 15 of NI 21-101.

3. Transparency

Amendments are being proposed to Parts 9 and 10 of 21-101CP for the purposes of clarifying the requirements under sections 7.1, 7.2, 8.1 and 8.2 of NI 21-101 for marketplaces, inter-dealer bond brokers and dealers to provide accurate and timely order and trade information to an information processor, or to an information vendor that meets the standards set by a regulation services provider.

4. Information Processor Requirements and Systems

The CSA are continuing to work toward the selection of an information processor based on the applications received (for equity and debt securities). A summary of these applications was published with the Joint Notice as CSA Staff Notice 21-306. We note that on July 14, 2008, the Bourse de Montréal withdrew its application to be the information processor for debt and equity securities.

It is our view that the information processor for equity securities should disseminate a full depth-of-book market-by-price data feed and consolidated trade information for all marketplaces trading equity securities.

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

We are proposing some amendments to Part 16 of 21-101CP to clarify the requirements under subsections 14.4(2) and (5) of NI 21-101 regarding certain obligations that an information processor has towards its users and providers of order and trade information, in relation to the collection, processing, distribution and publication of that information. In addition, we have proposed changes to the systems requirements applicable to an information processor that are outlined in Part 14 of NI 21-101. The changes mirror those described above for a marketplace. However, an information processor will be required to conduct an annual independent systems review, unless an exemption is sought and granted.

5. Amendments to Sections 7.2, 7.4, and 8.3 of NI 23-101 − Agreement Between a Marketplace and a Regulation Services Provider

We have amended subsections 7.2(c), 7.4(c), and 8.3(d) to require that the agreement between a regulation services provider and a marketplace mandates that the marketplace provide the regulation services provider with the information that the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants and if applicable, the marketplace. This amendment in no way changes the existing relationship between an exchange or quotation and trade reporting system and the regulation services provider that it has retained. Instead, it clarifies our expectations that the regulation services provider will be provided with the information it needs to effectively monitor trading on multiple marketplaces and to ensure that certain standards, such as clock synchronization, and use of markers, are uniformly met by all marketplaces that the regulation services provider surveils.

V. AUTHORITY FOR THE PROPOSED AMENDMENTS

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

In Ontario, the Proposed Amendments are being made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.

- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.

- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized stock exchanges, recognized self-regulatory organizations, and recognized quotation and trade reporting systems including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.

- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulation or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

VI. COMMENTS AND QUESTIONS

We invite all interested parties to make written submissions on the Proposed Amendments. We will consider submissions received by January 15, 2009. If you do not submit your comments by email, provide a diskette containing the submissions in Microsoft Word format.

Please address your comments to all of the CSA member commissions, as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Department of Justice, Northwest Territories
Registrar of Securities, Government of Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Registrar of Securities, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

and

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions may be referred to any of:

Tracey Stern
Ontario Securities Commission
(416) 593-8167

Susan Greenglass
Ontario Securities Commission
(416) 593-8140

Sonali GuptaBhaya
Ontario Securities Commission
(416) 593-2331

Matthew Thompson
Ontario Securities Commission
(416) 593-8223

Serge Boisvert
Autorité des marchés financiers
(514) 395-0337 ext.4358

Doug Brown
Manitoba Securities Commission
(204) 945-0605

Lorenz Berner
Alberta Securities Commission
(403) 355-3889

Mark Wang
British Columbia Securities Commission
(604) 899-6658

Meg Tassie
British Columbia Securities Commission
(604) 899-6819

Cassie Scanlan
British Columbia Securities Commission
(604) 899-6766

APPENDIX A

SUMMARY OF PUBLIC COMMENTS ON PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION* AND NATIONAL INSTRUMENT 23-101 *TRADING RULES* REGARDING THE TRADE-THROUGH PROPOSAL AND CANADIAN SECURITIES ADMINISTRATORS RESPONSES

General Comments	
Framework for Trade-Through Proposal	
General support was expressed by a number of commenters for the proposal that responsibility for trade-through protection should lie with marketplaces.	*The Canadian Securities Administrators (CSA or we) believe that a trade-through protection rule will help in maintaining investor confidence and fairness in our markets. In addition, imposing the obligation on marketplaces would allow flexibility in determining how to best implement the trade-through protection rule.*
Two commenters did not favour a trade-through rule. One of these commenters stated that it did not believe a trade-through rule was necessary, particularly for institutional orders.	
A couple of commenters urged Canadian regulators to implement a consistent system with that of the U.S.	*Where appropriate, the CSA have endeavoured to make the proposed trade-through protection regime consistent with the system used in the U.S.*
Finally, another commenter remarked that marketplaces must be responsible for ensuring accessibility on a consistent and reliable basis prior to launch involving the dealers, the marketplaces and the vendors. This commenter further stated that since the Canadian marketplace relies on third party vendor technology for access to marketplaces and post-trade processing, coordinated and successful industry-wide testing is a critical success factor to the introduction of new marketplaces in Canada.	*We have updated existing provisions to require a marketplace to publicly make available its technology requirements in their final form for at least three months immediately prior to operations and to provide public testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations. However, industry-wide testing is not being proposed at this time.*
Need for Data Consolidation and Smart Order Routers	
Some commenters expressed the view that a centralized data consolidator and order routers are necessary to comply with a trade-through rule.	*While we are of the view that a centralized data consolidator is not critical for compliance with a trade-through obligation, the CSA are working towards the introduction of an information processor to facilitate data consolidation. In addition, we expect that information vendors will respond to market demand and make consolidated data available. With respect to smart order routers, there are a number of ways in which a marketplace can implement its policies and procedures. Providing a smart order router is one such mechanism. It is the CSA's understanding that many of the marketplaces carrying on business in Canada do or plan to offer routing services to their participants.*
Requests for Clarification	
One commenter highlighted the lack of guidance for how the specific needs of institutional investors would be addressed in the trade-through proposal. Specifically, this commenter called for accommodation for institutional investors as the proposed system would inhibit the legitimate trading and price discovery activities of this element of the Canadian capital markets.	*The CSA are of the view that all marketplace participants should respect better-priced limit orders already displayed. However, the ability to use an inter-market sweep order has been included to facilitate block trading.*

Question 1: In addition to imposing a general obligation on marketplaces to establish, maintain and enforce written policies and procedures to prevent trade-throughs, would it also be necessary to place an obligation on marketplace participants to address trade execution on a foreign market?	
Comments	***CSA Responses***
An overwhelming majority of commenters were not supportive of imposing an obligation on marketplace participants to address trade execution on a foreign market.	*The CSA agree that the trade-through obligation should not apply to protect better-priced orders displayed on a foreign market. However, we note that currently, best execution would require marketplace participants to consider foreign markets when executing a trade. We have also proposed an anti-avoidance provision (section 6.7 of NI 23-101) to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.*
Question 2: What factors should we consider in developing our cost-benefit analysis for the trade-through proposal?	
Comments	***CSA Responses***
Commenters recommended the following factors should be considered when developing a cost-benefit analysis for the trade-through proposal: • Total cost to the marketplace of imposing trade-through obligations on various marketplace participants; • Total industry costs; • Access fees, settlement and clearing fees, cost of surveillance and monitoring of trading on each marketplace; • Costs of a system that is inconsistent with the U.S.; • Benefits of maintaining strict trade-through protection; • Net measurement of the benefit to the client; • Aggregate cost to the industry rather than on a dealer by dealer basis; • Cost of surveillance and monitoring within the dealers' compliance units; • Regulatory costs of the market regulator(s); • Impact of latency – missed opportunities, information leakage and high transaction and clearing costs if orders must travel to many destinations before they are filled; and • Look at the cost-benefits for trade-through on a portfolio or multiple order basis in addition to a single stock basis. One commenter stated that it is important to view all of the limit orders at the bid or ask in the aggregate in order and to consider the contribution made by retail orders.	*The CSA thank all commenters for their input. We are publishing a cost-benefit analysis which examines the anticipated incremental impact of the proposed amendments. The comments received have, where appropriate, informed that analysis. For example the current participant level obligation, removing current requirements and applying the trade-through obligation at the marketplace level were considered in the CBA.*

Question 3: Would you like to participate in the cost-benefit analysis by providing your input?	
Comments	***CSA Responses***
Seven commenters expressed an interest in providing input into the cost-benefit analysis.	*The CSA thank these commenters for their interest in participating in the cost-benefit analysis. We are publishing a cost-benefit analysis along with the proposed amendments and invite all interested parties to provide comments and estimates of the anticipated costs and benefits of the proposal. We will be considering conducting targeted consultation in the future.*
Question 4: Should trade-through protection apply only during "regular trading hours"? If so, what is the appropriate definition of "regular trading hours"?	
Comments	***CSA Responses***
Ten commenters believe that trade-through protection should only apply during "regular trading hours". Many of these commenters suggested that 9:30 a.m. to 4 p.m. ET should be the appropriate definition of "regular trading hours". Some commenters did not believe that trade-through protection should be limited to a portion of a trading day. A few of these commenters cited that trade-through protection should apply when two or more marketplaces are open simultaneously however trade-throughs of marketplaces that are closed should be allowed. Some reasons cited for this stance included: • Applying trade-through protection at all times would prevent liquidity to migrate to hours when trade-through obligations do not apply; and • Will avoid the confusion that may arise from different interpretations of "regular trading hours".	*The CSA are of the view that trade-through protection should apply across markets whenever two or more marketplaces with displayed protected orders are open for trading. Consequently, we have not defined "regular trading hours" but have provided some guidance in 23-101CP.*
Question 5: Should the consolidated feed (and, by extension, trade-through obligations) be limited to the top five levels? Would another number of levels (for example, top-of-book) be more appropriate for trade-through purposes? What is the impact of the absence of an information processor to provide centralized order and trade information?	
Comments	***CSA Responses***
Most commenters believe that that all visible, better-priced orders should be protected and that the trade-through obligation should extend through the whole depth-of-book. One commenter remarked that trade-through protection for the top five levels would be an onerous requirement and concurs with the U.S. approach that trade-through protection should extend to top-of-book quotations only. Another commenter was of the view that a trade-through rule is only appropriate where a consolidated quote is available.	*The CSA agree that the trade-through obligation should apply to the full depth-of-book. Under the proposed trade-through protection rule, all visible, better-priced orders displayed on marketplaces with automated functionality would be protected, subject to certain "permitted" trade-throughs as described in our response to comments in Question 9 below.* *The CSA agree that a consolidated quote would assist in meeting the trade-through obligation but this is not a necessity to effectively meet this requirement. As stated above, we are currently working towards the introduction of an information processor.*

Question 6: Should there be a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes?	
Comments	***CSA Responses***
The majority of commenters responding to this question indicated that they are not supportive of imposing a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes. Many of these commenters cited that fees should be determined by competition. Six commenters did favour fee caps. Some reasons for this position included: • The playing field for all participants would be level and memberships to an ATS may increase; • Prices would be easily comparable across marketplaces; • Dealers would be protected from becoming captive to unreasonable marketplace fees; and • Investors would not have to indirectly bear a disproportionate amount of the costs for accessing quotes under the trade-through obligations.	*In response to the comments received, we are proposing not to impose a specific limit on the fees charged but to refer to the minimum price increment outlined in IIROC Universal Market Integrity Rule 6.1. We have also prohibited a marketplace from imposing terms that have the effect of discriminating between orders routed to the marketplace to prevent trade-throughs and orders that originate on that marketplace. We have requested further comment as to whether it is appropriate to set a cap with a specified dollar amount.*
Question 7: Should the CSA establish a threshold that would require an ATS to permit access to all groups of marketplace participants? If so, what is the appropriate threshold?	
Comments	***CSA Responses***
Most commenters responding to this question were in favour of establishing a threshold that would require an ATS to permit all groups of marketplace participants. Suggested appropriate thresholds included: 20%, 10%, and 5% of market share. One commenter stated that ATSs should provide access to all groups of market participants when they have been deemed to be a relevant marketplace. Another commenter was of the belief that marketplaces should not unduly restrict access and that all categories of marketplace participants should be allowed to trade. Another commenter was unsure of an appropriate threshold in the absence of a fully competitive environment. This commenter suggested that this concept be revisited after a year of the operation of multiple marketplaces to assess the feasibility of establishing a suitable threshold for Canadian marketplaces. Five commenters did not support a legislated threshold that would require ATSs to allow access to all groups of marketplace participants. Some of these commenters believed that: • The CSA practice of looking at this issue on a case by case basis from the broad public interest point of view is appropriate; and	*Rather than requiring that a marketplace provide direct access to all groups of participants when it meets a certain threshold, we have instead provided additional guidance regarding fair access in 21-101CP. We will continue to monitor this issue.*

• It is unclear whether exchanges are complying with the U.S. fair access rule since only dealers can be members.	

Question 8: Should it be a requirement that specialized marketplaces not prohibit access to non-members so they can access, through a member (or subscriber), immediately accessible, visible limit orders to satisfy the trade-through obligation?

- **Should an ATS be required to provide direct order execution access if no subscriber will provide this service?**
- **Is this solution practical?**
- **Should there be a certain percentage threshold for specialized marketplaces below which a trade-through obligation would not apply to orders and/or trades on that marketplace?**

Comments	***CSA Responses***
Access of Non-members to Specialized Marketplaces Many commenters responding to this question supported the requirement of specialized marketplaces allowing access to non-members so that they can access immediately accessible, visible limit orders to satisfy the trade-through obligation. Some reasons cited for this position included: • the trade-through obligation is a duty owed by all marketplace participants to the capital markets in general and therefore all marketplace participants with such an obligation should have fair access to all better-priced orders; and • such a prohibition creates a powerful disincentive to join new marketplaces as compliance burdens will increase. Other commenters not in favour of this requirement submitted that: • marketplaces that limit membership contain, by definition, orders that are not immediately accessible, visible limit orders (by virtue of the fact that excluded members cannot see or execute against orders in this type of marketplace) and therefore these orders should be deemed "excluded orders"; and • it is not appropriate or necessary to force a specialized marketplace to change its technology or by-laws merely to allow the occasional and otherwise non-qualifying market participant to displace a quote for trade-through purposes. *Direct Order Execution Access* The majority of commenters responding to this question did not believe an ATS should be required to provide direct order execution access if no other subscriber would provide this service.	*With respect to issues relating to access to marketplaces by non-members/subscribers to a marketplace, we are not proposing that a marketplace provide direct access to non-members/subscribers. Under the proposed amendments, marketplaces would be given the discretion to determine how best to meet their trade-through obligations. This issue will be discussed with the industry implementation committee.*

A few commenters, however, were in support of such a requirement. *Practicality of Direct Order Execution Access* Some commenters responding to this question believe that it is practical to require an ATS to provide direct order execution access if no subscriber will provide this service. One of the reasons provided in support of this stance is that ATSs are registered brokers and they should be able to handle inbound order flow as client flow. Two commenters did not believe this is a practical solution. *Threshold Limits for Trade-Through Obligation* Suggested thresholds for which a trade-through obligation would not apply to orders and/or trades on a marketplace ranged from 5% (after one year of continuous trading) to 10% of trading volume of a Canadian issuer.	*The CSA have not set a threshold at which the trade-through obligation would apply and believe that the obligation should apply to all visible limit orders on a marketplace.*
Question 9: Are there any types of special terms orders that should not be exempt from trade-through obligations?	
Comments	***CSA Responses***
Many commenters remarked that the exemption of special terms orders listed in the joint notice is appropriate. One commenter cited that special terms orders that are used to establish the last sale price should not be exempt from the trade-through obligation. Another commenter contended that all special terms orders should be exempted. Another commenter specified that the ability for a "fill" term order (all-or-none, minimum fill) to trade-through a better-priced order on another marketplace should be consistent with how it is treated in a market and any exemptions for marketplaces with larger minimum order sizes. This commenter also added that "settlement" terms such as cash, delayed delivery etc. and odd lots should also be exempt from the trade-through rule. One commenter stated that the exclusion of special terms orders should be consistent with UMIR.	*We have not proposed a general exemption for all special terms orders. However, subsection 5.1(3) of Companion Policy 21-101 CP outlines that special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none or minimum fill orders, are not required to be provided to an information processor or an information vendor. Therefore, these types of orders would not fall under the definition of "protected orders" under the proposed rule and hence would not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first.* *In addition, orders with special settlement terms and "calculated price orders" have been included in the list of "permitted" trade-throughs in paragraph 6.2(e) of NI 23-101.* *As well, certain marketplaces provide an after-hours trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.*
Question 10: Are there current technology tools that would allow monitoring and enforcement of a flickering quote exception?	
Comments	***CSA Responses***
While commenters responding to this question were not aware of any technology tools available to allow for the monitoring and enforcement of a flickering quote exception, some suggested an "inter-market sweep order" to address this issue.	*It is expected that a marketplace will conduct periodic reviews to test the effectiveness of its policies and procedures for reasonably preventing trade-throughs and ensuring compliance with Part 6 of NI 23-101. We are of the view that a marketplace must retain relevant information so that the effectiveness of its policies and procedures can be*

Another commenter stated that it would be possible to develop a non-real time monitor at RS that would compare time stamps of orders and trades. Some commenters stated that it would be impractical to monitor for flickering order exceptions. Commenters offered the following alternative suggestions to a flickering order exception: • dealers should demonstrate that their trading policies and procedures are designed to minimize instances of trade-through caused by "flickering orders"; • initially monitor the reality of a multi-market operating environment in order to ascertain if this will actually be a material issue that warrants development work; • dealers to keep a log book that documents the instances and rationale as to why an order was non-executable, and if appropriate, the Participant could send an exception report to RS when this occurs; and • use "pattern" based regulation so that if a participant demonstrates a consistent pattern of abusing the exception it would be dealt with by regulators at that time.	*adequately evaluated by regulatory authorities. In certain circumstances, such as sending an inter-market sweep order, it may be appropriate for marketplace participants to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.*
Question 11: Should the exception only apply for a specified period of time (for example, one second)? If so, what is the appropriate period of time?	
Comments	***CSA Responses***
A number of commenters responding to this question believe that a specified time period may not be practical. One commenter suggested that instead of a specific period of time after the trade that would provide a safe harbour from trade-throughs, dealers should be required to demonstrate through either system documentation or through their audit trail that, at the time of order entry their orders were routed to the best priced marketplace given their current view of market data. Other commenters suggested that the appropriate duration should vary given the nature of the order, time of day and transaction load and one commenter suggested that it may be appropriate to have several time periods based on the nature of the order entered. One commenter suggested a quote which lasts for less than 5 seconds should not be subject to trade-through protection.	*We have allowed for the provision of "flickering orders' where a marketplace displaying the best price was traded through but had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. We have asked a specific question as to what length of time should be considered an "immediate" response by a marketplace to a received order in the attached Notice. In our view, because of the high speed of trading, one second may be too long.*
Question 12: Should this exception only be applicable for trades that must occur at a specific marketplace's closing price? Are there any issues of fairness if there is no reciprocal treatment for orders on another marketplace exempting them from having to execute at the closing price in a special facility if that price is better?	
Comments	***CSA Responses***
Three commenters specifically stated that they support the exemption from trade-through obligations of Market-On-Close (MOC) orders.	*As mentioned above, if a marketplace is operating a special trading facility with a set closing price, under paragraph 6.2(e of NI 23-101), a marketplace could execute closing price orders and would not be required to take steps to*

One commenter requested further clarification on what factors will be used to determine what the opening and closing price is for a security. One commenter referred to its position that trade-through protection should apply to all marketplaces that are open for continuous trading at any given time.	*reasonably prevent trade-throughs of orders on another marketplace. Otherwise, if two marketplaces with displayed protected orders are open for trading in their regular trading session, the trade-through protection rule would apply.*

Question 13: Should a last sale price order facility exception be limited to any residual volume of a trade or should it apply for any amount between the two original parties to a trade? What is the appropriate time limit?

Comments	***CSA Responses***
While five commenters were in support of a last sale price order facility exception they varied in their stances as to how this exception should be applied. One commenter stated that the last sale price exemption should be limited to the residual volume while others argued for the exception to be limited to the volume traded during the session the trade in question took place. Another commenter cited that trades should be encouraged to take place in the current context of the market and would not be supportive of a last sale price order facility exception being granted for residual volume of a trade. *Appropriate Time Limit* Suggestions for the duration of the exception ranged from 60 seconds to two minutes. Another commenter deferred to the expertise of the marketplace to determine volumes and time limits. *Opposition to Last Sale Price Order Facility Exception* Five commenters were of the view that there should not be a special exception for a last sale price order facility. One of these commenters, while not in favour of an exception for a last sale price order facility that operates during a market's normal trading hours, was supportive of the idea of allowing trades to continue at the closing price of a marketplace.	*We have not allowed for trade-throughs by transactions resulting from the execution of residual volumes of a trade within a last sale price order facility. We believe that better displayed prices should be honoured by all marketplace participants.*

Question 14: Should trade-throughs be allowed in any other circumstances? For example, are there specific types or characteristics of orders that should be subject to an exemption from the trade-through obligation?

Comments	***CSA Responses***
The following exemptions from trade-through protection were suggested by commenters: • specialty price crosses (including basis, VWAP, contingent and special trading session crosses); • special settlement terms; • Market-On-Close orders; • Derivative-related trades; • All-or-none orders (re: orders that are already in the special terms book where the trade is triggered by the marketplace algorithm);	*As mentioned above, the current proposal permits trade-throughs for orders containing special settlement terms, closing price orders and orders where the trade price is not known at the time of order entry and is to be calculated based on, but will not necessarily be equal to, the price of the security at the time of execution.* *All-or-none, minimum fill and other special terms orders that are not immediately executable or that trade in special terms books are not required to be provided to an information processor or information vendor under subsection 5.1(3) of 21-101CP. Therefore these types of orders would not fall under the definition of "protected orders" under the proposed rule and would not receive trade-through protection.*

• Minimum size orders; and • Stop orders and short orders where pricing is managed by an exchange. Another commenter is of the view that trade-throughs should not be allowed in any circumstance other than those listed in the joint notice. One commenter supported trade-through exemptions for situations where the trade price is not known at the time of order entry. Two commenters called for the CSA to maintain flexibility with respect to trade-through exemptions.	

Comments to Questions 15 to 18 and the corresponding CSA responses were published on June 20, 2008 in the Ontario Securities Commission Bulletin at (2008) 31 OSCB 6306.

Question 19: Please comment on whether the proposed reporting requirements for marketplaces and dealers would provide useful information. Is there other information that would be useful? Are there differences between the U.S. and Canadian markets that make this information less useful in Canada?

Comments	***CSA Responses***
Four commenters suggested that multiple marketplaces should be in operation for some time before determining the usefulness of reporting information. The majority of commenters responding to this question supported the proposed information requirements placed on marketplaces. One commenter suggested that the marketplace reporting requirements should be modeled after "Dash 5" reports produced in the U.S. given the significance of interlisted trading in Canada. This commenter stated that while the basic metrics proposed by the CSA are appropriate, they are insufficient since the structures of different marketplaces also need to be considered and the metrics provided in the Dash 5 type reports provide information that allows the end recipient to compare the costs and benefits of executing on various marketplaces. Some commenters did not believe that the information to be provided by the dealers would be useful to the public or for firms. *Suggestions for Other Useful Information* One commenter suggested that disclosure of routing and execution practices by marketplaces and dealers would provide valuable tools for monitoring and assessing best execution and help to improve the efficiency of capital markets. This commenter also stated that dealers should still provide the identity of market centres where they route a significant portion of their orders, disclosure of their relationship with such market centres or any conflict of interest that may exist. One commenter was of the view that ATSs should provide standardized and periodic data in order for market participants to be able to reasonably consider any dark pool options for best execution.	*The CSA delayed the implementation of the reporting requirements to enable multiple marketplaces to begin operations and for marketplace participants to adjust to the changing market structure. We continue to think that this reporting is important.* *We have further streamlined the proposed reporting requirements to focus on areas that we think would provide useful information to assess quality of execution.*

Question 20: Should trades executed on a foreign market or over-the-counter (OTC) be included in the data reported by dealers?	
Comments	***CSA Responses***
Foreign Trades The majority of commenters who responded to this question do not believe there should be a requirement to report foreign trades in Canada. Two commenters elaborated that there is a great potential cost in providing this information with little tangible benefit. Three commenters favoured the disclosure of foreign trades. One of these commenters supported this type of disclosure when there is a relationship between the parties which dictates how orders are routed. Another commenter suggested that this information would provide additional data points for internal analysis. *OTC Trades* With respect to OTC trade information, one commenter noted that although a lack of transparency combined with limited comparative information can make it difficult to measure best execution on the OTC market, such information may be useful in certain cases such as government issues.	*We are not proposing that trades executed on a foreign market or over-the-counter be included in the data. We are focussing on where securities are traded on multiple marketplaces in Canada.*
Question 21: Should dealers report information about orders that are routed due to trade-through obligations?	
Comments	***CSA Responses***
The majority of commenters responding to this question did not believe that dealers should report information about orders that are routed due to trade-through obligations. Reasons for this position included: • Detailed information about routing of orders and decisions made in the trade process is more appropriately collected as part of the TREATS initiative; • This requirement would induce more delays and offloads undue operational and regulatory costs onto participants; and • Additional reporting requirements should be deferred until the market has been operating in the context of the proposed regulations for a reasonable amount of time and careful study reveals a compelling regulatory need for such a requirement. Two commenters supported the reporting of information relating to orders routed for trade-through compliance purposes. One of these commenters however stated that it wants the CSA to be confident that the benefits of receiving such reports outweigh the costs associated with building a reporting structure before mandating this information.	*We are not proposing at this time to include information about orders that are routed due to trade-through obligations. This may be re-assessed once the trade-through requirements have been in place for a period of time.*

Question 22: Should information reported by a marketplace include spread-based statistics?	
Comments	***CSA Responses***
Six commenters did not support the requirement of marketplaces reporting spread-based statistics. Some reasons listed for this position include: • There are difficulties in setting objective standards so that everyone reports in similar ways and the statistics could be manipulated by selectively including/omitting execution data; • Depending on the nature of the marketplace, it may be completely irrelevant information; and • Spread based statistics will not assist in determining speed of execution, certainty of execution and over-all cost of the transaction. Five commenters indicated that spread based statistics should be reported for the following reasons: • Spread statistics are required when considering best execution for passive order flow; • This information is important for conducting transaction cost analysis in the form of implementation shortfall analysis; and • This information is the best metric for liquidity.	*There were mixed views on whether to include spread-based statistics. As a result, we have proposed that marketplace reporting include spread-based statistics and have specifically requested comment on this point.*

Question 23: If securities are traded on only one marketplace, would the information included in the proposed reporting requirements be useful? Is it practical for the requirement to be triggered only once securities are also traded on other marketplaces? Would marketplaces always be in a position to know when this has occurred?	
Comments	***CSA Responses***
Most commenters responding to this question did not believe the information included in the proposed reporting requirements would be useful if securities are traded on only one marketplace. Some commenters reasoned that the value of the information would not be justified by the cost of collection of the information. Three commenters did think that the information included in the proposed reporting requirements would be useful even if the securities were traded only on one marketplace. One commenter contended that this historical set of data can be used if or when the issuer graduates to a larger market where its securities will be listed on multiple marketplaces. Another commenter believes that transaction cost analysis can be conducted even if securities are traded on a single marketplace. As well, another commenter noted that the reporting requirements offer metrics to measure the expected execution quality of a marketplace and that since it is difficult to track interlisted securities on a real-time basis, this commenter is of the view that the best alternative is to standardize marketplace reporting requirements regardless of whether the securities traded are interlisted.	*We have not limited the marketplace reporting requirements where securities are traded only on one marketplace. We think that the proposed reporting requirements contain useful information to assess execution quality.*

II. List of Respondents

1. Bloomberg Tradebook Canada Company
2. BMO Financial Group
3. Canadian Security Traders Association Inc.
4. CNQ
5. CPP Investment Board
6. egX Canada
7. Highstreet Asset Management Inc.
8. Investment Industry Association of Canada
9. ITG Investment Technology Group
10. Liquidnet Canada Inc.
11. Merrill Lynch Canada Inc.
12. Perimeter Markets Inc.
13. Raymond James Ltd.
14. RBC Asset Management Inc.
15. RBC Dominion Securities Inc.
16. Scotia Capital Inc.
17. TD Asset Management Inc.
18. TD Newcrest
19. TSX Group Inc.

APPENDIX B

COST-BENEFIT ANALYSIS

PROPOSED TRADE-THROUGH PROTECTION RULE

On April 20, 2007, the CSA and Market Regulation Services Inc. (now the Investment Industry Regulatory Organization of Canada or IIROC) published the *Joint Notice on Trade-Through, Best Execution and Access to Marketplaces* (Joint Notice).[1] In the Joint Notice, we said that we would prepare a cost-benefit analysis for the proposal and we asked for comments on what factors we should consider. We also invited interested parties to let us know if they would like to participate further in our analysis process.

We thank everyone who submitted comments. This paper outlines the qualitative cost-benefit analysis we conducted to aid in the policy making process. The analysis incorporates the comments we received.

Our economic rationale for proposing a trade-through protection rule, where the obligation falls on marketplaces, reflects the following economic realities:

- marketplaces are well positioned to take advantage of economies of scale and can implement the necessary technical infrastructure at a lower cost than if all participants were required to do so
- the incremental compliance costs for dealers will be modest because there is already a trade-through rule (UMIR Best Price Rule, defined below), and
- marketplaces are already adding order routing capabilities that can be used to comply with the proposed rule, both as a service to their participants and in anticipation of CSA rulemaking

We welcome your feedback on this cost-benefit analysis and are interested in any empirical data you can provide in support of your comments. As part of the next phase, we will be contacting those who expressed interest in participating further in the analysis.

Overview

The CSA does not address trade-throughs[2] or a best-price obligation[3] in any of its rules. These obligations are currently set out in UMIR Rule 5.2 *Best Price Obligations* (UMIR Best Price Rule). However, this rule only applies to investment dealers that are members of IIROC.

In the past, the UMIR Best Price Rule was sufficient to protect better-priced limit orders from being traded-through because only dealers had direct access to marketplaces. In addition, after the specialization of exchanges in 1999, individual securities were traded only on a single marketplace. The marketplace could then enforce price priority and avoid trade-throughs on an intra-market basis.

The introduction of multiple marketplaces trading the same security, including some marketplaces that allow direct access by non-dealers, has limited the effectiveness of the UMIR Best Price Rule. Multiple marketplaces increase the potential for trade-throughs because no one marketplace can enforce price priority on an inter-market basis.

In addition, the limited jurisdiction of UMIR means dealers and non-dealers that engage in similar trading activities[4] are operating under different regulatory requirements. As a result, non-dealers can trade-through better-priced orders without breaching any regulations.

When participants that conduct the same activity are subject to different regulatory standards, regulatory asymmetry occurs. This is a concern to the CSA because it can:

(a) impact competition

(b) adversely affect the broader market and its participants, and

(c) create “free-riders” in the market

[1] (2007) 30 OSCB (Supp-3).
[2] A trade-through occurs when better-priced limit order is bypassed in favour of an inferior-priced limit order.
[3] A best-price obligation is an obligation to ensure that trades are not executed at inferior prices.
[4] Although non-dealers are only able to participate on a principal basis

(a) Impact on competition

The asymmetry in the regulatory treatment of dealers and non-dealers can affect how marketplaces compete for large transactions.

Institutional investors often want to limit the risks and costs associated with trading a block of shares by minimizing the potential for information leakage to the wider market. Institutional traders will not post a limit order for the full size of an order because the market could move against the trader, affecting the price paid and therefore the total cost of the transaction.

Instead, institutional traders will break a large order into smaller orders or trade on a less transparent marketplace where the risk of information leakage is reduced. For example, they may execute the trade:

- through a dealer in the "upstairs" market
- using hidden orders within a transparent limit order book (e.g. an iceberg order), or
- on an ATS that does not have pre-trade transparency (i.e. a dark pool[5])

If a dealer is trading via an exchange or an ATS, it is required to honour all better-priced limit orders. However, an institution can trade-though better-priced orders by trading directly on an ATS. This can give non-dealer participants a competitive advantage over dealers. It can also give ATSs with non-dealer access an advantage over other marketplaces.

(b) Impact on broader market

Trade-throughs can negatively affect other market participants. Limit order traders are impacted when a trade-through causes the delayed or missed execution of a limit order. This represents a cost to the trader that posted the limit order. Imposing a cost on others without compensation is a form of market failure and is of particular concern of regulators.

Repeated trade-throughs could also affect the market as a whole by decreasing the value of posting a limit order. As trade-throughs become more common, more participants may feel that they are not being compensated for exposing their limit orders and that the market is becoming less fair. Traders might then post fewer limit orders, which could negatively affect price discovery and market quality.

(c) Free-rider issues

Regulatory asymmetry creates free-riders that benefit from market integrity without necessarily paying for it. Dealers have the obligation to prevent trade-throughs and bear the costs of meeting that obligation. An example is the cost of monitoring multiple marketplaces on a real-time basis. The market benefits from the resulting market integrity and perception of fairness. This in turn, encourages traders to post limit orders and fosters an efficient price discovery process.

However, because non-dealer participants do not have this same obligation they can benefit from participating in a robust market without incurring the associated costs or taking into account other market participants. In essence, non-dealers are free-riders.

Scale and scope

Over the past few years, the number of marketplaces for trading equity securities in Canada has increased. Today, there are seven marketplaces that trade TSX-listed securities. Four of the current marketplaces use a continuous auction trading model, while the others use call auctions or negotiated trading.

Two of these marketplaces (Blockbook and Liquidnet) are ATSs which operate as dark pools and allow non-dealers to trade directly. While the ATS market in Canada is still developing, we expect that Canadian institutional investors will increase their use of these marketplaces over time. However, we do not anticipate that these marketplaces will completely replace dealer intermediated trading by institutional investors.

For some insight on the likely extent of dark pool trading we can look to the U.S. market. The U.S. has seen considerable growth in the number of dark pools and their use by institutional investors, but dark pool trading still accounts for less than 7% of total market volume.[6]

Trading on Blockbook and Liquidnet has resulted in a number of trade-throughs by non-dealers. While these trade-throughs do

[5] A dark pool is a marketplace that allows buyers and sellers to anonymously match stock orders without pre-trade transparency.
[6] Rosenblatt Securities, "Let there be light, Rosenblatt's Monthly Dark Liquidity Tracker", May 22, 2008.

not represent a significant proportion of total traded volume on Canadian markets, they have, to varying degrees, affected the traders whose posted limit orders were traded-through.

Objective and policy rationale

The CSA's objective is to promote competition, fairness, and price discovery in Canada's equity markets by updating market policy to reflect changes in market structure. This includes applying regulatory requirements consistently to participants engaging in similar activities.

Since IIROC has limited jurisdiction over non-dealer marketplace participants, it cannot enforce the UMIR Best Price Rule on these participants. Non-dealers have an economic incentive to trade-through better-priced orders if they can execute larger trades without the information leakage and costs associated with exposing their intent.

As a result, there is little incentive for non-dealers to voluntarily honour those better-price orders. We think that regulatory intervention is necessary to create a level playing field for market participants and to address the potential negative market impacts and free-rider issues associated with the current regime.

Policy alternatives

The status quo is not desirable because of the identified competitive issues and the potential negative effect on the market. We have considered the following three policy alternatives and evaluated each in terms of their anticipated impact on the market and its participants and the ability of each option to achieve our regulatory objective:

(a) create a participant-level best-price obligation for non-dealers

(b) remove the UMIR Best Price Rule, and

(c) create a trade-through obligation that applies to marketplaces (the Proposed Trade-through Protection Rule or the proposed rule)

Costs and benefits

(a) Participant-level obligation

As noted above, dealers already have obligations under the UMIR Best Price Rule but non-dealers do not. One way to address the current regulatory asymmetry is to create a best price rule that applies to non-dealer participants as well as dealers. Requiring both dealers and non-dealers to take reasonable steps to prevent trade-throughs would address the competitive imbalance of the current environment. Non-dealers would no longer be able to free-ride on the activities of dealers.

This alternative would not impose any new requirements on dealers. Those that are complying with the existing UMIR Best Price Rule would not incur any additional compliance costs. However, non-dealers would have to implement policies and procedures to prevent trade-throughs. This would include building systems to monitor multiple marketplaces and route orders to the best available price. These costs could be significant.

To a large degree, these costs would be fixed costs and would not be proportional to the size of the firm. Large firms might be able to absorb these costs given their high volume of trading. However, smaller firms would face proportionally higher compliance costs because of the limited economies of scale.

The costs could discourage some non-dealers, especially smaller firms, from directly participating in the market. This could affect the ability of marketplaces whose niche is serving institutional investors to offer a competitive alternative to existing marketplaces. Fewer execution options for institutional investors could result, which is inconsistent with our objective of promoting competition.

(b) Remove the UMIR Best Price Rule

Removing the current UMIR Best Price Rule is, perhaps, the most controversial of the options. Some argue that a trade-through or best-price rule is not required.[7] However, industry commenters to the April 2007 Joint Notice generally supported the need for trade-through protection in the Canadian market.

Removing the UMIR Best Price Rule would eliminate the regulatory asymmetry present in the current regime and addresses the

[7] For an overview of academic research in this area see Comerton-Forde, Carole and Bruce Robert Arnold, 2005, Literature Review: Best Execution and Trade-Though, Market Regulation Services Inc.

free-rider concern. There would be no additional compliance costs for dealers or non-dealers.

However, limit order traders and the broader market are affected if traders are allowed to trade-through better-priced orders. Without a best price rule, traders could choose which orders to trade against, subject to their best execution obligations. They would not take into account the impact on better-priced orders. Trading-through a better-priced order could result in a delayed or missed execution for posted orders. A decrease in the likelihood of execution represents an increase in trading costs for limit order traders. A decrease in the value of exposing limit orders to the market could result in fewer limit orders being placed.

Having the UMIR Best Price Rule has meant that Canadian market participants are used to, and expect, a market with price priority. Removing that rule, and therefore price priority across marketplaces, could make Canada a less attractive market in which to post limit orders. Canadian marketplaces might find it harder to attract liquidity which could affect the efficiency of the Canadian market and its ability to compete. It is important to keep in mind that that the SEC's Regulation NMS does create a marketplace level best-price obligation in the U.S. market.

Removing the UMIR Best Price Rule could also reduce competition in the Canadian market. Attracting liquidity and traders away from the established marketplaces can be a significant barrier to entry for new marketplaces. A best price obligation results in orders being directed to the marketplace with the best price.[8] This lowers the barriers to entry for those new marketplaces that are able to offer competitive quotes. Without a best price obligation it could be more challenging for a new marketplace to compete.

Finally, to the best of our knowledge there has been no research on a market that has removed an entrenched best-price rule. As a result, there is little to indicate what the actual impact would be of removing the UMIR Best Price Rule.

(c) Create a marketplace level rule

These first two alternatives would address the regulatory asymmetry between dealers and non-dealers, however there could be significant negative impacts associated with each of them. Therefore, our analysis focuses on the Proposed Trade-through Protection Rule, which would apply to marketplaces rather than participants.

(i) Compliance costs for marketplaces

Imposing a trade-through rule at the marketplace level would result in costs for Canadian marketplaces trading equities. Marketplaces could have to:

- determine how to comply with the rule
- implement and maintain written policies and procedures to prevent trade-throughs
- train staff on the rule and their policies and procedures
- maintain and update the policies and procedures to ensure continued compliance with the rule
- acquire information and systems to monitor activity on all other protected marketplaces
- update trading systems to be able to process the Inter-market Sweep Order (ISO) marker and identify other permitted trade-throughs, and
- implement polices and procedures relating to the identification of system malfunctions and the required communication to other marketplaces, regulation service providers and marketplace participants

The following is a summary of the most significant costs for marketplaces under the proposed rule.

Policies and procedure to prevent trade-throughs

The Proposed Trade-through Protection Rule intentionally includes flexibility for marketplaces and does not prescribe any one way in which a marketplace can meet its regulatory obligations.

Marketplaces would need access to real-time consolidated bid and offer information to identify possible better-priced orders. They could develop this information themselves, as many with order routers have done, or they may be able to buy the information from an information vendor or service provider.

[8] The current UMIR Best Price Rule contains a number of qualifications that are designed to restrict the benefits of the requirement to marketplaces that meet certain standards.

However, trade-throughs could be prevented by choosing to reject orders that would result in a trade-through of a better-priced protected order. This logic would have to be programmed into the marketplace's trading system.

Or, a marketplace could redirect incoming orders to the better available price(s) by establishing linkages with other marketplaces. This could be done using in-house smart order routing technology or a service provider.

We recognize that implementing a smart order router could be costly. However, most existing Canadian marketplaces have added or plan to add order routing capabilities[9] through a smart order router or a third-party service provider. They are doing this as a value-added service and, possibly, in anticipation of the proposed rule creating a marketplace obligation. As a result, we anticipate that these marketplaces have already provided for these costs.

Compliance monitoring

Access to historical consolidated bid and offer information would be necessary to perform ongoing monitoring of a marketplace's policies and procedures. Marketplaces could compile this information from what is currently available or it may become available from a service provider. If marketplaces compile the information in-house and build their own historical database there would be associated, and possibly significant, costs.

We do not anticipate that access to consolidated bid and offer information would be a significant incremental cost for marketplaces with a smart order router as such data would be needed for more than compliance with the proposed rule.

The other component to monitoring compliance is information about the trading activity on each marketplace. Marketplaces may already be storing such information for business purposes and so we do not anticipate material incremental costs as a result of the proposed rule.

Updated systems, policies, and procedures

Marketplaces would need to update their trading systems to incorporate the proposed ISO marker. Incorporating the ISO marker should involve minimal incremental costs because it is expected to evolve from the current bypass marker

(ii) Compliance costs for dealers

We anticipate that there would be compliance cost savings for dealers if the trade-through obligation is moved to the marketplace level.

Marketplace monitoring

Under the current regime, dealers need to monitor other marketplaces so as to identify better-priced orders and route their orders as necessary.

Some dealers have implemented monitoring and routing systems to address a business need as well as meet regulatory requirements. Firms that have high trading volumes and want to take advantage of low latency trading would arguably invest in this technology whether or not there is a trade-through rule. Because these firms are able to exploit the available economies of scale, the cost per-client or per-trade is expected to be reasonable.

Dealers that operate on a smaller scale or who trade lower volumes are faced with significant costs in order to comply with the current dealer level obligation contained in the UMIR Best Price Rule. These firms cannot take advantage of economies of scale and would find it difficult to realize a return on the necessary investment in infrastructure. We anticipate that the proposed rule would reduce the burden on these firms because they would no longer be subject to market monitoring and access requirements.

Updated systems, policies, and procedures

Dealers would need to update their trading systems to incorporate the proposed ISO marker. These costs could be higher for dealers with proprietary software than for dealers that use third-party systems. System vendors would presumably make changes for the benefit of all their clients, which would reduce the cost per client.

Incorporating the ISO marker should involve minimal incremental costs because it is expected to evolve from the current bypass marker. However, dealers would also have to develop and implement policies and procedures to ensure that the ISO order marker is used appropriately. This would include training staff on using the marker.

[9] Either through the use of a smart order router or via a third-party service provider.

The ISO marker would also allow firms to benefit from any market monitoring and order routing technology that they have already invested in. There could be some degree of latency associated with a marketplace checking an incoming order against the quoted prices on other marketplaces. The ISO marker would allow dealers to avoid that latency if it duplicates the checks they already perform.

Dealers would also have to develop policies and procedures on using the ISO marker when dealing with systems failures or malfunctions experienced by a marketplace. They would have to document and keep records of the steps taken and notify the marketplace with the apparent system malfunction and the regulation service provider.

Dealers would have to be able to demonstrate compliance with the requirements relating to ISO markers and would have to access information about market conditions at the time an ISO order was routed.

Dealers may be able to access consolidated market data via a vendor[10] or choose to construct that consolidation themselves. Firms would have to access historical consolidated market data to demonstrate compliance on a post-trade basis. The cost of data storage could be significant because the proposed rule applies on a depth-of-book basis.

A data consolidator or other data vendor may make consolidated historical information available at a reasonable cost. In the United States, service providers and exchanges sell access to these databases. For example, Nasdaq's Market Replay, which allows users to display market conditions at a point in time, is available for a relatively modest cost.

(iii) Compliance costs for non-dealer market participants

Updated systems, policies, and procedures

Costs related to implementing the ISO marker would only be incurred by non-dealers that want to use the marker. Firms that choose to use the ISO order marker might have to update their trading systems. We anticipate that this cost would be higher for firms using proprietary trading systems. They would also have to develop and implement policies and procedures to ensure that the ISO order marker is used appropriately. This would include training staff using the marker.

Firms would also have to store certain information about market conditions at the time an ISO order was routed. As noted above, the cost of storing data in-house could be significant. However, we anticipate that a data vendor will be able to take advantage of economies of scale and make a database available at a reasonable cost.

Impact on trading

Transaction costs for certain types of trades (i.e. block trades) might increase for non-dealers because they would no longer be able to trade-through better-priced orders.

(iv) Costs for other stakeholders

Market data vendors and other service providers would have to modify their systems to:

- process markers for ISOs, and
- identify marketplaces that are experiencing a system failure or malfunction

(v) Impact on competition

We expect the proposed rule to restore an appropriate competitive balance. Marketplaces would be required to have policies and procedures to prevent trade-throughs and, as a result, dealers and non-dealers would be subject to same trading constraints. These requirements would apply to all marketplaces. Those that permit non-dealer access would not have a regulation based advantage over other marketplaces in attracting order flow from institutional investors.

While there is some degree of flexibility in how marketplaces would meet their obligation to prevent trade-throughs, many would likely implement order routing capabilities. The costs associated with this could be a barrier to entry for new marketplaces. However, the actions of current marketplaces suggest that, regardless of the rules, order routing capabilities may be required to be competitive.

[10] TSX, "TSX Datalinx to launch consolidated Canadian data feed including data from ATSs", press release, October 31, 2007

The proposed rule would require that prior to executing a trade, marketplaces check:

- displayed quotes on other marketplaces to ensure that there are no better-price orders, or
- ensure that the order is marked as an ISO

This step could increase the amount of time it takes to process a trade. However, since all marketplaces would have to conduct these checks, any increased latency should not affect how marketplaces compete with one another.

We do not anticipate that the proposed rule would have any other effects on competition. Marketplaces would still be able to compete in areas other than the quoted price while taking steps to prevent trade-throughs from occurring.

(vi) Impact on investors

The proposed rule would reduce the opportunity for trade-throughs to occur. This could promote the perception of fairness in the market and encourage market participation. It would also reduce the likelihood of investors being affected as a result of having an order traded-through.

Any increased transaction costs experienced by institutional investors will ultimately be passed on to the institutions' clients (e.g. pension plan members, mutual fund investors, etc.). On a per-client basis, the additional transactions costs are expected to be limited.

Conclusion

While all three policy options address the regulatory asymmetry, they also all have associated costs. In our opinion, the costs of creating a trade-through rule for non-dealers or of removing the UMIR Best Price Rule would not be proportionate to our objective. As a result, we think the Proposed Trade-through Protection Rule is the most balanced way to meet our objective.

Complying with the proposed rule would involve costs, particularly for marketplaces. We anticipate that current efforts to develop and implement smart order routers should limit the incremental cost of the rule. Most of the compliance costs would be fixed costs related to policies, procedures and systems. In our view, marketplaces are better positioned to take advantage of economies of scale in managing these costs than dealers and non-dealers.

Unofficial Consolidation – September 12, 2008

This document is an unofficial consolidation of all amendments to National Instrument 21-101 *Marketplace Operation*, its forms and its Companion Policy current to **September 12, 2008**. The black-lined portions indicate the proposed amendments to National Instrument 21-101 and its Companion Policy. This document is for reference purposes only and is not an official statement of the law.

APPENDIX C

NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION

Table of Contents

NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Instrument

"alternative trading system" means a marketplace that

(a) is not a recognized quotation and trade reporting system or a recognized exchange, and

(b) does not

(i) require an issuer to enter into an agreement to have its securities traded on the marketplace,

(ii) provide, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis,

(iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and

(iv) discipline subscribers other than by exclusion from participation in the marketplace;

"ATS" means an alternative trading system;

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

"effective spread" means,

(a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt; or

(b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt and the execution price.

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

"foreign exchange-traded security" means a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada;

"government debt security" means

(a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,

(b) a debt security issued or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,

(c) a debt security of a crown corporation,

(d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the Education Act (Ontario), or

(e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l'île de Montréal

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

~~"IDA" means the Investment Dealers Association of Canada;~~ "IIROC" means the Investment Industry Regulatory Organization of Canada;

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

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

"market integrator" [repealed]

"marketplace" means

(a) an exchange,

(b) a quotation and trade reporting system,

(c) a person or company not included in paragraph (a) or (b) that

(i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,

(ii) brings together the orders for securities of multiple buyers and sellers, and

(iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or

(d) a dealer that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker;

“marketplace participant” means a member of an exchange, a user of a quotation and trade reporting system, or a subscriber of an ATS;

“member” means, for a recognized exchange, a person or company

(a) holding at least one seat on the exchange, or

(b) that has been granted direct trading access rights by the exchange and is subject to regulatory oversight by the exchange,

and the person or company’s representatives;

“NI 23-101” means National Instrument 23-101 Trading Rules;

“order” means a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security;

“realized spread” means,

(a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution; or

(b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution and the execution price; and

where, for orders that execute within the last five minutes of a marketplace's trading hours, the midpoint referred to in paragraphs (a) and (b) is the midpoint of the final best bid price and best ask price disseminated for the trading day.

"recognized exchange" means

(a) in Ontario, an exchange recognized by the securities regulatory authority to carry on business as a stock exchange,

(b) in Quebec, an exchange recognized by the securities regulatory authority as a self-regulatory organization or authorized by the securities regulatory authority, and

(c) in every other jurisdiction, an exchange recognized by the securities regulatory authority as an exchange, self-regulatory organization or self-regulatory body;

"recognized quotation and trade reporting system" means

(a) in every jurisdiction other than British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation to carry on business as a quotation and trade reporting system, and

(b) in British Columbia, a quotation and trade reporting system recognized by the securities regulatory authority under securities legislation as a quotation and trade reporting system or as an exchange;

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

(a) a recognized exchange,

(b) a recognized quotation and trade reporting system, or

(c) a recognized self-regulatory entity;

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

(a) is not an exchange, and

(b) is recognized as a self-regulatory body or self-regulatory organization by the securities regulatory authority;

"subscriber" means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS, and the person or company's representatives;

"trading volume" means the number of securities traded;

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

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

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

1.2 Interpretation – Marketplace – For the purpose of the definition of "marketplace" in section 1.1, a person or company is not considered to constitute, maintain or provide a market or facilities for bringing together buyers and sellers of securities, solely because the person or company routes orders to a marketplace or a dealer for execution.

1.3 Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

(1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is a controlled entity of,

(i) that other,

(ii) that other and one or more persons or companies each of which is a controlled entity of that other, or

(iii) two or more persons or companies, each of which is a controlled entity of that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

1.4 Interpretation – Security

(1) In Alberta and British Columbia, the term "security", when used in this Instrument, includes an option that is an exchange contract but does not include a futures contract.

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

PART 2 APPLICATION

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

PART 3 EXCHANGE – RECOGNITION

3.1 Application for Recognition

(1) An applicant for recognition as an exchange shall file Form 21-101F1.

(2) An applicant for recognition as an exchange shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F1, and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

3.2 Change in Information After Recognition

(1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange shall file

(a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or

(b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

(2) If a recognized exchange implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized exchange shall, within 30 days after the end of the calendar quarter in which the change takes place, file

(a) if the exchange was recognized before this Instrument came into force, the information describing the change in the manner set out in Form 21-101F1; or

(b) if the exchange is recognized after this Instrument comes into force, an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

(3) Subsection (2) does not apply to a change to a matter set out in Exhibits F and 0 of Form 21-101F1.

PART 4 QUOTATION AND TRADE REPORTING SYSTEM – RECOGNITION

4.1 Application for Recognition

(1) An applicant for recognition as a quotation and trade reporting system shall file Form 21-101F1.

(2) An applicant for recognition as a quotation and trade reporting system shall inform in writing the securities regulatory authority immediately of any change to the information provided in Form 21-101F1 and the applicant shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1 no later than seven days after the change takes place.

4.2 Change in Information After Recognition

(1) At least 45 days before implementing a significant change to a matter set out in Form 21-101F1, a recognized quotation and trade reporting system shall file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

(2) If a recognized quotation and trade reporting system implements a change involving a matter set out in Form 21-101F1, other than a change referred to in subsection (1), the recognized quotation and trade reporting system shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F1 in the manner set out in Form 21-101F1.

PART 5 REQUIREMENTS APPLICABLE ONLY TO RECOGNIZED EXCHANGES AND RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEMS

5.1 Access Requirements – A recognized exchange and a recognized quotation and trade reporting system shall

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

(b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and

(c) keep records of

(i) each grant of access including, for each member in the case of an exchange and for each user in the case of a quotation and trade reporting system, the reasons for granting access to an applicant, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

5.2 No Restrictions on Trading on Another Marketplace – A recognized exchange or recognized quotation and trade reporting system shall not prohibit, condition, or otherwise limit, directly or indirectly, a member or user from effecting a transaction on any marketplace.

5.3 Public Interest Rules

(1) Rules, policies and other similar instruments adopted by a recognized exchange or a recognized quotation and trade reporting system

(a) shall not be contrary to the public interest; and

(b) shall be designed to

(i) ensure compliance with securities legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade, and

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in securities.

(2) A recognized exchange or a recognized quotation and trade reporting system shall not

(a) permit unreasonable discrimination among clients, issuers and members or among clients, issuers and users; or

(b) impose any burden on competition that is not reasonably necessary and appropriate.

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

(a) require compliance with securities legislation; and

(b) provide appropriate sanctions for violations of the rules or other similar instruments of the exchange or quotation and trade reporting system.

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

5.6 Filing of Annual Audited Financial Statements – A recognized exchange or a recognized quotation and trade reporting system shall file annual audited financial statements within 90 days after the end of its latest financial year.

PART 6 REQUIREMENTS APPLICABLE ONLY TO ATSs

6.1 Registration – An ATS shall not carry on business as an ATS unless

(a) it is registered as a dealer;

(b) it is a member of a self-regulatory entity; and

(c) it complies with the provisions of this Instrument and NI 23-101.

6.2 Registration Exemption Not Available – Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.

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

(a) exchange-traded securities;

(b) corporate debt securities;

(c) government debt securities; or

(d) foreign exchange-traded securities.

6.4 Reporting Requirements

(1) An ATS shall file an initial operation report on Form 21-101F2 at least 30 days before the ATS begins to carry on business as an ATS.

(2) At least 45 days before implementing a significant change to a matter set out in Form 21-101F2, an ATS shall file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.

(3) If an ATS implements a change involving a matter set out in Form 21-101F2, other than a change referred to in subsection (2), the ATS shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2.

(4) An ATS shall file Form 21-101F3 within 30 days after the end of each calendar quarter during any part of which the ATS has carried on business.

6.5 Ceasing to Carry on Business as an ATS

(1) An ATS that intends to cease carrying on business as an ATS shall file a report on Form 21-101F4 at least 30 days before ceasing to carry on that business.

(2) An ATS that involuntarily ceases to carry on business as an ATS shall file a report on Form 21-101F4 as soon as practicable after it ceases to carry on that business.

6.6 Notification of Intent to Carry on Exchange Activities – An ATS shall notify the securities regulatory authority in writing at least six months before it first

(a) requires an issuer to enter into an agreement before the issuer's securities can trade on the ATS;

(b) provides, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;

(c) sets requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the ATS; or

(d) establishes procedures for disciplining subscribers other than by exclusion from trading.

6.7 Notification of Threshold

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

(a) during at least three of the preceding four calendar quarters, the average daily dollar value of the trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the average daily dollar value of the trading volume for the calendar quarter in that type of security on all marketplaces in Canada;

(b) during at least three of the preceding four calendar quarters, the total trading volume on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the total trading volume for the calendar quarter in that type of security on all marketplaces in Canada; or

(c) during at least three of the preceding four calendar quarters, the number of trades on the ATS for a calendar quarter in any type of security is equal to or greater than 20 percent of the number of trades for the calendar quarter in that type of security on all marketplaces in Canada.

(2) An ATS shall provide the notice referred to in subsection (1) within 90 days after the threshold referred to in subsection (1) is met or exceeded.

6.8 Confidential Treatment of Trading Information

(1) An ATS shall not release a subscriber's trading information to a person or company, other than the subscriber, unless

(a) the subscriber has consented in writing to the release of the information;

(b) the release of the information is required by this Instrument or under applicable law; or

(c) the information has been publicly disclosed by another person or company, and the disclosure was lawful.

(2) An ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information, including

(a) limiting access to the trading information of subscribers to

(i) employees of the ATS, or

(ii) persons or companies retained by the ATS to operate the system or to be responsible for compliance by the ATS with Canadian securities legislation; and

(b) implementing standards controlling trading by employees of the ATS for their own accounts.

(3) An ATS shall not carry on business as an ATS unless it has implemented adequate oversight procedures to ensure that the safeguards and procedures established under subsection (2) are followed.

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

6.10 Risk Disclosure for Trades in Foreign Exchange-Traded Securities

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

The securities traded by or through [the ATS] are not listed on an exchange in Canada and may not be securities of a reporting issuer in Canada. As a result, there is no assurance that information concerning the issuer is available or, if the information is available, that it meets Canadian disclosure requirements.

(2) Before the first order for a foreign exchange-traded security is entered onto the ATS by a subscriber, the ATS shall obtain an acknowledgement from the subscriber that the subscriber has received the disclosure required in subsection (1).

6.11 Risk Disclosure to Non-Registered Subscribers

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

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

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

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

6.13 Access Requirements – An ATS shall

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

(b) not unreasonably prohibit, condition or limit access by a person or company to services offered by it; and

(c) keep records of

(i) each grant of access, including, for each subscriber, the reasons for granting access to an applicant, and

(ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

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

7.1 Pre-Trade Information Transparency – Exchange-Traded Securities

(1) A marketplace that displays orders of exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the exchange-traded securities displayed on the marketplace to an information processor as required by the information processor or, if there Is no information processor, to an information vendor that meets the standards set by a regulation services provider.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

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

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

(1) A marketplace that displays orders of foreign exchange-traded securities to a person or company shall provide accurate and timely information regarding orders for the foreign exchange-traded securities displayed on the marketplace to an information vendor.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

7.4 Post-Trade Information Transparency – Foreign Exchange-Traded Securities – A marketplace shall provide accurate and timely information regarding trades for foreign exchange-traded securities executed on the marketplace to an information vendor.

7.5 Consolidated Feed – Exchange-Traded Securities – An information processor shall produce an accurate consolidated feed in real-time showing the information provided to the information processor under sections 7.1 and 7.2.

7.6 Compliance with Requirements of an Information Processor – A marketplace shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.

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

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

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

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed on the marketplace as required by the information processor.

(4) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding orders for government debt securities executed through the inter-dealer bond broker as required by the information processor.

(5) An inter-dealer bond broker shall provide to an information processor accurate and timely information regarding details of trades of government debt securities executed through the interdealer bond broker as required by the information processor.

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

(1) A marketplace that displays orders of corporate debt securities to a person or company shall provide accurate and timely information regarding orders for designated corporate debt securities displayed on the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.

(2) Subsection (1) does not apply if the marketplace only displays orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.

(3) A marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed on the marketplace to an information processor, as required by the information processor or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.

(4) An inter-dealer bond broker shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker to an information processor as required by the

information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.

(5) A dealer executing trades of corporate debt securities outside of a marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider.

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

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

8.5 Filing Requirements for the Information Processor

(1) The information processor shall file, within 30 days after the end of each calendar quarter, the process and criteria for the selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.

(2) The information processor shall file, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by the Instrument, including where the list of designated securities can be found.

8.6 Exemption for Government Debt Securities – Section 8.1 does not apply until January 1, 2012.

PART 9 [Repealed]

PART 10 DISCLOSURE OF TRADING FEES FOR MARKETPLACES

10.1 Disclosure of Trading Fees by Marketplaces – A marketplace shall make its schedule of trading fees publicly available.

10.2 Trading Fees for Trade-Through Purposes – With respect to trading fees charged for the execution of an order to comply with section 6.1 of NI 23-101, a marketplace shall not impose

(a) a fee that is equal to or greater than the minimum price increment described in IIROC Universal Market Integrity Rule 6.1, as amended; and

(b) terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace.

PART 11 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

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

11.2 Other Records

~~(1)~~ As part of the records required to be maintained under section 11.1, a marketplace shall include the following information in electronic form:

(a) a record of all marketplace participants who have been granted access to trading in the marketplace;

(b) daily trading summaries for the marketplace, including

(i) a list of securities traded,

(ii) transaction volumes

(A) for securities other than debt securities, expressed as the number of issues traded, number of trades, total unit volume and total dollar value of trades and, if the price of the securities

traded is quoted in a currency other than Canadian dollars, the total value in that other currency, and

(B) for debt securities, expressed as the number of trades and total dollar value traded and, if the price of the securities traded is quoted in a currency other than Canadian dollars, the total value in that other currency,

(c) a record of each order which shall include

(i) the order identifier assigned to the order by the marketplace,

(ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,

(iii) the identifier assigned to the marketplace where the order is received or originated,

(iv) the type, issuer, class, series and symbol of the security,

(v) the number of securities to which the order applies,

(vi) the strike date and strike price, if applicable,

(vii) whether the order is a buy or sell order,

(viii) whether the order is a short sale order, if applicable,

(ix) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,

(x) the date and time the order is first originated or received by the marketplace,

(xi) whether the account is a retail, wholesale, employee, proprietary or any other type of account,

(xii) [repealed]

(xiii) the date and time the order expires,

(xiv) whether the order is an intentional cross,

(xv) whether the order is a jitney and if so, the identifier of the underlying broker,

(xvi) [repealed]

(xvii) the currency of the order; and

(xviii) [repealed]

(d) in addition to the record maintained in accordance with paragraph (c), all execution report details of orders, including

(i) the identifier assigned to the marketplace where the order was executed,

(ii) whether the order was fully or partially executed,

(iii) the number of securities bought or sold,

(iv) the date and time of the execution of the order,

(v) the price at which the order was executed,

(vi) the identifier assigned to the marketplace participant on each side of the trade,

(vii) whether the transaction was a cross,

(viii) time-sequenced records of all messages sent to or received from an information processor, an information vendor or a marketplace,

(ix) the marketplace transaction fee for each trade.

11.2.1 Transmission in Electronic Form – A marketplace shall transmit

(a) to a regulation services provider, if it has entered into an agreement with a regulation services provider in accordance with NI 23-101, the information required by the regulation services provider, within ten business days, in electronic form; and

(b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

11.3 Record Preservation Requirements

(1) For a period of not less than seven years from the creation of a record referred to in this section, and for the first two years in a readily accessible location, a marketplace shall keep

(a) all records required to be made under sections 11.1 and 11.2;

(b) at least one copy of its standards for granting access to trading, if any, all records relevant to its decision to grant, deny or limit access to a person or company and, if applicable, all other records made or received by the marketplace in the course of complying with section 5.1 or 6.13;

(c) at least one copy of all records made or received by the marketplace in the course of complying with section 12.1, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records;

(d) all written notices provided by the marketplace to marketplace participants generally, including notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the marketplace and denials of, or limitation to, access to the marketplace;

(e) the acknowledgement obtained under subsection 6.10(2) or 6.11(2);

(f) a copy of any agreement referred to in section 8.4 of NI 23-101; and

(g) a copy of any agreement referred to in subsections 13.1(2) and 13.1(3).

(2) During the period in which a marketplace is in existence, the marketplace shall keep

(a) all organizational documents, minute books and stock certificate books;

(b) in the case of a recognized exchange, copies of all forms filed under Part 3;

(c) in the case of a recognized quotation and trade reporting system, copies of all forms filed under Part 4; and

(d) in the case of an ATS, copies of all forms filed under sections 6.4 and 6.5 and notices given under sections 6.6 and 6.7.

11.4 Means of Record Preservation – A marketplace may keep all records, documents and forms referred to in this Part by means of mechanical, electronic or other devices, if

(a) the method of recordkeeping is not prohibited under other applicable law;

(b) the marketplace takes reasonable precautions, appropriate to the means used, to govern against the risk of falsification of the information recorded; and

(c) the marketplace provides a means for making the information available in an accurate and intelligible form, capable of being printed, within a reasonable time to any person or company lawfully entitled to examine the records.

~~**11.5 Synchronization of Clocks**~~

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

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

11.5 Synchronization of Clocks – (1) A marketplace trading exchange-traded securities, an information processor receiving information about those securities and a dealer trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities and an inter-dealer bond broker trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

PART 11.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES

11.1.1 Reporting of Order Execution Information by Marketplaces – (1) A marketplace shall publish in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a monthly report containing the information set out below, but not including information relating to any non-standard order, calculated price order or closing price order:

Liquidity Measures:

(a) for all orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace:

(i) the number of orders that the marketplace received;

(ii) the number of orders that were cancelled;

(iii) the number of orders that were executed on the marketplace;

(iv) if applicable, the number of orders routed to another marketplace for execution;

(v) the average volume of all orders executed on the marketplace;

(vi) the share-weighted average effective spread for order executions; and

(vii) the share-weighted average realized spread for order executions.

Trading Statistics:

(b) the number of trades executed on the marketplace;

(c) the volume of all trades executed on the marketplace;

(d) the volume of all trades resulting from the execution of orders that are not displayed on the marketplace;

(e) the volume of all trades resulting from the execution of orders that are partially displayed on the marketplace;

(f) the value of all trades executed on the marketplace;

(g) the arithmetic mean and median size of trades executed on the marketplace;

(h) the number of trades that were executed on the marketplace with a volume of,

(i) for securities other than options,

(A) over 5,000 up to and including 10,000 units of securities, and

(B) over 10,000 units of securities, and

(ii) for options,

(A) over 100 up to and including 250 options contracts; and

(B) over 250 options contracts.

Speed and Certainty of Execution Measures:

(i) the number of orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace and that are executed:

(i) within 1 second after the time of their receipt;

(ii) more than 1 second and up to and including 10 seconds after the time of their receipt;

(iii) more than 10 seconds and up to and including 60 seconds after the time of their receipt;

(iv) more than 1 minute and up to and including 5 minutes after the time of their receipt; and

(v) more than 5 minutes and up to and including 30 minutes after the time of their receipt.

(2) The reporting required in paragraphs (1)(a) through (i) shall be categorized by security.

(3) This section is effective on **[insert date six months after Effective Date]**".

~~**PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**~~

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

~~(a) on a reasonably frequent basis, and in any event, at least annually,~~

~~(i) make reasonable current and future capacity estimates,~~

~~(ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,~~

~~(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,~~

~~(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and~~

~~(v) establish reasonable contingency and business continuity plans;~~

~~(b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and~~

~~(c) promptly notify the securities regulatory authority of any material systems failures.~~

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

~~**12.3 Availability of technology specifications and testing facilities**~~

~~(1) For at least two months immediately prior to operating, a marketplace shall make available to the public any technology requirements regarding interfacing with or access to the marketplace.~~

~~(2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available to the public, for at least one month, testing facilities for interfacing with and access to the marketplace.~~

PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

12.1 System Requirements – For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall,

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal control over those systems; and

(iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b) consistent with prudent business practice, on a reasonably frequent basis, and in any event, at least annually,

(i) make reasonable current and future capacity estimates;

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans; and

(c) promptly notify the regulator, or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider of any material systems failures.

12.2 Systems Reviews – (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report~~,~~ in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or audit committee, promptly upon the report's completion, and

(b) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities – (1) A marketplace shall publish all technology requirements regarding interfacing with or ~~access to~~accessing the marketplace in their final form,

(a) if operations have not begun, for at least three months immediately before operations begin; and

(b) once it has begun operations, for at least three months before implementing a material change to its technology requirements.

(2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a) if operations have not begun, for at least two months immediately before operations begin; and

(b) once it has begun operations, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

PART 13 CLEARING AND SETTLEMENT

13.1 Clearing and Settlement

(1) All trades executed through an ATS shall be reported and settled through a clearing agency.

(2) For a trade executed through an ATS by a subscriber that is registered as a dealer under securities legislation, the ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by

(a) the ATS;

(b) the subscriber; or

(c) an agent for the subscriber that is a clearing member of a clearing agency.

(3) For a trade executed through an ATS by a subscriber that is not registered as a dealer under securities legislation, an ATS and its subscriber shall enter into an agreement that specifies whether the trade shall be reported and settled by

(a) the ATS; or

(b) an agent for the subscriber that is a clearing member of a clearing agency.

PART 14 REQUIREMENTS FOR AN INFORMATION PROCESSOR

14.1 Filing Requirements for an Information Processor

(1) A person or company that intends to carry on business as an information processor shall file Form 21-101 F5 at least 90 days before the information processor begins to carry on business as an information processor.

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

14.2 Change in Information

(1) At least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, an information processor shall file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

(2) If an information processor implements a change involving a matter set out in Form 21-101F5, other than a change referred to in subsection (1), the information processor shall, within 30 days after the end of the calendar quarter in which the change takes place, file an amendment to the information provided in Form 21-101F5 in the manner set out in Form 21-101F5.

14.3 Ceasing to Carry on Business as an Information Processor

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

(2) If an information processor involuntarily ceases to carry on business as an information processor, the information processor shall file a report on Form 21-101F6 as soon as practicable after it ceases to carry on that business.

14.4 Requirements Applicable to an Information Processor

(1) An information processor shall enter into an agreement with each marketplace, interdealer bond broker and dealer that is required to provide information to the information processor that the marketplace, inter-dealer bond broker or dealer will

(a) provide information to the information processor in accordance with Part 7 or 8, as applicable; and

(b) comply with any other reasonable requirements set by the information processor.

(2) An information processor shall provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities.

(3) An information processor shall keep such books, records and other documents as are reasonably necessary for the proper recording of its business.

(4) An information processor shall establish in a timely manner an electronic connection to a marketplace, inter-dealer bond broker or dealer that is required to provide information to the information processor .

(5) An information processor shall provide prompt and accurate order and trade information and shall not unreasonably restrict fair access to such information.

~~**14.5 System Requirements** - An information processor shall~~

~~(a) on a reasonably frequent basis, and in any event, at least annually,~~

~~(i) make reasonable current and future capacity estimates for each of its systems,~~

~~(ii) conduct capacity stress tests of critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner,~~

~~(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems,~~

~~(iv) review the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters, and~~

~~(v) establish reasonable contingency and business continuity plans;~~

~~(b) annually, cause to be performed an independent review and prepare a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a), and conduct a review by senior management of the report containing the recommendations and conclusions of the independent review; and~~

~~(c) promptly notify the securities regulatory authority of any material systems failures.~~

14.5 System Requirements – An information processor shall,

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal controls over its critical systems; and

(iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) make reasonable current and future capacity estimates for each of its systems;

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans;

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e) promptly notify the regulator, or, in Québec, the securities regulatory authority, and any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor of any material systems failures.

PART 15 EXEMPTION

15.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 16 EFFECTIVE DATE

16.1 Effective Date – This Instrument comes into force on December 1, 2001.

NATIONAL INSTRUMENT 21-101

FORM 21-101F1
INFORMATION STATEMENT
EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

Filer: ❑ **EXCHANGE** ❑ **QUOTATION AND TRADE REPORTING SYSTEM**

Type of Filing: ❑ **INITIAL** ❑ **AMENDMENT**

1. Full name:

2. Main street address (do not use a P.O. box):

3. Mailing address (if different):

4. Address of head office (if different from address in item 2):

5. Business telephone and facsimile number:

   (Telephone) (Facsimile)

6. Website address:

7. Contact employee:

   (Name and Title) (Telephone Number) (Facsimile) (E-mail address)

8. Counsel:

   (Firm Name) (Contact Name) (Telephone Number) (Facsimile) (E-mail address)

9. Date of financial year-end:

10. Legal status:

    ❑ Corporation ❑ Sole Proprietorship

    ❑ Partnership ❑ Other (specify):

Except where the exchange or quotation and trade reporting system is a sole proprietorship, indicate the date and place where the exchange or quotation and trade reporting system obtained its legal status (*e.g.*, place of incorporation, place where partnership agreement was filed or where exchange or quotation and trade reporting system entity was formed):

(a) Date (DD/MM/YYYY):

(b) Place of formation:

(c) Statute under which exchange or quotation and trade reporting system was organized:

11. Market Regulation is being conducted by:

- ❑ the exchange
- ❑ the quotation and trade reporting system
- ❑ regulation services provider other than the filer (see exhibit O)

EXHIBITS

File all Exhibits with the Filing. For each Exhibit, include the name of the exchange or quotation and trade reporting system, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

If the filer, recognized exchange or recognized quotation and trade reporting system files an amendment to the information provided in its Filing and the information relates to an Exhibit filed with the Filing or a subsequent amendment, the filer, recognized exchange or recognized quotation and trade reporting system, must, in order to comply with subsection 3.1(2), section 3.2, subsection 4.1(2) or 4.2 of National Instrument 21-101, provide a description of the change and file a complete and updated Exhibit.

1. Corporate Governance

Exhibit A

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit B

For each affiliated entity of the exchange or quotation and trade reporting system, and for any person or company with whom the exchange or quotation and trade reporting system has a contractual or other agreement relating to the operation of an electronic trading system (the "System") to be used to effect transactions on the exchange or quotation and trade reporting system, provide the following information:

1. Name and address of person or company.
2. Form of organization (e.g., association, corporation, partnership, etc.).
3. Location and statute citation under which organized. Date of incorporation in present form.
4. Brief description of nature and extent of affiliation or contractual or other agreement with exchange or quotation and trade reporting system.
5. Brief description of business or functions. Description should include responsibilities with respect to operation of the System and/or execution, reporting, clearance, or settlement of transactions in connection with operation of the System.
6. If a person or company has ceased to be an affiliated entity of the exchange or quotation and trade reporting system during the previous year or ceased to have a contractual or other agreement relating to the operation of a System during the previous year, provide a brief statement of the reasons for termination of the relationship.

Exhibit C

A list of partners, directors, officers, governors, members of all standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, indicating the following for each:

1. Name.
2. Title.
3. Dates of commencement and expiry of present term of office or position and length of time position held.

4. Type of business in which each is primarily engaged (*e.g.*, sales, trading, market making, etc.) and current employer.

5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

6. Whether the person is considered to be an independent director.

Exhibit D

For each affiliated entity of the exchange or quotation and trade reporting system, provide the following information:

1. A copy of the constating documents, including corporate by-laws and other similar documents.

2. A copy of existing by-laws or corresponding rules or instruments.

3. The name and title of the present officers, governors, members of all standing committees or persons performing similar functions.

4. For the latest financial year of the affiliated entity, unconsolidated financial statements, which may be unaudited. Such financial statements shall consist, at a minimum, of a balance sheet and an income statement prepared in accordance with, or if the affiliated entity is organized under the laws of a foreign jurisdiction, reconciled with Canadian GAAP. If the affiliated entity is required by securities legislation to file annual financial statements, a statement to that effect with a reference to the relevant securities legislation may be provided instead of the financial statements required here.

Exhibit E

This Exhibit is applicable only to exchange or quotation and trade reporting systems that have one or more owners, shareholders, or partners that are not also marketplace participants. If the exchange or quotation and trade reporting system is a corporation, please provide a list of each shareholder that directly owns five percent or more of a class of a voting security of the exchange or quotation and trade reporting system. If the exchange or quotation and trade reporting system is a partnership, please provide a list of all general partners and those limited partners that have the right to receive upon dissolution, or have contributed, five percent or more of the partnership's capital. For each of the persons listed in this Exhibit, please provide the following:

1. Full legal name.

2. Title or status.

3. Date title or status was acquired.

4. Approximate ownership interest.

5. Whether the person has control (as interpreted in subsection 1.3(2) of National Instrument 21-101 *Marketplace Operation*).

2. Rules

Exhibit F

A copy of all by-laws, rules, policies and other similar instruments of the exchange or quotation and trade reporting system that are not included in Exhibit A.

3. Systems and Operations

Exhibit G

Describe the manner of operation of the System. This description should include the following:

1. A detailed description of the market, including how orders will be entered and trades executed (*e.g.,* call market, auction market, dealer market). If more than one method of order entry or trade execution is being used, please describe.

2. The means of access to the System.

3. Procedures governing entry and display of quotations and orders in the System.

4. Detailed description of the procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System.

5. The hours of operation of the System, and the date on which the exchange or quotation and trade reporting system intends to commence operation of the System.

6. If the exchange or quotation and trade reporting system proposes to hold funds or securities on a regular basis, a description of the controls that will be implemented to ensure the safety of those funds or securities.

7. Description of training provided to users of the System and any materials provided to the users.

8. Description of current and future capacity estimates, contingency and business continuity plans and the procedures to review and test methodology of the system and to perform stress testing.

Exhibit H

Provide a schedule for each of the following:

1. The securities listed on the exchange or quoted on the quotation and trade reporting system, indicating for each the name of the issuer and a description of the security and whether or not the issuer is suspended from trading. After the initial filing of this form, please provide a list of the changes to the securities listed on the exchange or quoted on the quotation and trade reporting system on a quarterly basis.

2. Other securities traded on the marketplace including, for each, the name of the issuer and a description of the security.

4. Access

Exhibit I[1]

A complete set of all forms pertaining to:

1. Filing required for participation in the exchange or quotation and trade reporting system.

2. Any other similar materials.

Exhibit J[2]

A complete set of all forms, reports or questionnaires required of marketplace participants relating to financial responsibility or minimum capital requirements or other eligibility requirements for such marketplace participants. Provide a table of contents listing the forms included in this Exhibit and a narrative of the requirements.

Exhibit K

Describe the exchange's or quotation and trade reporting system's criteria for participation in the exchange or quotation and trade reporting system. Describe conditions under which marketplace participants may be subject to suspension or termination with regard to access to the exchange or quotation and trade reporting system. Describe any procedures that will be involved in the suspension or termination of a member.

Exhibit L

Provide an alphabetical list of all marketplace participants, including the following information:

1. Name.

2. Date of becoming a marketplace participant.

[1] Exhibit I is to be provided only if not otherwise provided with Exhibit F.
[2] Exhibit J is to be provided only if not otherwise provided with Exhibit F or Exhibit I.

3. Principal business address and telephone number.

4. If a marketplace participant is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (*e.g.*, partner, officer, director, employee, etc.).

5. Describe the type of trading activities primarily engaged in by the marketplace participant (*e.g.*, agency trader, proprietary trader, registered trader, market maker). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the activities or functions enumerated in this item, identify each type (*e.g.*, agency trades, registered trader and market maker) and state the number of marketplace participants in each.

6. The class of participation or other access.

5. Listing Criteria

Exhibit M[3]

A complete set of documents comprising the exchange's or quotation and trade reporting system's listing or quotation filings, including any agreements required to be executed in connection with listing or quotation and a schedule of listing or quotation fees. If the exchange or quotation and trade reporting system does not list securities, provide a brief description of the criteria used to determine what securities may be traded on the exchange or quotation and trade reporting system. Provide a table of contents listing the forms included in this Exhibit and a narrative description of the listing requirements.

6. Fees

Exhibit N

A description of all fees to be paid by members to the exchange, including fees relating to connection to the system, access, data, regulation (if applicable) and how such fees are set.

7. Financial Viability

Exhibit O[4]

For the latest financial year of the exchange or quotation and trade reporting system, audited financial statements of the exchange or quotation and trade reporting system and a report prepared by an independent auditor.

8. Regulation

Exhibit P

A description of the regulation performed by the exchange or quotation and trade reporting system, including the structure of the department performing regulation, how the department is funded, policies and procedures in place to ensure confidentiality and policies and procedures relating to conducting an investigation.

Exhibit Q

If market regulation is conducted by a regulation services provider other than the filer, provide the contract between the filer and the regulation services provider.

Exhibit R

If more than one entity is performing regulation services for a type of security and if the filer is conducting market regulation for itself and its members, provide the contract between the filer and the regulation services provider providing for co-ordinated monitoring and enforcement under section 7.5 of National Instrument 23-101.

[3] The forms described in Exhibit M are to be provided only if not otherwise provided with Exhibit F.
[4] For a new exchange, future oriented financial information should be provided instead of the information specified in Exhibit O.

CERTIFICATE OF EXCHANGE OR QUOTATION AND TRADE REPORTING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____this _____ day of _____ 20_____

_____
(Name of exchange or quotation and trade reporting system)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

NATIONAL INSTRUMENT 21-101

FORM 21-101F2
INITIAL OPERATION REPORT
ALTERNATIVE TRADING SYSTEM

TYPE OF FILING:

❑ **INITIAL OPERATION REPORT** ❑ **AMENDMENT**

Identification:

A. Full name of alternative trading system (if sole proprietor, last, first and middle name):

B. Name(s) under which business is conducted, if different from item A:

C. If this filing makes a name change on behalf of the alternative trading system in respect of the name set out in Item A or Item B, enter the previous name and the new name.

Previous name:

New name:

D. Alternative trading system's main street address:

E. Mailing address (if different):

F. Address of head office (if different from address in item D):

G. Business telephone and facsimile number:

(Telephone) (Facsimile)

H. Website address:

I. Contact Employee:

(Name and Title) (Telephone Number) (Facsimile) (E-mail address)

J. The ATS is

❑ a member of
name of the recognized self-regulatory entity

❑ a registered dealer

K. If this is an initial operation report, the date the alternative trading system expects to commence operation:

L. The ATS has contracted with [regulation services provider] to perform market regulation for the ATS and its subscribers.

EXHIBITS

File all Exhibits with the Initial Operation Report. For each Exhibit, include the name of the ATS, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

If the ATS files an amendment to the information provided in its Initial Operation Report and the information relates to an Exhibit filed with the Initial Operation Report or a subsequent amendment, the ATS must, in order to comply with subsection 6.4(2) or 6.4(3) of National Instrument 21-101, provide a description of the change and file a complete and updated Exhibit.

Exhibit A

A description of classes of subscribers (*e.g.*, dealer, institution, or retail). Also describe any differences in access to the services offered by the alternative trading system to different groups or classes of subscribers.

Exhibit B:

1. A list of the types of securities the alternative trading system trades (*e.g.*, equity, debt) or if this is an initial operation report, the types of securities it expects to trade.

2. A list of each of the securities the alternative trading system trades, or if this is an initial operation report, the securities it expects to trade.

Exhibit C

A detailed description of the market structure of the alternative trading system (*e.g.*, call market, auction market, dealer market).

Exhibit D

The name, address, telephone number, facsimile number and e-mail address of counsel for the alternative trading system.

Exhibit E

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments.

Exhibit F

The name of any person or company, other than the alternative trading system, that will be involved in the operation of the alternative trading system, including the execution, trading, clearing and settling of transactions on behalf of the alternative trading system. Provide a description of the role and responsibilities of each person or company.

Exhibit G

The following information:

1. The manner of operation of the alternative trading system.

2. Procedures governing entry of orders into the alternative trading system.

3. The means of access to the alternative trading system.

4. Fees charged by the alternative trading system.

5. The procedures governing execution, reporting, clearance and settlement of transactions effected through the alternative trading system. Where applicable, the description should include, at a minimum: the parties involved in settling the trades; the trades being settled; and the procedures to manage counterparty and settlement risk.

6. Procedures for ensuring subscriber compliance with requirements of the alternative trading system.

7. A description of safeguards and procedures implemented by the alternative trading system to protect subscribers' trading information.

8. Description of the training to be provided to users of the System and a copy of any materials provided.

Exhibit H

A brief description of the alternative trading system's procedures for reviewing system capacity, security and contingency planning procedures.

Exhibit I

If any other person or company, other than the alternative trading system, will hold or safeguard subscriber funds or securities on a regular basis, attach the name of the person or company and a brief description of the controls that will be implemented to ensure the safety of the funds and securities.

Exhibit J

A list of the full legal name of registered holders and beneficial owners of securities of the alternative trading system.

Exhibit K

A description of all material contracts executed by the alternative trading system.

Exhibit L

A copy of the contract executed between the ATS and the regulation services provider.

Exhibit M

The form of contract executed between the ATS and its subscribers.

Exhibit N

The form of acknowledgement required by subsections 6.10(2) and 6.11(2) of National Instrument 21-101.

Exhibit O

Description of the training to be provided to subscribers relating to the requirements set by the regulation services provider and a copy of any materials provided.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____this _____ day of _____ 20____

_____
(Name of alternative trading system)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

[Amended March 1, 2007]

NATIONAL INSTRUMENT 21-101

FORM 21-101F3
QUARTERLY REPORT OF ALTERNATIVE TRADING SYSTEM ACTIVITIES

Alternative Trading System Name: _____

Period covered by this report: _____ to _____

1. Identification:

   A. Full name of alternative trading system (if sole proprietor, last, first and middle name):

   B. Name(s) under which business is conducted, if different from item 1A:

   C. Alternative trading system's main street address:

2. Attach as Exhibit A, a list of all subscribers at any time during the period covered by this report.

3. Attach as Exhibit B, a list of all securities that were traded on the alternative trading system at any time during the period covered by this report.

4.

   (a) Provide the details requested in the form set out in the chart below for each type of security traded on the alternative trading system for transactions during regular trading hours during the quarter. Enter "None", "N/A" or "0" where appropriate.

   (b) Provide the details requested in the form set out in the chart below for each type of security traded on the alternative trading system for transactions during after hours trading sessions during the quarter. Enter "None", "N/A" or "0" where appropriate.

Category of Securities	Average Daily Dollar Value of Trading Volume	Total Trading Volume	Total Number of Trades
A. Exchange-traded securities Equity securities Preferred securities Debt securities Options			
B. Unlisted debt securities – Government debt securities Domestic Foreign			
C. Unlisted debt securities – Corporate debt securities Domestic			

Category of Securities	Average Daily Dollar Value of Trading Volume	Total Trading Volume	Total Number of Trades
D. Foreign Exchange-Traded Securities Equity securities Preferred securities Debt securities Options			
E. Other Specify types of securities			

5. Provide the total trading volume for each security traded on the alternative trading system in the form set out in the chart below. Enter "None", "N/A" or "0" where appropriate.

Category of Securities	Total Trading Volume for Each Security
A. Exchange-traded securities Equity securities [name of securities] Preferred securities [name of securities] Debt securities [name of securities] Options [name of securities]	
B. Unlisted debt securities – Government debt securities Domestic [by issuer and maturity] Foreign [by issuer and maturity]	
C. Unlisted debt securities – Corporate debt securities Domestic [by issuer and maturity]	
D. Foreign Exchange-Traded Securities Equity securities [name of securities] Preferred securities [name of securities] Debt securities [name of securities] Options	

Category of Securities	Total Trading Volume for Each Security
[name of securities]	
E. Other Specify securities	

6. Attach as Exhibit C, a list of all persons granted, denied, or limited access to the alternative trading system during the period covered by this report, designating for each person (a) whether they were granted, denied, or limited access; (b) the date the alternative trading system took such action; (c) the effective date of such action; and (d) the nature of any denial or limitation of access.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report relating to the alternative trading system is true and correct.

DATED at _____this _____ day of _____ 20____

_____
(Name of alternative trading system)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

NATIONAL INSTRUMENT 21-101

FORM 21-101F4
CESSATION OF OPERATIONS REPORT FOR
ALTERNATIVE TRADING SYSTEM

1. Identification:

   A. Full name of alternative trading system (if sole proprietor, last, first and middle name):

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date alternative trading system proposes to cease carrying on business as an ATS:

3. If cessation of business was involuntary, date alternative trading system has ceased to carry on business as an ATS:

4. Please check the appropriate box:

   ❑ the ATS intends to carry on business as an exchange and has filed Form 21-101F1.

   ❑ the ATS intends to cease to carry on business.

   ❑ the ATS intends to become a member of an exchange.

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the ATS, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the alternative trading system ceasing to carry on business as an ATS.

Exhibit B

A list of each of the securities the alternative trading system trades.

Exhibit C

The amount of funds and securities, if any, held for subscribers by the alternative trading system, or another person or company retained by the alternative trading system to hold funds and securities for subscribers and the procedures in place to transfer or to return all funds and securities to subscribers.

CERTIFICATE OF ALTERNATIVE TRADING SYSTEM

The undersigned certifies that the information given in this report is true and correct.

DATED at _____this _____ day of _____ 20 _____

_____
(Name of alternative trading system)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

NATIONAL INSTRUMENT 21-101

FORM 21-101F5
INITIAL OPERATION REPORT FOR INFORMATION PROCESSOR

TYPE OF FILING:

❑ **INITIAL FORM** ❑ **AMENDMENT**

GENERAL INFORMATION

1. Full name of information processor:

2. Main street address (do not use a P.O. box):

3. Mailing address (if different):

4. Address of head office (if different from address in item 2):

5. Business telephone and facsimile number:

(Telephone) (Facsimile)

6. Website address:

7. Contact employee:

(Name and Title) (Telephone Number) (Facsimile) (E-mail address)

8. Counsel:

(Firm Name) (Contact Name) (Telephone Number) (Facsimile) (E-mail address)

9. Date of financial year-end:

10. List of all marketplaces, dealers or other parties for which the information processor is acting or for which it proposes to act as an information processor. For each marketplace, dealer or other party, provide a description of the function(s) which the information processor performs or proposes to perform.

11. List all types of securities for which information will be collected, processed, distributed or published by the information processor. For each such marketplace, dealer or other party, provide a list of all securities for which information with respect to quotations for, or transactions in, is or is proposed to be collected, processed, distributed or published.

BUSINESS ORGANIZATION

12. Legal status:

❑ Corporation ❑ Sole Proprietorship

❑ Partnership ❑ Other (specify):

Except where the information processor is a sole proprietorship, indicate the date and place where the information processor obtained its legal status (e.g., place of incorporation, place where partnership agreement was filed or where information processor was formed):

(a) Date (DD/MM/YYYY): _____ (b) Place of formation:

Exhibits

File all Exhibits with the Initial Form. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

If the information processor files an amendment to the information provided in its Initial Form, and the information relates to an Exhibit filed with the Initial Form or a subsequent amendment, the information processor must, in order to comply with sections 14.1 and 14.2 of National Instrument 21-101 provide a description of the change and file a complete and updated Exhibit.

1. Corporate Governance

Exhibit A

A copy of the constating documents, including corporate by-laws and other similar documents, and all subsequent amendments identifying the processes and procedures which promote independence from the marketplaces, inter-dealer bond brokers and dealers that provide data.

Exhibit B

List any person or company who owns 10 percent or more of the information processor' s stock or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the information processor. Provide the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis through which such person exercises or may exercise such control or direction.

Exhibit C

A list of the partners, officers, directors, governors, members of all standing committees or persons performing similar functions who presently hold or have held their offices or positions during the previous year identifying those individuals with overall responsibility for the integrity and timeliness of data reported to and displayed by the system (the "System") of the information processor, indicating the following for each:

1. Name.

2. Title.

3. Dates of commencement and expiry of present term of office or position and length of time the office or position held.

4. Type of business in which each is primarily engaged and current employer.

5. Type of business in which each was primarily engaged in the preceding five years, if different from that set out in item 4.

6. Whether the person is considered to be an independent director.

Exhibit D

A narrative or graphic description of the organizational structure of the information processor.

Exhibit E

A description of the personnel qualifications for each category of professional, non-professional and supervisory employee employed by the information processor. Detail whether the personnel are employed by the information processor or a third party identifying the employees responsible for monitoring the timeliness and integrity of data reported to and displayed by the System.

Exhibit F

For each affiliated entity of the information processor, and for any person or company with whom the information processor has a contractual or other agreement relating to the operations of the information processor, provide the following information:

1. Name and address of person or company.

2. Form of organization (e.g., association, corporation, partnership, etc.)

3. Name of location and statute citation under which organized. Date of incorporation in present form.

4. Brief description of nature and extent of affiliation or contractual or other agreement with the information processor.

5. Brief description of business or functions.

6. If a person or company has ceased to be an affiliated entity of the information processor during the previous year or ceased to have a contractual or other agreement relating to the operation of the information processor during the previous year, provide a brief statement of the reasons for termination of the relationship.

2. Systems and Operations

Exhibit G

Describe the manner of operation of the System of the information processor that collects, processes, distributes and publishes information in accordance with National Instruments 21-101 and 23-101. This description should include the following:

1. The means of access to the System.

2. Procedures governing entry and display of quotations and orders in the System including data validation processes.

3. The hours of operation of the System.

4. Description of the training provided to users of the System and any materials provided to the users.

5. Description of current and future capacity estimates, contingency and business continuity plans and the procedures to review and test methodology of the system and to perform stress testing.

Exhibit H

A description in narrative form of each service or function performed by the information processor. Include a description of all procedures utilized for the collection, processing, distribution, validation and publication of information with respect to orders and trades in securities.

Exhibit I

A list of all computer hardware utilized by the information processor to perform the services or functions listed in Item 10, indicating:

1. Manufacturer, and manufacturer's equipment and identification number.

2. Whether purchased or leased (if leased, duration of lease and any provisions for purchase or renewal).

3. Where such equipment (exclusive of terminals and other access devices) is physically located.

Exhibit J

A description of the measures or procedures implemented by the information processor to provide for the security of any system employed to perform the functions of an information processor. Include a general description of any physical and operational safeguards designed to prevent unauthorized access to the system. Describe any measures used to verify the timeliness and accuracy of information received and disseminated by the system, including the processes to resolve data integrity issues identified.

Exhibit K

Where the functions of an information processor are performed by automated facilities or systems, attach a description of:

1. All backup systems which are designed to prevent interruptions in the performance of any information providing functions as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection or as a result of any independent source,

2. Business continuity and contingency plans for the ongoing operations of the facilities or systems in the event of a catastrophe,

3. Each type of interruption which has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause and duration, and

4. The total number of interruptions which have lasted two minutes or less.

Exhibit L

For each service or function listed in Item 10,

1. Quantify in appropriate units of measure the limits on the information processor's capacity to retrieve, collect, process, store or display the data elements included within each function.

2. Identify *the factors* (mechanical, electronic *or* other) *which account for* the *current* limitations reported *in* answer to 1. on the capacity to receive, collect, process, store or display the data elements included within each function.

3. Financial Viability

Exhibit M

Audited financial statements for the latest financial year of the information processor and a report prepared by an independent auditor. Please discuss the financial viability of the information processor in the context of having sufficient financial resources to properly perform its functions.

Exhibit N

A business plan with pro forma financial statements and estimates of revenue.

4. Fees and Revenue Sharing

Exhibit O

A complete list of all fees and other charges imposed, or to be imposed, by or on behalf of the information processor for its information services, including the cost of establishing a connection that will provide information to the information processor. Where arrangements to share revenue from the sale of data disseminated by the information processor with marketplaces, inter-dealer bond brokers and dealers that provide data to the information processor in accordance with National Instrument 21-101 are in place, a complete description of the arrangements and the basis for these arrangements.

5. Access

Exhibit P

Attach the following:

1. State the number of persons who presently subscribe or who have notified the information processor of their intention to subscribe to the services of the information processor.

2. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the information processor, indicate the name of each such person and the reason for the prohibition or limitation.

Exhibit Q

The form of contract governing the terms by which persons may subscribe to the services of an information processor.

Exhibit R

A description of any specifications, qualifications or other criteria which limit, are interpreted to limit or have the effect of limiting access to or use of any services provided by the information processor and state the reasons for imposing such specifications, qualifications or other criteria. This applies to limits relating to providing information to the information processor and the limits relating to accessing the consolidated feed distributed by the information processor.

Exhibit S

Attach any specifications, qualifications or other criteria required of participants who supply securities information to the information processor for collection, processing for distribution or publication by the information processor.

6. Selection of Securities Reported to the Information Processor

Exhibit T

Where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with National Instrument 21-101, describe the manner of selection and communication of these securities. This description should include the following:

1. The criteria used to determine which securities should be reported to the information processor.

2. The process for selection of the securities, including a description of the parties consulted in the process and the frequency of the selection process.

3. The process to communicate the securities selected to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by National Instrument 21-101. The description should include where this information is located.

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____this _____ day of _____ 20 _____

_____
(Name of information processor)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

[Amended March 1, 2007]

NATIONAL INSTRUMENT 21-101

FORM 21-101F6
CESSATION OF OPERATIONS REPORT FOR
INFORMATION PROCESSOR

1. Identification:

   A. Full name of information processor:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date information processor proposes to cease carrying on business:

3. If cessation of business was involuntary, date information processor ceased to carry on business:

Exhibits

File all Exhibits with the Cessation of Operations Report. For each Exhibit, include the name of the information processor, the date of filing of the Exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the information processor ceasing to carry on business.

Exhibit B

A list of each of the securities the information processor displays.

CERTIFICATE OF INFORMATION PROCESSOR

The undersigned certifies that the information given in this report is true and correct.

DATED at _____this _____ day of _____ 20

_____
(Name of information processor)

_____
(Name of director, officer or partner - please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity - please type or print)

COMPANION POLICY 21-101CP
TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION

Table of Contents

COMPANION POLICY 21-101 CP
TO NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION

PART 1 INTRODUCTION

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

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

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

1.2 Definition of Exchange-Traded Security – Section 1.1 of the Instrument defines an "exchange-traded *security" as a security that is* listed *on a* recognized exchange *or is* quoted *on a* recognized quotation and trade reporting system or is listed on an exchange or quoted on a quotation and trade reporting system that is recognized for the purposes of NI 21-101 and NI 23-101. A security that is inter-listed would be considered to be an exchange-traded security. A security that is listed on a foreign exchange or quoted on a foreign quotation and trade reporting system, and is not listed or quoted on a domestic exchange or quotation and trade reporting system, falls within the definition of “foreign exchange-traded security”.

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

1.4 Definition of Regulation Services Provider – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace and does not provide these services to others.

PART 2 MARKETPLACE

2.1 Marketplace

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

(2) Two of the characteristics of a "marketplace" are

(a) that it brings together orders for securities of multiple buyers and sellers; and

(b) that it uses established, non-discretionary methods under which the orders interact with each other.

(3) The Canadian securities regulatory authorities consider that a person or company brings together orders for securities if it

(a) displays, or otherwise represents to marketplace participants, trading interests entered on the system; or

(b) receives orders centrally for processing and execution (regardless of the level of automation used).

(4) The Canadian securities regulatory authorities are of the view that "established, nondiscretionary methods" include any methods that dictate the terms of trading among the multiple buyers and sellers entering orders on the system. Such methods include providing a trading facility or setting rules governing trading among marketplace participants. Common examples include a traditional exchange and a computer system, whether comprised of software, hardware, protocols, or any combination thereof, through which orders interact, or any other trading mechanism that provides a means or location for the bringing together and execution of orders. Rules imposing execution priorities, such as time and price priority rules, would be "established, non-discretionary methods."

(5) The Canadian securities regulatory authorities do not consider the following systems to be marketplaces for purposes of the Instrument:

1. A system operated by a person or company that only permits one seller to sell its securities, such as a system that permits issuers to sell their own securities to investors.

2. A system that merely routes orders for execution to a facility where the orders are executed.

3. A system that posts information about trading interests, without facilities for execution.

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

(6) A person or company operating any of the systems described in subsection (5) should consider whether the person or company is trading for the purposes of securities legislation and is required to be registered as a dealer under securities legislation.

(7) Inter-dealer bond brokers have a choice as to how to be regulated under the Instrument and NI 23-101. Each inter-dealer bond broker can choose to be subject to ~~IDA~~IIROC ~~By-law No. 36~~Rule 36 and ~~IDA~~IIROC ~~Regulation 2100~~Rule 2100, fall within the definition of inter-dealer bond broker in the Instrument and be subject to the transparency requirements of Part 8 of the Instrument. Alternatively, the inter-dealer bond broker can choose to be an ATS and comply with the provisions of the Instrument and NI 23-101 applicable to a marketplace and an ATS. An inter-dealer bond broker that chooses to be an ATS will not be subject to ~~By-law No. 36~~Rule 36 or ~~IDA~~IIROC ~~Regulation 2100~~Rule 2100, but will be subject to all other ~~IDA~~IIROC requirements applicable to a dealer.

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

3.1 Exchange

(1) Canadian securities legislation of most jurisdictions does not define the term "exchange".

(2) The Canadian securities regulatory authorities generally consider a marketplace, other than a quotation and trade reporting system, to be an exchange for purposes of securities legislation, if the marketplace

(a) requires an issuer to enter into an agreement in order for the issuer's securities to trade on the marketplace, i.e., the marketplace provides a listing function;

(b) provides, directly, or through one or more marketplace participants, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis, i.e., the marketplace has one or more marketplace participants that guarantee that a bid and an ask will be posted for a security on a continuous or reasonably continuous basis. For example, this type of liquidity guarantee can be carried out on exchanges through traders acting as principal such as registered traders, specialists or market makers;

(c) sets requirements governing the conduct of marketplace participants, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those marketplace participants to execute trades on the system (see subsection (3)); or

(d) disciplines marketplace participants, in addition to discipline by exclusion from trading, i.e., the marketplace can levy fines or take enforcement action.

(3) An ATS that requires a subscriber to agree to comply with the requirements of a regulation services provider as part of its contract with that subscriber is not setting "requirements governing the conduct of subscribers". In addition, marketplaces are not precluded from imposing credit conditions on subscribers or requiring subscribers to submit financial information to the marketplace.

(4) The criteria in subsection 3.1(2) are not exclusive and there may be other instances in which the Canadian securities regulatory authorities will consider a marketplace to be an exchange.

3.2 Quotation and Trade Reporting System

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

(2) A quotation and trade reporting system is considered to have "quoted" a security if

(a) the security has been subject to a listing or quoting process, and

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

3.3 Definition of an ATS

(1) In order to be an ATS for the purposes of the Instrument, a marketplace cannot engage in certain activities or meet certain criteria such as

(a) requiring listing agreements,

(b) having one or more marketplace participants that guarantee that a two-sided market will be posted for a security on a continuous or reasonably continuous basis,

(c) setting requirements governing the conduct of subscribers, in addition to those requirements set by the marketplace in respect of the method of trading or algorithm used by those subscribers to execute trades on the system, and

(d) disciplining subscribers.

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

(2) An ATS can establish trading algorithms that provide that a trade takes place if certain events occur. These algorithms are not considered to be "requirements governing the conduct of subscribers".

(3) A marketplace that would otherwise meet the definition of an ATS in the Instrument may apply to the Canadian securities regulatory authorities for recognition as an exchange.

3.4 Requirements Applicable to ATSs

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

(2) If the ATS is a member of an exchange, the rules, policies and other similar instruments of the exchange apply to the ATS.

(3) Under subsection 6.1(a) of the Instrument, an ATS that is not a member of a recognized exchange or an exchange recognized for the purposes of the Instrument and NI 23-101 must register as a dealer if it wishes to carry on business. Unless otherwise specified, an ATS registered as a dealer is subject to all of the requirements applicable to dealers under Canadian securities legislation, including the requirements imposed by the Instrument and NI 23-101. An ATS will be carrying on business in a local jurisdiction if it provides direct access to subscribers located in that jurisdiction.

(4) If an ATS registered as a dealer in one jurisdiction in Canada provides access in another jurisdiction in Canada to subscribers who are not registered dealers under securities legislation, the ATS must be registered in that other jurisdiction. However, if all of the ATS's subscribers in the other jurisdiction are registered as dealers in that other jurisdiction, the securities

regulatory authority in the other jurisdiction may consider granting the ATS an exemption from the requirement to register as a dealer under subsection 6.1(a) of the Instrument and from the registration requirements of securities legislation. In determining if the exemption is in the public interest, a securities regulatory authority will consider a number of factors, including whether the ATS is registered in another jurisdiction and whether the ATS deals only with registered dealers in that jurisdiction.

(5) Subsection 6.1(b) of the Instrument prohibits an ATS to which the provisions of the Instrument apply from carrying on business unless it is a member of a self-regulatory entity. Membership in a self-regulatory entity is required for purposes of membership in the Canadian Investor Protection Fund, capital requirements and clearing and settlement procedures. At this time, the ~~IDA~~IIROC is the only entity that would come within the definition.

(6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.

(7) Subsection 6.7(1) of the Instrument requires an ATS to notify the securities regulatory authority if one of three thresholds is met or exceeded. Upon being informed that one of the thresholds is met or exceeded, the securities regulatory authority intends to review the ATS, its structure and operations in order to consider whether the person or company operating the ATS should be considered to be an exchange for purposes of securities legislation. The securities regulatory authority intends to conduct this review because each of these thresholds may be indicative of an ATS having market dominance over a type of security, such that it would be more appropriate that the ATS be regulated as an exchange. If more than one Canadian securities regulatory authority is conducting this review, the reviewing jurisdictions intend to coordinate their review. The volume thresholds referred to in subsection 6.7(1) and section 12.2 of the Instrument are based on the type of security. The Canadian securities regulatory authorities consider a type of security to refer to a distinctive category of security such as equity securities, preferred securities, debt securities or options.

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

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

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

4.1 Recognition as an Exchange or Quotation and Trade Reporting System

(1) In determining whether to recognize an exchange or quotation and trade reporting system, the Canadian securities regulatory authorities must determine whether it is in the public interest to do so.

(2) In exercising this discretion, the Canadian securities regulatory authorities will look at a number of factors, including

(a) the manner in which the exchange or quotation and trade reporting system proposes to comply with the Instrument;

(b) whether the exchange or quotation and trade reporting system has fair and meaningful representation on its governing body, in the context of the nature and structure of the exchange or quotation and trade reporting system;

(c) Whether the exchange or quotation and trade reporting system has sufficient financial resources for the proper performance of its functions; and

(d) whether the rules, policies and other similar instruments of the exchange or quotation and trade reporting system ensure that its business is conducted in an orderly manner so as to afford protection to investors.

PART 5 ORDERS

5.1 Orders

(1) The term "order" is defined in section 1.1 of the Instrument as a firm indication by a person or company, acting as either principal or agent, of a willingness to buy or sell a security. By virtue of this definition, a marketplace that displays good faith,

non-firm indications of interest, including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications, is not displaying "orders".

(2) The label put on a transaction is not determinative of whether the transaction constitutes an order. Instead, whether or not an indication is "firm" will depend on what actually takes place between the buyer and seller. At a minimum, the Canadian securities regulatory authorities will consider an indication to be firm if it can be executed without further discussion between the person or company entering the indication and the counterparty. Even if the person or company must give its subsequent agreement to an execution, the Canadian securities regulatory authorities will still consider the indication to be firm if this subsequent agreement is always, or almost always, granted so that the agreement is largely a formality. For instance, an indication where there is a clear or prevailing presumption that a trade will take place at the indicated price, based on understandings or past dealings, will be viewed as an order.

(3) A firm indication of a willingness to buy or sell a security includes bid or offer quotations, market orders, limit orders and any other priced orders. For the purpose of sections 7.1, 7.3, 8.1 and 8.2 of the Instrument, the Canadian securities regulatory authorities do not consider special terms orders that are not immediately executable or that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery, to be orders that must be provided to an information processor or, if there is no information processor, to an information vendor for consolidation.

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

PART 6 FORMS FILED BY MARKETPLACES

6.1 Forms Filed by Marketplaces

(1) Subsection 3.1(1) of the Instrument requires an applicant for recognition as an exchange to file Form 21-101Fl. This subsection does not apply to an exchange that was recognized before the Instrument came into force.

(2) The forms filed by a marketplace under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that the forms contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that the forms be available for public inspection.

(3) Under subsection 3.2(1) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F1, a recognized exchange must file information describing the change or an amendment to the information provided in Form 21-101F1, in each case, in the manner set out in Form 21-101F1 . In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, G, I, J, K, M, N, P and O of Form 21-101F1. This is also applicable to recognized quotation and trade reporting systems under subsection 4.2(1) of the Instrument.

(4) A recognized exchange or recognized quotation and trade reporting system that files amendments to the information provided in Form 21-101F1 should number each filing consecutively.

(5) Securities legislation or the terms and conditions of the recognition of the exchange or quotation and trade reporting system may require that a recognized exchange or recognized quotation and trade reporting system that is voluntarily surrendering its recognition file a notice or application with the securities regulatory authority.

(6) Under subsection 6.4(2) of the Instrument, at least 45 days prior to implementing a significant change to a matter set out in Form 21-101F2, an ATS is required to file an amendment to the information provided in Form 21-101F2 in the manner set out in Form 21-101F2. The Canadian securities regulatory authorities consider that a significant change includes ~~any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers~~a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.

(7) Subsection 6.4(4) of the Instrument requires an ATS to file Form 21-101F3 by the following dates: April 30 (for the quarter ending March 31), July 30 (for the quarter ending June 30), October 30 (for the quarter ending September 30) and January 30 (for the quarter ending December 31).

(8) If an ATS files notice of its intention to carry on exchange activities pursuant to section 6.6 of the Instrument, and the ATS intends to begin to carry on business as an exchange, the ATS is required to file Form 21-101F1.

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

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

7.1 Access Requirements – Section 5.1 of the Instrument sets out access requirements that apply to a recognized exchange and a recognized quotation and trade reporting system. The Canadian securities regulatory authorities note that the requirements regarding access for members do not, however, restrict the authority of an exchange or quotation and trade reporting system to maintain reasonable standards for access. In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a member or user. The reference to “services” in paragraph (b) means all services that a marketplace provides including any services that may be offered to a member in the case of an exchange or a user in the case of a quotation and trade reporting system or anyone accessing orders directly or indirectly on the exchange or quotation and trade reporting system for purposes of the trade-through requirements set out in Part 6 of NI 23-101. A recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a member or user directly, or (b) a person or company that is indirectly accessing the recognized exchange or recognized quotation and trade reporting system through a member or user.

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

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

PART 8 REQUIREMENTS ONLY APPLICABLE TO ATSs

8.1 Confidential Treatment of Trading Information by ATSs

(1) Subsection 6.8(2) of the Instrument provides that an ATS shall not carry on business as an ATS unless it has implemented reasonable safeguards and procedures to protect a subscriber's trading information. These include

(a) limiting access to the trading information of subscribers, such as the identity of subscribers and their orders, to those employees of, or persons or companies retained by, the ATS to operate the system or to be responsible for its compliance with Canadian securities legislation; and

(b) having in place procedures to ensure that employees of the ATS cannot use such information for trading in their own accounts.

(2) The procedures referred to in subsection (1) should be clear and unambiguous and presented to all employees and agents of the ATS, whether or not they have direct responsibility for the operation of the ATS.

(3) Nothing in section 6.8 of the Instrument prohibits an ATS from complying with National Policy 41 Shareholder Communication, or its successor instrument. This statement is necessary because an investment dealer that operates an ATS may be an intermediary for the purposes of National Policy 41, or its successor instrument, and may be required to disclose information under that Instrument.

8.2 Access Requirements – Section 6.13 of the Instrument sets out access requirements that apply to an ATS. The Canadian securities regulatory authorities note that the requirements regarding access do not prevent an ATS from setting reasonable standards for access. In addition, the reference to "a person or company" in subsection (b) includes a system or facility that is operated by a person or company and a person or company that obtains access through a subscriber that is a dealer. The reference to “services” in paragraph (b) means all services that a marketplace provides including any services that may be offered to a subscriber or anyone accessing orders directly or indirectly on the ATS for purposes of the trade-through requirements set out in Part 6 of NI 23-101. An ATS should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a subscriber directly, or (b) a person or company that is indirectly accessing the ATS through a subscriber.

PART 9 INFORMATION TRANSPARENCY REQUIREMENTS FOR EXCHANGE-TRADED SECURITIES

9.1 Information Transparency Requirements for Exchange-Traded Securities

(1) ~~Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide information to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider.~~ Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider. Some marketplaces, such as exchanges, may be regulation services providers and will establish standards for the information vendors they use to display order and trade information to ensure that the information displayed by the information vendors is timely, accurate and promotes market integrity. If the marketplace has entered into a contract with a regulation services provider under NI 23-101, the marketplace must provide information to the regulation services provider and an information vendor that meets the standards set by that regulation services provider.

(2) ~~To comply with subsections 7.1 and 7.2 of the Instrument, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.~~ In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.

(3) Repealed]

(4) [Repealed]

(5) It is expected that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers.

9.2 [Repealed]

PART 10 INFORMATION TRANSPARENCY REQUIREMENTS FOR UNLISTED DEBT SECURITIES

10.1 Information Transparency Requirements for Unlisted Debt Securities

(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2012. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.

(2) The requirements of the information processor for government debt securities are as follows:

(a) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time quotation information displayed on the marketplace for all bids and offers with respect to unlisted debt securities designated by the information processor, including details as to type, issuer, coupon and maturity of security, best bid price, best ask price and total disclosed volume at such prices; and

(b) Marketplaces trading government debt securities and inter-dealer bond brokers are required to provide in real time details of trades of all government debt securities designated by the information processor, including details as to the type, issuer, series, coupon and maturity, price and time of the trade and the volume traded.

(3) The requirements of the information processor for corporate debt securities are as follows:

(a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than $2 million, the trade details provided to the information processor are to be reported as "$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than $200,000, the trade details provided to the information processor are to be reported as "$200,000+".

(b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.

(c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.

(4) The marketplace upon which the trade is executed will not be shown, unless the marketplace determines that it wants its name to be shown.

(5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.

(6) An "investment grade corporate debt security" is a corporate debt security that is rated by one of the listed rating organizations at or above one of the following rating categories or a rating category that preceded or replaces a category listed below:

Rating Organization	**Long Term Debt**	**Short Term Debt**
Fitch, Inc.	BBB	F3
Dominion Bond Rating Service Limited	BBB	R-2
Moody's Investors Service, Inc.	Baa	Prime-3
Standard & Poors Corporation	BBB	A-3

(7) A "non-investment grade corporate debt security" is a corporate debt security that is not an investment grade corporate debt security.

(8) The information processor will publish the list of designated government debt securities and designated corporate debt securities. The information processor will give reasonable notice of any change to the list.

(9) The information processor may request changes to the transparency requirements by filing an amendment to Form 21-101F5 with the Canadian securities regulatory authorities pursuant to subsection 14.2(1) of the Instrument. The Canadian securities regulatory authorities will review the amendment to Form 21-101F5 to determine whether the proposed changes are contrary to the public interest, to ensure fairness and to ensure that there is an appropriate balance between the standards of transparency and market quality (defined in terms of market liquidity and efficiency) in each area of the market. The proposed changes to the transparency requirements will also be subject to consultation with market participants.~~;and~~

10.2 ~~[Repealed]~~Availability of Information – In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.

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

PART 11 MARKET INTEGRATION

11.1 [Repealed]

11.2 [Repealed]

11.3 [Repealed]

11.4 [Repealed]

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

PART 12 DISCLOSURE OF TRADING FEES FOR MARKETPLACES

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

12.2 Trading Fees for Trade-Through Purposes – Section 10.2 of the Instrument prohibits a marketplace from imposing fees for the purpose of complying with the trade-through requirements set out in Part 6 of NI 23-101 that (i) is equal to or greater than the minimum price increment that is described in IIROC Universal Market Integrity Rule 6.1, as amended, or (ii) has the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace. This prohibition would include any fees charged to access an order on a marketplace. Paragraph 10.2(b) of the Instrument is intended to ensure that a marketplace does not charge discriminatory fees to those routing orders to meet their trade-through obligations.

PART 13 RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

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

~~**13.2 Synchronization of Clocks** - Subsection 11.5(1) requires a marketplace trading exchange-traded securities or foreign exchange-traded securities, an information processor receiving information about those securities, a dealer trading those securities and a regulation services provider monitoring the activities of marketplaces trading those securities shall synchronize their clocks. Subsection 11.5(2) requires a marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities, an inter-dealer bond broker trading those securities and a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities shall synchronize their clocks. The Canadian securities regulatory authorities are of the view that synchronization means that in most circumstances, the clocks will be within 2 seconds of each other. The clocks should be checked at least daily for synchronization and should be adjusted on a weekly basis. For exchange-traded securities and foreign exchange-traded securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks. For unlisted debt securities, the marketplaces, information processor, dealers and regulation services provider should select an appropriate national time standard to be used by all parties to synchronize the clocks.~~

13.2 Synchronization of Clocks – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the activities of marketplaces, and, as appropriate, inter-dealer bond brokers or dealers trading the relevant securities. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized

exchange or recognized quotation and trade reporting system should coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.

PART 13.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES

13.1.1 Reporting of Order Execution Information by Marketplaces – (1) Section 11.1.1 of the Instrument requires a marketplace to make available standardized, monthly reports of statistical information concerning the execution of orders. It is expected that this information would provide a starting point to promote visibility and best execution, in particular, relating to the factors of execution price and speed. It is also expected that this information would provide a tool for dealers and advisers to evaluate the quality of executions among marketplaces and aid in fulfilling their duty of best execution.

(2) Orders that are not immediately executable and orders that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery are not considered to be orders for the purposes of this Part. As well, order information regarding pre-arranged trades and intentional or internal crosses is not required. In addition, marketplaces reporting trade information should only count each share traded once.

PART 14 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS

~~**14.1 Capacity, Integrity and Security of Marketplace Systems**~~

~~(1) Subsection (a) of section 12.1 of the Instrument requires a marketplace to meet certain systems, capacity, integrity and security standards. Subsections (b) and (c) of section 12.1 of the Instrument require a recognized exchange, a recognized quotation and trade reporting system and an ATS that exceeds the threshold in section 12.2 of the Instrument to meet certain additional systems, capacity, integrity and security standards.~~

~~(2) The activities in subsection (a) of section 12.1 of the Instrument must be carried out at least once a year. The Canadian securities regulatory authorities would expect these activities to be carried out even more frequently if there is a change to the marketplace that is material either in terms of structure or volume of trading that necessitates that these functions be carried out more frequently in order to ensure that the marketplace can appropriately service its marketplace participants.~~

~~(3) The independent review contemplated by subsection (b) of section 12.1 of the Instrument should be performed by competent, independent audit personnel following established audit procedures and standards.~~

~~(4) An ATS becomes subject to subsections (b) and (c) of section 12.1 of the Instrument after it first satisfies the trading volume test in section 12.2 of the Instrument. It remains subject to subsections (b) and (c) of section 12.1 even if, thereafter, it no longer satisfies the trading volume test, unless it is successful in obtaining relief under section 15.1 of the Instrument.~~

14.1 Systems Requirements – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include *'Information Technology Control Guidelines'* from The Canadian Institute of Chartered Accountants (CICA) and *'COBIT'* from the IT Governance Institute.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator, or, in Québec, the securities regulatory authority.

14.2 Availability of Technology Specifications and Testing Facilities (1) Subsection 12.3(1) of the Instrument requires marketplaces to publish their technology requirements regarding interfacing with or accessing the marketplace in their final form for at least three months. If there are material changes to these requirements after they are published and before operations begin, the revised requirements should be published for a new three month period prior to operations. The subsection also

requires that an operating marketplace publish its technology specifications for at least three months before implementing a material change to its technology requirements.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been published. Should the marketplace publish its specifications for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities available for at least two months before implementing the material systems change.

PART 15 CLEARING AND SETTLEMENT

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

PART 16 INFORMATION PROCESSOR

16.1 Information Processor

(1) The Canadian securities regulatory authorities believe that it is important for those who trade to have access to accurate information on the prices at which trades in particular securities are taking place (i.e., last sale reports) and the prices at which others have expressed their willingness to buy or sell (*i.e.*, orders).

~~(2) The purpose of an information processor is to ensure the availability of prompt and accurate order and trade information and to guarantee fair access to the information.~~
(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to 'fair access', an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.

16.2 Selection of an Information Processor

(1) The Canadian securities regulatory authorities will review Form 21-101F5 to determine whether it is contrary to the public interest for the person or company who filed the form to act as an information processor. The Canadian securities regulatory authorities will look at a number of factors when reviewing the form filed, including,

(a) the performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to orders for, and trades in, securities;

(b) whether all marketplaces may obtain access to the information processor on fair and reasonable terms ~~which are not unreasonably discriminatory~~;

(c) personnel qualifications;

(d) whether the information processor has sufficient financial resources for the proper performance of its functions;

(e) the existence of another entity performing the proposed function for the same type of security;

(f) the systems report referred to in subsection 14.5(b) of the Instrument.

(2) The Canadian securities regulatory authorities request that the forms and exhibits be filed in electronic format, where possible.

(3) The forms filed by an information processor under the Instrument will be kept confidential. The Canadian securities regulatory authorities are of the view that they contain intimate financial, commercial and technical information and that the interests of the filers in non-disclosure outweigh the desirability of adhering to the principle that all forms be available for public inspection.

16.3 Change to Information – Under subsection 14.2(1) of the Instrument, an information processor is required to file an amendment to the information provided in Form 21-101F5 at least 45 days before implementing a significant change involving a matter set out in Form 21-101F5, in the manner set out in Form 21-101F5. In the view of the Canadian securities regulatory authorities, a significant change includes a change to the information contained in Exhibits A, B, F, G, H, 0, P, Q, R and S and Item 10 of Form 21-101F5.

16.4 System Requirements – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.

Unofficial Consolidation – September 12, 2008

This document is an unofficial consolidation of all amendments to National Instrument 23-101 *Trading Rules*, and its Companion Policy current to **September 12, 2008**. The black-lined portions indicate the proposed amendments to National Instrument 23-101 and its Companion Policy. This document is for reference purposes only and is not an official statement of the law.

NATIONAL INSTRUMENT 23-101
TRADING RULES

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NATIONAL INSTRUMENT 23-101
TRADING RULES

PART 1 DEFINITION AND INTERPRETATION

1.1 Definition – In this Instrument

"NI 21-101" means National Instrument 21-101 Marketplace Operation;

"automated functionality" means the ability to:

(a) permit an incoming order that has been entered on the marketplace electronically to be marked as fill-or-kill;

(b) immediately and automatically execute an order marked as fill-or-kill against the displayed volume;

(c) immediately and automatically cancel any unexecuted portion of an order marked as fill-or-kill without routing the order elsewhere;

(d) immediately and automatically transmit a response to the sender of an order marked as fill-or-kill indicating the action taken with respect to the order; and

(e) immediately and automatically display information that updates the displayed order to reflect any change to its material terms;

"best execution" means the most advantageous execution terms reasonably available under the circumstances;

"calculated price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace if the price of that security

(a) is not known at the time of order entry; and

(b) is to be calculated based on, but will not necessarily be equal to, the price of that security at the time of execution;

"closing price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is

(a) entered on a marketplace on a trading day; and

(b) subject to the conditions that

(i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii) the order be executed subsequent to the establishment of the closing price;

"inter-market sweep order" means a limit order for the purchase or sale of an exchange-traded security, other than a derivative,

(a) entered on or routed to a marketplace to be executed against a protected order; and

(b) identified as an inter-market sweep order; and

at the same time that it is entered or routed, one or more additional limit orders are routed, as necessary, to a marketplace to execute against the displayed volume of any other protected order on that marketplace with a better price to the protected order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace that is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of a trade at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) the case of a sale, lower than any protected bid.

1.2 Interpretation – NI 21-101 –Terms defined or interpreted in NI 21-101 and used in this Instrument have the respective meanings ascribed to them in NI 21-101.

PART 2 APPLICATION OF THIS INSTRUMENT

2.1 Application of this Instrument – A person or company is exempt from subsection 3.1(1) and Parts 4 and 5 if the person or company complies with similar requirements established by

(a) a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) directly;

(b) a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) directly; or

(c) a regulation services provider.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) A person or company shall not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in or acquisition of a security or any act, practice or course of conduct, if the person or company knows, or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or a derivative of that security; or

(b) perpetrates a fraud on any person or company.

(2) In Alberta, British Columbia, Ontario, Quebec and Saskatchewan, instead of subsection (1), the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply.

PART 4 BEST EXECUTION

4.1 Application of this Part – This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

4.2 Best Execution – A dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client.

4.3 Order and Trade Information – To satisfy the requirements in section 4.2, a dealer or adviser shall make reasonable efforts to use facilities providing information regarding orders and trades.

4.4 Reporting of Order Routing by Dealer – (1) A dealer shall publish, in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a quarterly report on its routing of orders when acting as agent during that quarter and shall include the following information if securities are traded on more than one marketplace:

(a) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace

(i) at the direction or instruction of the client, and

(ii) otherwise determined by the dealer; and

(b) a discussion of any material aspects of a dealer's relationship with a marketplace including a description of any arrangements.

(2) A dealer shall, within 15 days of receiving a request from a client, disclose to the client the identity of any marketplace where the client's orders were routed for execution in the six months before the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the executions, if any, that resulted from such orders.

(3) This section is effective on [**insert date six months after Effective Date**].

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – If a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 21-101 makes a decision to prohibit trading in a particular security for a regulatory purpose, no person or company shall execute a trade for the purchase or sale of that security during the period in which the prohibition is in place.

~~**PART 6 TRADING HOURS**~~

~~**6.1 Trading Hours** - Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.~~

PART 6 TRADE-THROUGH PROTECTION

6.1 Trade-through Protection – (1) A marketplace shall establish, maintain and enforce written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs listed in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that constitutes a trade-through listed in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required by subsection (1) and shall take prompt action to remedy any deficiencies in such policies and procedures.

(3) At least 45 days before implementation, a marketplace shall provide to the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any material amendments to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) the transaction that constituted the trade-through was executed when there were reasonable grounds to believe that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment;

(b) the transaction that constituted the trade-through was the execution of an order identified as an inter-market sweep order;

(c) the transaction that constituted the trade-through was executed by a marketplace that simultaneously routed an inter-market sweep order to execute against the total displayed volume of any protected order that was traded through;

(d) the marketplace displaying the protected order that was traded through had displayed, immediately before the execution of the transaction that constituted the trade-through, a protected order with a price that was equal or inferior to the price of the trade-through transaction;

(e) the transaction that constituted the trade-through was the result of the execution of

(i) a non-standard order;

(ii) a calculated price order; or

(iii) a closing price order; and

(f) the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer.

6.3 Inter-market Sweep Order Requirements – A marketplace or marketplace participant responsible for the routing of an inter-market sweep order must take all reasonable steps to ensure that the order is an inter-market sweep order.

6.4 Systems or Equipment Failure, Malfunction or Material Delay – (1) A marketplace shall immediately notify all regulation services providers, its marketplace participants and other marketplaces if there is a failure, malfunction or material delay of its systems or equipment.

(2) When executing a transaction that falls within paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it has reasonable grounds to believe it is experiencing a failure, malfunction or material delay of its systems or equipment;

(b) all regulation services providers; and

(c) its marketplace participants.

(3) When a marketplace participant has reasonable grounds to believe that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment; and

(b) all regulation services providers.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally lock or cross a particular marketplace or the market as a whole by

(a) entering on a marketplace a bid at a price that is the same as or higher than the best protected offer; or

(b) entering on a marketplace an offer at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – Each marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall route an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

PART 7 MONITORING AND ENFORCEMENT OF REQUIREMENTS SET BY A RECOGNIZED EXCHANGE AND A RECOGNIZED QUOTATION AND TRADE REPORTING SYSTEM

7.1 Requirements for a Recognized Exchange

(1) A recognized exchange shall set requirements governing the conduct of its members, including requirements that the members will conduct trading activities in compliance with this Instrument.

(2) A recognized exchange shall monitor the conduct of its members and enforce the requirements set under subsection (1), either

(a) directly, or

(b) indirectly through a regulation services provider.

7.2 Agreement between a Recognized Exchange and a Regulation Services Provider – A recognized exchange that monitors the conduct of its members indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider that provides

(a) that the regulation services provider will monitor the conduct of the members of a recognized exchange;

(b) that the regulation services provider will enforce the requirements set under subsection 7.1(1);

(c) ~~that the recognized exchange will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and~~that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange; and

(d) that the recognized exchange will comply with all orders or directions made by the regulation services provider.

7.3 Requirements for a Recognized Quotation and Trade Reporting System

(1) A recognized quotation and trade reporting system shall set requirements governing the conduct of its users, including requirements that the users will conduct trading activities in compliance with this Instrument.

(2) A recognized quotation and trade reporting system shall monitor the conduct of its users and enforce the requirements set under subsection (1) either

(a) directly; or

(b) indirectly through a regulation services provider.

7.4 Agreement between a Recognized Quotation and Trade Reporting System and a Regulation Services Provider – A recognized quotation and trade reporting system that monitors the conduct of its users indirectly through a regulation services provider shall enter into a written agreement with the regulation services provider that provides

(a) that the regulation services provider will monitor the conduct of the users of a recognized quotation and trade reporting system;

(b) that the regulation services provider will enforce the requirements set under subsection 7.3(1);

(c) ~~that the recognized quotation and trade reporting system will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and~~that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized quotation and trade reporting system; and

(d) that the recognized quotation and trade reporting system will comply with all orders or directions made by the regulation services provider.

7.5 Co-ordination of Monitoring and Enforcement – A regulation services provider, recognized exchange, or recognized quotation and trade reporting system shall enter into a written agreement with all other regulation services providers, recognized exchanges, and recognized quotation and trade reporting systems to coordinate monitoring and enforcement of the requirements set ~~under this Part~~ under Parts 7 and 8.

PART 8 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN ATS

8.1 Pre-condition to Trading on an ATS – An ATS shall not execute a subscriber's order to buy or sell securities unless the ATS has executed and is subject to the written agreements required by sections 8.3 and 8.4.

8.2 Requirements Set by a Regulation Services Provider for an ATS

(1) A regulation services provider shall set requirements governing an ATS and its subscribers, including requirements that the ATS and its subscribers will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an ATS and its subscribers and shall enforce the requirements set under subsection (1).

8.3 Agreement between an ATS and a Regulation Services Provider – An ATS and a regulation services provider shall enter into a written agreement that provides

(a) that the ATS will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);

(b) that the regulation services provider will monitor the conduct of the ATS and its subscribers;

(c) that the regulation services provider will enforce the requirements set under subsection 8.2(1);

(d) ~~that the ATS will transmit the information required by Part 11 of NI 21-101 to the regulation services provider; and~~ that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of ATSs and marketplace participants; and

(e) that the ATS will comply with all orders or directions made by the regulation services provider.

8.4 Agreement between an ATS and its Subscriber – An ATS and its subscriber shall enter into a written agreement that provides

(a) that the subscriber will conduct its trading activities in compliance with the requirements set under subsection 8.2(1);

(b) that the subscriber acknowledges that the regulation services provider will monitor the conduct of the subscriber and enforce the requirements set under subsection 8.2(1);

(c) that the subscriber will comply with all orders or directions made by the regulation services provider in its capacity as a regulation services provider, including orders excluding the subscriber from trading on any marketplace.

8.5 [Repealed]

PART 9 MONITORING AND ENFORCEMENT REQUIREMENTS FOR AN INTERDEALER BOND BROKER

9.1 Requirements Set by a Regulation Services Provider for an Inter-Dealer Bond Broker

(1) A regulation services provider shall set requirements governing an inter-dealer bond broker, including requirements that the inter-dealer bond broker will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of an inter-dealer bond broker and shall enforce the requirements set under subsection (1).

9.2 Agreement between an Inter-Dealer Bond Broker and a Regulation Services Provider – An inter-dealer bond broker and a regulation services provider shall enter into a written agreement that provides

(a) that the inter-dealer bond broker will conduct its trading activities in compliance with the requirements set under subsection 9.1(1);

(b) that the regulation services provider will monitor the conduct of the inter-dealer bond broker;

(c) that the regulation services provider will enforce the requirements set under subsection 9.1(1); and

(d) that the inter-dealer bond broker will comply with all orders or directions made by the regulation services provider.

9.3 Exemption for an Inter-Dealer Bond Broker

(1) Sections 9.1 and 9.2 do not apply to an inter-dealer bond broker, if the inter-dealer bond broker complies with the requirements of ~~IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets~~IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended.

(2) [Repealed]

PART 10 MONITORING AND ENFORCEMENT REQUIREMENTS FOR A DEALER EXECUTING TRADES OF UNLISTED DEBT SECURITIES OUTSIDE OF A MARKETPLACE

10.1 Requirements Set by a Regulation Services Provider for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace

(1) A regulation services provider shall set requirements governing a dealer executing trades of unlisted debt securities outside of a marketplace, including requirements that the dealer will conduct trading activities in compliance with this Instrument.

(2) A regulation services provider shall monitor the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace and shall enforce the requirements set under subsection (1).

10.2 Agreement between a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace and a Regulation Services Provider – A dealer executing trades of unlisted debt securities outside of a marketplace shall enter into an agreement with a regulation services provider that provides

(a) that the dealer will conduct its trading activities in compliance with the requirements set under subsection 10.1(1);

(b) that the regulation services provider will monitor the conduct of the dealer;

(c) that the regulation services provider will enforce the requirements set under subsection 10.1(1); and

(d) that the dealer will comply with all orders or directions made by the regulation services provider.

10.3 [Repealed]

PART 11 AUDIT TRAIL REQUIREMENTS

11.1 Application of this Part

(1) This Part does not apply to a dealer that is carrying on business as an ATS in compliance with section 6.1 of NI 21-101.

(2) A dealer or inter-dealer bond broker is exempt from this Part if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.

11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers

(1) **Recording Requirements for Receipt or Origination of an Order** – Immediately following the receipt or origination of an order for equity, fixed income and other securities identified by a regulation services provider, a dealer and inter-dealer bond broker shall record specific information relating to that order including,

(a) the order identifier;

(b) the dealer or inter-dealer bond broker identifier;

(c) the type, issuer, class, series and symbol of the security;

(d) the face amount or unit price of the order, if applicable;

(e) the number of securities to which the order applies;

(f) the strike date and strike price, if applicable;

(g) whether the order is a buy or sell order;

(h) whether the order is a short sale order, if applicable;

(i) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade;

(j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;

(k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;

(l) the client account number or client identifier;

(m) the date and time that the order expires;

(n) whether the order is an intentional cross;

(o) whether the order is a jitney and if so, the underlying broker identifier;

(p) any client instructions or consents respecting the handling or trading of the order, if applicable;

(q) the currency of the order;

(r) an insider marker; and

(s) any other markers required by a regulation services provider.

(2) **Recording Requirements for Transmission of an Order** – Immediately following the transmission of an order for securities to a dealer, inter-dealer bond broker or a marketplace, a dealer or inter-dealer bond broker transmitting the order shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

(a) the dealer or inter-dealer bond broker identifier assigned to the dealer or inter-dealer bond broker transmitting the order and the identifier assigned to the dealer, inter-dealer bond broker or marketplace to which the order is transmitted; and

(b) the date and time the order is transmitted.

(3) **Recording Requirements for Variation, Correction or Cancellation of an Order** – Immediately following the variation, correction or cancellation of an order for securities, a dealer or inter-dealer bond broker shall add to the record of the order maintained in accordance with this section specific information relating to that order including,

(a) the date and time the variation, correction or cancellation was originated or received;

(b) whether the order was varied, corrected or cancelled on the instructions of the client, the dealer or the inter-dealer bond broker;

(c) in the case of variation or correction, any of the information required by subsection (1) which has been changed; and

(d) the date and time the variation, correction or cancellation of the order is entered.

(4) **Recording Requirements for Execution of an Order** – Immediately following the execution of an order for securities, the dealer or inter-dealer bond broker shall add to the record maintained in accordance with this section specific information relating to that order including,

(a) the identifier of the marketplace where the order was executed or the identifier of the dealer or inter-dealer bond broker executing the order if the order was not executed on a marketplace;

(b) the date and time of the execution of the order;

(c) whether the order was fully or partially executed;

(d) the number of securities bought or sold;

(e) whether the transaction was a cross;

(f) whether the dealer has executed the order as principal;

(g) the commission charged and all other transaction fees; and

(h) the price at which the order was executed, including mark-up or mark-down.

~~**(5)[Repealed]**~~

~~**(6)[Repealed]**~~

(~~7~~5) **Record Preservation Requirements** – A dealer and an inter-dealer bond broker shall keep all records for a period of not less than seven years from the creation of the record referred to in this section, and for the first two years in a readily accessible location.

(6) [Repealed]

11.3 Transmission in Electronic Form – A dealer and inter-dealer bond broker shall transmit

(a) to a regulation services provider the information required by the regulation services provider, within ten business days, in electronic form; and

(b) to the securities regulatory authority the information required by the securities regulatory authority under securities legislation, within ten business days, in electronic form.

PART 12 EXEMPTION

12.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 13 EFFECTIVE DATE

13.1 Effective Date – This Instrument comes into force on December 1, 2001.

COMPANION POLICY 23-101 CP
TO NATIONAL INSTRUMENT 23-101
TRADING RULES

Table of Contents

COMPANION POLICY 23-101CP
TO NATIONAL INSTRUMENT 23-101
TRADING RULES

PART 1 INTRODUCTION

1.1 Introduction – The purpose of this Companion Policy is to state the views of the Canadian securities regulatory authorities on various matters related to National Instrument 23-101 Trading Rules (the "Instrument"), including

(a) a discussion of the general approach taken by the Canadian securities regulatory authorities in, and the general regulatory purpose for, the Instrument; and

(b) the interpretation of various terms and provisions in the Instrument.

1.2 Just and Equitable Principles of Trade – While the Instrument deals with specific trading practices, as a general matter, the Canadian securities regulatory authorities expect marketplace participants to transact business openly and fairly, and in accordance with just and equitable principles of trade.

PART 1.1 DEFINITIONS

1.1.1 Definition of best execution – (1) In the Instrument, best execution is defined as the "most advantageous execution terms reasonably available under the circumstances". In seeking best execution, a dealer or adviser may consider a number of elements, including:

a. price;

b. speed of execution;

c. certainty of execution; and

d. the overall cost of the transaction.

These four broad elements encompass more specific considerations, such as order size, reliability of quotes, liquidity, market impact (i.e. the price movement that occurs when executing an order) and opportunity cost (i.e. the missed opportunity to obtain a better price when an order is not completed at the most advantageous time). The overall cost of the transaction is meant to include, where appropriate, all costs associated with accessing an order and/or executing a trade that are passed on to a client, including fees arising from trading on a particular marketplace, jitney fees (i.e. any fees charged by one dealer to another for providing trading access) and settlement costs. The commission fees charged by a dealer would also be a cost of the transaction.

(2) The elements to be considered in determining "the most advantageous execution terms reasonably available" (i.e. best execution) and the weight given to each will vary depending on the instructions and needs of the client, the particular security, the prevailing market conditions and whether the dealer or adviser is responsible for best execution under the circumstances. Please see a detailed discussion below in Part 4.

PART 2 ~~APPLICATION OF THE INSTRUMENT~~APPLICATION AND DEFINITIONS

2.1 Application ~~of the Instrument~~ and Definitions – Section 2.1 of the Instrument provides an exemption from subsection 3.1(1) and Parts 4 and 5 of the Instrument if a person or company complies with similar requirements established by a recognized exchange that monitors and enforces the requirements set under subsection 7.1(1) of the Instrument directly, a recognized quotation and trade reporting system that monitors and enforces requirements set under subsection 7.3(1) of the Instrument directly or a regulation services provider. The requirements are filed by the recognized exchange, recognized quotation and trade reporting system or regulation services provider and approved by a securities regulatory authority. If a person or company is not in compliance with the requirements of the recognized exchange, recognized quotation and trade reporting system or the regulation services provider, then the exemption does not apply and that person or company is subject to subsection 3.1(1) and Parts 4 and 5 of the Instrument. The exemption from subsection 3.1(1) does not apply in Alberta, British Columbia, Ontario, Quebec and Saskatchewan and the relevant provisions of securities legislation apply.

2.2 Definition of Automated Functionality – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order

to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of fill-or-kill orders.

2.3 Definition of Calculated Price Order – The definition of "calculated price order" refers to any order where the price is not known at the time of order entry and is based on, but not necessarily equal to, the price of an exchange-traded security at the time of execution. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider.

2.4 Definition of Inter-Market Sweep Order – An inter-market sweep order must be marked to inform the receiving marketplace that it can be immediately executed without reference to better-priced orders displayed by other marketplaces. It may be marked "ISO" by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one inter-market sweep order in order to execute against the best protected bid or best protected offer and any inferior-priced orders. In addition, marketplace participants may send a single inter-market sweep order to execute against the best protected bid or best protected offer.

2.5 Definition of Non-Standard Order – The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

2.6 Definition of Protected Order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the trade-through obligation applies.

PART 3 MANIPULATION AND FRAUD

3.1 Manipulation and Fraud

(1) Subsection 3.1(1) of the Instrument prohibits the practices of manipulation and deceptive trading, as these may create misleading price and trade activity, which are detrimental to investors and the integrity of the market.

(2) Subsection 3.1(2) of the Instrument provides that despite subsection 3.1(1) of the Instrument, the provisions of the *Securities* Act (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Quebec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Quebec and Saskatchewan. The jurisdictions listed have provisions in their legislation that deal with manipulation and fraud.

(3) For the purposes of subsection 3.1(1) of the Instrument, and without limiting the generality of those provisions, the Canadian securities regulatory authorities, depending on the circumstances, would normally consider the following to result in, contribute to or create a misleading appearance of trading activity in, or an artificial price for, a security:

(a) Executing transactions in a security if the transactions do not involve a change in beneficial or economic ownership. This includes activities such as wash-trading.

(b) Effecting transactions that have the effect of artificially raising, lowering or maintaining the price of the security. For example, making purchases of or offers to purchase securities at successively higher prices or making sales of or offers to sell a security at successively lower prices or entering an order or orders for the purchase or sale of a security to:

(i) establish a predetermined price or quotation,

(ii) effect a high or low closing price or closing quotation, or

(iii) maintain the trading price, ask price or bid price within a predetermined range.

(c) Entering orders that could reasonably be expected to create an artificial appearance of investor participation in the market. For example, entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, at substantially the same price for the sale or purchase, respectively, of that security has been or will be entered by or for the same or different persons.

(d) Executing prearranged transactions that have the effect of creating a misleading appearance of active public trading or that have the effect of improperly excluding other marketplace participants from the transaction.

(e) Effecting transactions if the purpose of the transactions is to defer payment for the securities traded.

(f) Entering orders to purchase or sell securities without the ability and the intention to

(i) make the payment necessary to properly settle the transaction, in the case of a purchase; or

(ii) deliver the securities necessary to properly settle the transaction, in the case of a sale.

This includes activities known as free-riding, kiting or debit kiting, in which a person or company avoids having to make payment or deliver securities to settle a trade.

(g) Engaging in any transaction, practice or scheme that unduly interferes with the normal forces of demand for or supply of a security or that artificially restricts or reduces the public float of a security in a way that could reasonably be expected to result in an artificial price for the security.

(h) Engaging in manipulative trading activity designed to increase the value of a derivative position.

(i) Entering a series of orders for a security that are not intended to be executed.

(4) The Canadian securities regulatory authorities do not consider market stabilization activities carried out in connection with a distribution to be activities in breach of subsection 3.1(1) of the Instrument, if the market stabilization activities are carried out in compliance with the rules of the marketplace on which the securities trade or with provisions of securities legislation that permit market stabilization by a person or company in connection with a distribution.

(5) Section 3.1 of the Instrument applies to transactions both on and off a marketplace. In determining whether a transaction results in, contributes to or creates a misleading appearance of trading activity in, or an artificial price for a security, it may be relevant whether the transaction takes place on or off a marketplace. For example, a transfer of securities to a holding company for *bona fide* purposes that takes place off a marketplace would not normally violate section 3.1 even though it is a transfer with no change in beneficial ownership.

(6) The Canadian securities regulatory authorities are of the view that section 3.1 of the Instrument does not create a private right of action.

(7) In the view of the Canadian securities regulatory authorities, section 3.1 includes attempting to create a misleading appearance of trading activity in or an artificial price for, a security or attempting to perpetrate a fraud.

PART 4 BEST EXECUTION

4.1 Best Execution – (1) The best execution obligation in Part 4 of the Instrument does not apply to an ATS that is registered as a dealer provided that it is carrying on business as a marketplace and is not handling any client orders other than accepting them to allow them to execute on the system. However, the best execution obligation does otherwise apply to an ATS acting as an agent for a client.

(2) Section 4.2 of the Instrument requires a dealer or adviser to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. The obligation applies to all securities.

(3) Although what constitutes "best execution" varies depending on the particular circumstances, to meet the "reasonable efforts" test, a dealer or adviser should be able to demonstrate that it has, and has abided by, its policies and procedures that (i) require it to follow the client's instructions and the objectives set, and (ii) outline a process designed to achieve best execution. The policies and procedures should describe how the dealer or adviser evaluates whether best execution was obtained and should be regularly and rigorously reviewed. The policies outlining the obligations of the dealer or adviser will be dependent on the role it is playing in an execution. For example, in making reasonable efforts to achieve best execution, the dealer should consider the client's instructions and a number of factors, including the client's investment objectives and the dealer's knowledge of markets and trading patterns. An adviser should consider a number of factors, including assessing a particular client's requirements or portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on a regular basis. In addition, if an adviser is directly accessing a marketplace, the factors to be considered by dealers may also be applicable.

(4) Where securities listed on a Canadian exchange or quoted on a Canadian quotation and trade reporting system are inter-listed either within Canada or on a foreign exchange or quotation and trade reporting system, in making reasonable efforts to achieve best execution, the dealer should assess whether it is appropriate to consider all marketplaces upon which the security is listed or quoted and where the security is traded, both within and outside of Canada.

(5) In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all appropriate marketplaces (not just marketplaces where the dealer is a participant). This does not mean that a dealer must have access to real-time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

(6) For foreign exchange-traded securities, if they are traded on an ATS in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the ATS as well as the foreign markets upon which the securities trade.

(7) Section 4.2 of the Instrument applies to registered advisers as well as registered dealers that carry out advisory functions but are exempt from registration as advisers.

(8) Section 4.3 of the Instrument requires that a dealer or adviser make reasonable efforts to use facilities providing information regarding orders and trades. These reasonable efforts refer to the use of the information displayed by the information processor or, if there is no information processor, an information vendor.

4.2 Reporting Requirements Applicable to Dealers – Section 4.4 of the Instrument requires disclosure of the order routing practices of dealers that route orders for clients. As dealers owe a duty of best execution to their clients, dealers should review their order routing practices periodically to assure they are meeting this responsibility. It is expected that the information required by section 4.4 of the Instrument will bring transparency to this process and provide clients with the opportunity to monitor a dealer's order routing activity. On request by a client, a dealer is required to disclose where an individual client's orders were routed.

PART 5 REGULATORY HALTS

5.1 Regulatory Halts – Section 5.1 of the Instrument applies when a regulatory halt has been imposed by a regulation services provider, a recognized exchange, recognized quotation and trade reporting system or an exchange or quotation and trade reporting system that has been recognized for the purposes of the Instrument and NI 21-101. A regulatory halt, as referred to in section 5.1 of the Instrument, is one that is imposed to maintain a fair and orderly market, including halts related to a timely disclosure policy, or because there has been a violation of regulatory requirements. In the view of the Canadian securities regulatory authorities, an order may trade on a marketplace despite the fact that trading of the security has been suspended

because the issuer of the security has ceased to meet minimum listing or quotation requirements, or has failed to pay to the recognized exchange, the recognized quotation and trading system or the exchange or quotation and trade reporting system recognized for the purposes of the Instrument and NI 21-101 any fees in respect of the listing or quotation of securities of the issuer. Similarly, an order may trade on a marketplace despite the fact that trading of the security has been delayed or halted because of technical problems affecting only the trading system of the recognized exchange, recognized quotation and trading system or exchange or quotation and trade reporting system recognized for the purposes of the Instrument and NI 21-101.

~~**PART 6 TRADING HOURS**~~

~~**6.1 Trading Hours**~~

~~(1) Section 6.1 of the Instrument provides that each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. A marketplace may have after hours trading at any prices.~~

~~(2) An ATS can trade after hours at prices outside of the closing bid price and ask price of a security set by the marketplace where that security is listed or quoted.~~

PART 6 TRADE-THROUGH PROTECTION

6.1 Trade-through Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities.

(3) In certain circumstances a marketplace participant should create policies and procedures and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an inter-market sweep order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively. If a marketplace participant regularly uses inter-market sweep orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

(4) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace.

(5) Trade-through protection applies whenever two or more marketplaces with displayed protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 List of Trade-throughs – Section 6.2 of the Instrument sets forth a list of "permitted" trade-throughs that are primarily designed to achieve workable trade-through protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraph 6.2(a) of the Instrument would apply where there are reasonable grounds to believe that a marketplace is experiencing a failure or malfunction of its systems or equipment as well as any material delay (systems issues). If a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) The marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants and regulation services providers when the failure,

malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant that has reasonable grounds to believe that the marketplace is having systems issues may nevertheless rely on paragraph 6.2(a). This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its belief. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a).

(b) Paragraph 6.2(b) of the Instrument contemplates that a marketplace would immediately execute any order identified as an inter-market sweep order. A marketplace that receives an inter-market sweep order would not need to delay its execution to ensure the execution of better-priced orders at other marketplaces. A marketplace participant may send an inter-market sweep order to a marketplace for execution.

(c) Paragraph 6.2(d) of the Instrument allows for a transaction if the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. This inclusion of "flickering orders" in paragraph 6.2(d) provides some relief due to rapidly moving markets.

(d) The basis for the inclusion of calculated price orders, non-standard orders and closing price orders in paragraph 6.2(e) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated price orders and closing price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraph 6.2(f) of the Instrument includes a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With trade-through protection only applying to displayed orders or parts of orders, hidden or reserve orders will remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of this paragraph would be a violation of section 6.5 of the Instrument.

6.3 Locked and Crossed Markets – Section 6.5 of the Instrument provides that a marketplace participant cannot intentionally lock or cross a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order to lock or cross a marketplace or the market as a whole (for example, to take advantage of rebates offered by a particular marketplace instead of executing against already existing orders). It is not intended to prohibit the use of marketable limit orders. Paragraph 6.2(f) allows for the resolution of crossed markets that occur unintentionally.

6.4 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from routing an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.

PART 7 MONITORING AND ENFORCEMENT

7.1 Monitoring and Enforcement of Requirements Set By a Recognized Exchange or Recognized Quotation and Trade Reporting System – Under section 7.1 of the Instrument, a recognized exchange will set its own requirements governing the conduct of its members. Under section 7.3 of the Instrument, a recognized quotation and trade reporting system will set its own requirements governing the conduct of its users. The recognized exchange or recognized quotation and trade reporting system can monitor and enforce these requirements either directly or indirectly through a regulation services provider. A regulation services provider is a person or company that provides regulation services and is either a recognized exchange, recognized quotation and trade reporting system or a recognized self-regulatory entity. Sections 7.2 and 7.4 of the Instrument require the recognized exchange or recognized quotation and trade reporting system that chooses to have the monitoring and enforcement performed by the regulation services provider to enter into an agreement with the regulation services provider in which the regulation services provider agrees to enforce the requirements of the recognized exchange or recognized quotation and trade reporting system.

7.2 Monitoring and Enforcement Requirements for an ATS – Section 8.2 of the Instrument requires the regulation services provider to set requirements that govern an ATS and its subscribers. Before executing a trade for a subscriber, the ATS

must enter into an agreement with a regulation services provider and an agreement with each subscriber. These agreements form the basis upon which a regulation services provider will monitor the trading activities of the ATS and its subscribers and enforce its requirements. The requirements set by a regulation services provider must include requirements that the ATS and its subscribers will conduct trading activities in compliance with the Instrument. The ATS and its subscribers are considered to be in compliance with the Instrument and are exempt from the application of most of its provisions if the ATS and the subscriber are in compliance with the requirements set by a regulation services provider.

7.3 Monitoring and Enforcement Requirements for an Inter-Dealer Bond Broker – Section 9.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of an inter-dealer bond broker. Under section 9.2 of the Instrument, the inter-dealer bond broker must enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the inter-dealer bond broker and enforce the requirements set by the regulation services provider. However, section 9.3 of the Instrument provides inter-dealer bond brokers with an exemption from sections 9.1 and 9.2 of the Instrument if the inter-dealer bond broker complies with the requirements of ~~IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets~~IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets, as amended, as if that policy was drafted to apply to the inter-dealer bond broker.

7.4 Monitoring and Enforcement Requirements for a Dealer Executing Trades of Unlisted Debt Securities Outside of a Marketplace – Section 10.1 of the Instrument requires that a regulation services provider set requirements governing the conduct of a dealer executing trades of unlisted debt securities outside of a marketplace. Under section 10.2 of the Instrument, the dealer must also enter into an agreement with the regulation services provider providing that the regulation services provider monitor the activities of the dealer and enforce the requirements set by the regulation services provider.

7.5 Coordination of Monitoring and Enforcement – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they co-ordinate the enforcement of the requirements set under Parts 7 and 8. This coordination may include having regulation services providers monitor trading on all marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting the terms of its own rules or policies and procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, and audit trail requirements. If a recognized exchange or recognized quotation and trade reporting system has retained a regulation services provider, the agreement to coordinate required in section 7.5 of the Instrument should be reflected in the agreement referred to in section 7.2 or section 7.4 respectively. If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities.

(2) Currently, only IIROC is the regulation services provider for both exchange-traded and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.

PART 8 AUDIT TRAIL REQUIREMENTS

8.1 Audit Trail Requirements – Section 11.2 of the Instrument imposes obligations on dealers and inter-dealer bond brokers to record in electronic form and to report certain items of information with respect to orders and trades. Information to be recorded includes any markers required by a regulation services provider (such as a significant shareholder marker). The purpose of the obligations set out in Part 11 is to enable the entity performing the monitoring and surveillance functions to construct an audit trail of order, quotation and transaction data which will enhance its surveillance and examination capabilities.

8.2 Transmission of Information to a Regulation Services Provider – Section 11.3 of the Instrument requires that a dealer and an inter-dealer bond broker provide to the regulation services provider information required by the regulation services provider, within ten business days, in electronic form. This requirement is triggered only when the regulation services provider sets requirements to transmit information.

8.3 Electronic Form – Subsection 11.3 of the Instrument requires any information required to be transmitted to the regulation services provider and securities regulatory authority in electronic form. Dealers and inter-dealer bond brokers are required to provide information in a form that is accessible to the securities regulatory authorities and the regulation services provider (for example, in SELECTR format).

AMENDMENTS TO
NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

PART 1 AMENDMENTS

1.1 Amendments

(1) This Instrument amends National Instrument 21-101 *Marketplace Operation*.

(2) The definitions in section 1.1 are amended as follows:

(a) the definition of "IDA" is repealed and replaced by the following ""IIROC" means the Investment Industry Regulatory Organization of Canada";

(b) the definition of "inter-dealer bond broker" is amended by:

(i) striking out "IDA" and substituting "IIROC";

(ii) striking out "By-law No. 36" and substituting "Rule 36"; and

(iii) striking out "Regulation 2100" and substituting "Rule 2100"; and

(c) adding the following definitions:

""effective spread" means,

(a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt; or

(b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt and the execution price.

"realized spread" means,

(a) for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution; or

(b) for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution and the execution price; and

where, for orders that execute within the last five minutes of a marketplace's trading hours, the midpoint referred to in paragraphs (a) and (b) is the midpoint of the final best bid price and best ask price disseminated for the trading day.".

(3) The following section is added after section 10.1:

"**10.2 Trading Fees for Trade-Through Purposes** – With respect to trading fees charged for the execution of an order to comply with section 6.1 of NI 23-101, a marketplace shall not impose

(a) a fee that is equal to or greater than the minimum price increment described in IIROC Universal Market Integrity Rule 6.1, as amended; and

(b) terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace."

(4) Section 11.5 is repealed and replaced by the following:

"**11.5 Synchronization of Clocks** – (1) A marketplace trading exchange-traded securities, an information processor

receiving information about those securities and a dealer trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities and an inter-dealer bond broker trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.".

(5) The following Part is added:

"**PART 11.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES**

11.1.1 Reporting of Order Execution Information by Marketplaces – (1) A marketplace shall publish in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a monthly report containing the information set out below, but not including information relating to any non-standard order, calculated price order or closing price order:

Liquidity Measures:

(a) for all orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace:

(i) the number of orders that the marketplace received;

(ii) the number of orders that were cancelled;

(iii) the number of orders that were executed on the marketplace;

(iv) if applicable, the number of orders routed to another marketplace for execution;

(v) the average volume of all orders executed on the marketplace;

(vi) the share-weighted average effective spread for order executions; and

(vii) the share-weighted average realized spread for order executions.

Trading Statistics:

(b) the number of trades executed on the marketplace;

(c) the volume of all trades executed on the marketplace;

(d) the volume of all trades resulting from the execution of orders that are not displayed on the marketplace;

(e) the volume of all trades resulting from the execution of orders that are partially displayed on the marketplace;

(f) the value of all trades executed on the marketplace;

(g) the arithmetic mean and median size of trades executed on the marketplace;

(h) the number of trades that were executed on the marketplace with a volume of,

(i) for securities other than options,

(A) over 5,000 up to and including 10,000 units of securities, and

(B) over 10,000 units of securities, and

(ii) for options,

(A) over 100 up to and including 250 options contracts; and

(B) over 250 options contracts.

Speed and Certainty of Execution Measures:

(i) the number of orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace and that are executed:

(i) within 1 second after the time of their receipt;

(ii) more than 1 second and up to and including 10 seconds after the time of their receipt;

(iii) more than 10 seconds and up to and including 60 seconds after the time of their receipt;

(iv) more than 1 minute and up to and including 5 minutes after the time of their receipt; and

(v) more than 5 minutes and up to and including 30 minutes after the time of their receipt.

(2) The reporting required in paragraphs (1)(a) through (i) shall be categorized by security.

(3) This section is effective on [**insert date six months after Effective Date**].

(6) Part 12 is repealed and replaced with the following:

"**PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**

12.1 System Requirements – For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall,

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal control over those systems; and

(iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b) consistent with prudent business practice, on a reasonably frequent basis, and in any event, at least annually,

(i) make reasonable current and future capacity estimates;

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans; and

(c) promptly notify the regulator, or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider of any material systems failures.

12.2 Systems Reviews – (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a) its board of directors, or the audit committee, promptly upon the report's completion, and

(b) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities – (1) A marketplace shall publish all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a) if operations have not begun, for at least three months immediately before operations begin; and

(b) once it has begun operations, for at least three months before implementing a material change to its technology requirements.

(2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a) if operations have not begun, for at least two months immediately before operations begin; and

(b) once it has begun operations, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).".

(7) Section 14.5 is repealed and replaced with the following:

"**14.5 System Requirements** – An information processor shall,

(a) develop and maintain

(i) reasonable business continuity and disaster recovery plans;

(ii) an adequate system of internal controls over its critical systems; and

(iii) adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) make reasonable current and future capacity estimates for each of its systems;

(ii) conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

(iii) test its business continuity and disaster recovery plans;

(c) annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d) provide the report resulting from the review conducted under paragraph (c) to

(i) its board of directors or the audit committee promptly upon the report's completion, and

(ii) to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e) promptly notify the regulator, or, in Québec, the securities regulatory authority, and any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor of any material systems failures.

1.2 **Effective Date** – This Instrument comes into force on [**].

AMENDMENTS TO COMPANION POLICY 21-101CP –
TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*

PART 1 AMENDMENTS

1.1 Amendments

(1) This amends Companion Policy 21-101CP.

(2) Part 1 is amended by adding the following section as section 1.4:

"**1.4 Definition of Regulation Services Provider** – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace and does not provide these services to others.".

(3) Subsection 2.1(7) is amended by:

(i) striking out the reference to the "IDA" and substituting "IIROC"; and

(ii) striking out "IDA By-law No. 36" and "By-law No. 36" and substituting "Rule 36"; and

(iii) striking out "IDA Regulation 2100" and "Regulation 2100" and substituting "Rule 2100".

(4) Subsection 3.4(5) is amended by striking out the reference to the "IDA" and substituting "IIROC".

(5) Subsection 6.1(6) is amended by striking out "any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers." and substituting "a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.".

(6) Section 7.1 is amended by:

(a) striking out "." at the end of the last sentence; and

(b) adding the following at the end of the paragraph:

"and a person or company that obtains access through a member or user. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a member in the case of an exchange or a user in the case of a quotation and trade reporting system or anyone accessing orders directly or indirectly on the exchange or quotation and trade reporting system for purposes of the trade-through requirements set out in Part 6 of NI 23-101. A recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a member or user directly, or (b) a person or company that is indirectly accessing the recognized exchange or recognized quotation and trade reporting system through a member or user.".

(7) Section 8.2 is amended by:

(a) striking out "." at the end of the last sentence; and

(b) adding the following at the end of the paragraph:

"and a person or company that obtains access through a subscriber that is a dealer. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a subscriber or anyone accessing orders directly or indirectly on the ATS for purposes of the trade-through requirements set out in Part 6 of NI 23-101. An ATS should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a subscriber directly, or (b) a person or company that is indirectly accessing the ATS through a subscriber.".

(8) Part 9 is amended by:

(a) striking out the first two sentences of subsection 9.1(1) and substituting the following:

"(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider."; and

(b) repealing and replacing subsection 9.1(2) with the following:

"(2) In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.".

(9) Part 10 is amended by:

(a) striking out "; and" at the end of section 10.1(9); and

(b) adding the following as section 10.2:

"**10.2 Availability of Information** – In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.".

(10) The following is added as section 12.2:

"**12.2 Trading Fees for Trade-Through Purposes** – Section 10.2 of the Instrument prohibits a marketplace from imposing fees for the purpose of complying with the trade-through requirements set out in Part 6 of NI 23-101 that (i) is equal to or greater than the minimum price increment that is described in IIROC Universal Market Integrity Rule 6.1, as amended, or (ii) has the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace. This prohibition would include any fees charged to access an order on a marketplace. Paragraph 10.2(b) of the Instrument is intended to ensure that a marketplace does not charge discriminatory fees to those routing orders to meet their trade-through obligations.".

(11) Section 13.2 is repealed and replaced with the following:

"**13.2 Synchronization of Clocks** – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the activities of marketplaces, and, as appropriate, inter-dealer bond brokers or dealers trading the relevant securities. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system should coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.".

(12) The Companion Policy is amended by adding the following Part after Part 13:

"**PART 13.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES**

13.1.1 Reporting of Order Execution Information by Marketplaces – (1) Section 11.1.1 of the Instrument requires a marketplace to make available standardized, monthly reports of statistical information concerning the execution of orders. It is expected that this information would provide a starting point to promote visibility and best execution, in particular, relating to the factors of execution price and speed. It is also expected that this information would provide a tool for dealers and advisers to evaluate the quality of executions among marketplaces and aid in fulfilling their duty of best execution.

(2) Orders that are not immediately executable and orders that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery are not considered to be orders for the purposes of this Part. As well, order information regarding pre-arranged trades and intentional or internal crosses is not required. In addition, marketplaces reporting trade information should only count each share traded once.".

(13) Section 14.1 is repealed and replaced with the following:

"**14.1 Systems Requirements** – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from The Canadian Institute of Chartered Accountants (CICA) and '*COBIT'* from the IT Governance Institute.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator, or, in Québec, the securities regulatory authority.".

(14) The following is added as section 14.2:

"**14.2 Availability of Technology Specifications and Testing Facilities** – (1) Subsection 12.3(1) of the Instrument requires marketplaces to publish their technology requirements regarding interfacing with or accessing the marketplace in their final form for at least three months. If there are material changes to these requirements after they are published and before operations begin, the revised requirements should be published for a new three month period prior to operations. The subsection also requires that an operating marketplace publish its technology specifications for at least three months before implementing a material change to its technology requirements.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been published. Should the marketplace publish its specifications for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities available for at least two months before implementing the material systems change.".

(15) Part 16 is amended by:

(a) repealing and replacing subsection 16.1(2) with the following:

"(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to 'fair access', an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide

order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.";

(b) striking out "which are not unreasonably discriminatory" from paragraph 16.2(1)(b); and

(c) adding the following as section 16.4:

"**16.4 System Requirements** – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.".

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES*

PART 1 AMENDMENTS

1.1 Amendments

(1) This Instrument amends National Instrument 23-101 *Trading Rules*.

(2) The following definitions are added to section 1.1:

"automated functionality" means the ability to:

(a) permit an incoming order that has been entered on the marketplace electronically to be marked as fill-or-kill;

(b) immediately and automatically execute an order marked as fill-or-kill against the displayed volume;

(c) immediately and automatically cancel any unexecuted portion of an order marked as fill-or-kill without routing the order elsewhere;

(d) immediately and automatically transmit a response to the sender of an order marked as fill-or-kill indicating the action taken with respect to the order; and

(e) immediately and automatically display information that updates the displayed order to reflect any change to its material terms;

"calculated price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace if the price of that security

(a) is not known at the time of order entry; and

(b) is to be calculated based on, but will not necessarily be equal to, the price of that security at the time of execution;

"closing price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is

(a) entered on a marketplace on a trading day; and

(b) subject to the conditions that

(i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii) the order be executed subsequent to the establishment of the closing price;

"inter-market sweep order" means a limit order for the purchase or sale of an exchange-traded security, other than a derivative,

(a) entered on or routed to a marketplace to be executed against a protected order; and

(b) identified as an inter-market sweep order; and

at the same time that it is entered or routed, one or more additional limit orders are routed, as necessary, to a marketplace to execute against the displayed volume of any other protected order on that marketplace with a better price than the protected order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of a trade at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) the case of a sale, lower than any protected bid.

(3) Part 4 is amended by adding the following as section 4.4:

"**4.4 Reporting of Order Routing by Dealer** – (1) A dealer shall publish, in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a quarterly report on its routing of orders when acting as agent during that quarter and shall include the following information if securities are traded on more than one marketplace:

(a) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace

(i) at the direction or instruction of the client, and

(ii) otherwise determined by the dealer; and

(b) a discussion of any material aspects of a dealer's relationship with a marketplace including a description of any arrangements.

(2) A dealer shall, within 15 days of receiving a request from a client, disclose to the client the identity of any marketplace where the client's orders were routed for execution in the six months before the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the executions, if any, that resulted from such orders.

(3) This section is effective on [**insert date six months after Effective Date**]".

(4) Part 6 is repealed and replaced by:

"**PART 6 – TRADE-THROUGH PROTECTION**

6.1 Trade-through Protection – (1) A marketplace shall establish, maintain and enforce written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs listed in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that constitutes a trade-through listed in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required by subsection (1) and shall take prompt action to remedy any deficiencies in such policies and procedures.

(3) At least 45 days before implementation, a marketplace shall provide to the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any material amendments to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) the transaction that constituted the trade-through was executed when there were reasonable grounds to believe that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment;

(b) the transaction that constituted the trade-through was the execution of an order identified as an inter-market sweep order;

(c) the transaction that constituted the trade-through was executed by a marketplace that simultaneously routed an inter-market sweep order to execute against the total displayed volume of any protected order that was traded through;

(d) the marketplace displaying the protected order that was traded through had displayed, immediately before the execution of the transaction that constituted the trade-through, a protected order with a price that was equal or inferior to the price of the trade-through transaction;

(e) the transaction that constituted the trade-through was the result of the execution of

(i) a non-standard order;

(ii) a calculated price order; or

(iii) a closing price order; and

(f) the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer.

6.3 Inter-market Sweep Order Requirements – A marketplace or marketplace participant responsible for the routing of an inter-market sweep order must take all reasonable steps to ensure that the order is an inter-market sweep order.

6.4 Systems or Equipment Failure, Malfunction or Material Delay – (1) A marketplace shall immediately notify all regulation services providers, its marketplace participants and other marketplaces if there is a failure, malfunction or material delay of its systems or equipment.

(2) When executing a transaction that falls within paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it has reasonable grounds to believe it is experiencing a failure, malfunction or material delay of its systems or equipment;

(b) all regulation services providers; and

(c) its marketplace participants.

(3) When a marketplace participant has reasonable grounds to believe that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment; and

(b) all regulation services providers.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally lock or cross a particular marketplace or the market as a whole by

(a) entering on a marketplace a bid at a price that is the same as or higher than the best protected offer; or

(b) entering on a marketplace an offer at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – Each marketplace shall set the hours of trading to be observed by marketplace participants.

6.7 Anti-Avoidance – No person or company shall route an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.".

(5) Part 7 is amended by:

(a) repealing and replacing paragraph 7.2(c) with the following:

"(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange; and"; and

(b) repealing and replacing paragraph 7.4(c) with the following:

"(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized quotation and trade reporting system; and"; and

(c) amending section 7.5 by striking out "under this Part" and substituting "under Parts 7 and 8".

(6) Paragraph 8.3(d) is repealed and replaced by:

"(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of ATSs and marketplace participants; and".

(7) Section 9.3 is amended by striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets".

1.2 Effective Date – This Instrument comes into force on [**].

AMENDMENTS TO COMPANION POLICY 23-101CP –
TO NATIONAL INSTRUMENT 23-101 *TRADING RULES*

PART 1 AMENDMENTS

1.1 Amendments

(1) This amends Companion Policy 23-101CP.

(2) Part 2 is amended by:

(a) striking out the title of Part 2 and substituting "APPLICATION AND DEFINITIONS"; and

(b) adding the following after section 2.1:

"**2.2 Definition of Automated Functionality** – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of fill-or-kill orders.

2.3 Definition of Calculated Price Order – The definition of "calculated price order" refers to any order where the price is not known at the time of order entry and is based on, but not necessarily equal to, the price of an exchange-traded security at the time of execution. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider.

2.4 Definition of Inter-Market Sweep Order – An inter-market sweep order must be marked to inform the receiving marketplace that it can be immediately executed without reference to better-priced orders displayed by other marketplaces. It may be marked "ISO" by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one inter-market sweep order in order to execute against the best protected bid or best protected offer and any inferior-priced orders. In addition, marketplace participants may send a single inter-market sweep order to execute against the best protected bid or best protected offer.

2.5 Definition of Non-Standard Order – The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

2.6 Definition of Protected Order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the trade-through obligation applies.".

(3) Part 4 is amended by adding the following as section 4.2:

4.2 Reporting Requirements Applicable to Dealers – (1) Section 4.4 of the Instrument requires disclosure of the order routing practices of dealers that route orders for clients. As dealers owe a duty of best execution to their clients, dealers should review their order routing practices periodically to assure they are meeting this responsibility. It is expected that the information required by section 4.4 of the Instrument will bring transparency to this process and provide clients with the opportunity to monitor a dealer's order routing activity. On request by a client, a dealer is required to disclose where an individual client's orders were routed.".

(4) Part 6 is repealed and replaced with the following:

"**PART 6 – TRADE-THROUGH PROTECTION**

6.1 Trade-through Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities.

(3) In certain circumstances, a marketplace participant should create policies and procedures and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an inter-market sweep order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively. If a marketplace participant regularly uses inter-market sweep orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

(4) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace.

(5) Trade-through protection applies whenever two or more marketplaces with displayed protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 List of Trade-throughs – Section 6.2 of the Instrument sets forth a list of "permitted" trade-throughs that are primarily designed to achieve workable trade-through protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraph 6.2(a) of the Instrument would apply where there are reasonable grounds to believe that a marketplace is experiencing a failure or malfunction of its systems or equipment as well as any material delay (systems issues). If a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) The marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants and regulation services providers when the failure, malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant that has reasonable grounds to believe that the marketplace is having systems issues may nevertheless rely on paragraph 6.2(a) . This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its belief. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a).

(b) Paragraphs 6.2(b) and 6.2(c) of the Instrument contemplate that a marketplace would immediately execute any order identified as an inter-market sweep order. A marketplace that receives an inter-market sweep order would not need to delay its execution to ensure the execution of better-priced orders at other marketplaces. A marketplace participant may send an inter-market sweep order to a marketplace for execution.

(c) Paragraph 6.2(d) of the Instrument allows for a transaction if the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. The inclusion of “flickering orders” in paragraph 6.2(d) provides some relief due to rapidly moving markets.

(d) The basis for the inclusion of calculated price orders, non-standard orders and closing price orders in paragraph 6.2(e) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated price orders and closing price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraph 6.2(f) of the Instrument includes a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With trade-through protection only applying to displayed orders or parts of orders, hidden or reserve orders will remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of this paragraph would be a violation of section 6.5 of the Instrument.

6.3 Locked and Crossed Markets – Section 6.5 of the Instrument provides that a marketplace participant cannot intentionally lock or cross a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order to lock or cross a marketplace or the market as a whole (for example, to take advantage of rebates offered by a particular marketplace instead of executing against already existing orders). It is not intended to prohibit the use of marketable limit orders. Paragraph 6.2(f) allows for the resolution of crossed markets that occur unintentionally.

6.4 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from routing an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.”.

(5) Part 7 is amended by:

(a) striking out “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” and substituting “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets” in section 7.3; and

(b) adding the following as section 7.5:

“**7.5 Coordination of Monitoring and Enforcement** – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination may include having regulation services providers monitor trading on all marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system

or securities regulatory authority if a marketplace is not meeting the terms of its own rules or policies and procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, and audit trail requirements. If a recognized exchange or recognized quotation and trade reporting system has retained a regulation services provider, the agreement to coordinate required in section 7.5 of the Instrument should be reflected in the agreement referred to in section 7.2 or section 7.4 respectively. If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities.

(2) Currently, only IIROC is the regulation services provider for both exchange-traded and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.”.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
08/31/2008	8	ACM Commercial Mortgage Fund - Units	2,558,500.00	25,344.93
09/25/2008	1	ACM Trust 2008-R2 - Notes	502,600,000.00	502,600,000.00
09/25/2008	1	ACM Trust 2008-R4 - Notes	350,901,000.00	350,901,000.00
09/16/2008	4	Adroit Resources Inc. - Flow-Through Units	725,000.00	3,625,000.00
09/30/2008	7	Altima Resources Ltd. - Flow-Through Units	147,240.00	818,000.00
09/30/2008	13	Altima Resources Ltd. - Non-Flow Through Units	999,489.88	6,246,812.00
09/30/2008	4	Arianne Resources Inc. - Units	44,660.00	638,000.00
09/30/2008	2	Arianne Resources Inc. - Units	15,000.00	250,000.00
10/03/2008	3	Atrium VII 340 Midpark Way Limited Partnership - Limited Partnership Interest	20,967,219.46	100.00
09/17/2008	5	Axentra Corporation - Notes	1,275,680.00	2,600,000.00
08/20/2008	9	Barrett Corporation - Preferred Shares	4,504,946.00	33,619.00
09/29/2008	30	Birch Landing Atlanta Apartment LLLP - Limited Partnership Interest	5,844,309.00	30.00
07/18/2008	8	Blueprint Software Systems Inc. - Preferred Shares	1,250,000.00	23,526,076.00
09/30/2008	11	C3 Resources Inc. - Common Shares	1,007,000.00	2,517,500.00
10/01/2008	2	Capital Direct I Income Trust - Trust Units	160,000.00	16,000.00
08/19/2008	27	Cayman Energy Inc. - Common Shares	1,000,000.80	833,334.00
09/29/2008 to 10/08/2008	15	CMC Markets UK plc - Contracts for Differences	56,000.00	15.00
09/23/2008	3	Diamond Estates Wines & Spirits Ltd. - Common Shares	285,000.00	75,000.00
09/23/2008 to 09/30/2008	9	Edgeworth Mortgage Investment Corporation - Preferred Shares	354,000.00	35,400.00
09/30/2008	3	Extreme Venture Partners Fund I LP - Limited Partnership Units	200,000.00	200.00
09/25/2008	1	First Leaside Elite Limited Partnership - Limited Partnership Interest	141,237.76	136,620.00
09/24/2008	1	First Leaside Wealth Management Inc. - Preferred Shares	150,000.00	150,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/18/2008 to 09/27/2008	45	Fisgard Capital Corporation - Common Shares	1,165,828.29	1,165,819.00
07/29/2008	7	I Love Rewards Inc. - Common Share Purchase Warrant	719,886.50	1,439,273.00
07/29/2008	7	I Love Rewards Inc. - Preferred Shares	719,886.50	2,550,721.00
09/24/2008 to 09/26/2008	9	IGW Real Estate Investment Trust - Trust Units	477,253.46	387,005.00
10/01/2008	6	Imperial Capital Equity Partners Ltd. - Capital Commitment	11,500,000.00	11,500,000.00
09/17/2008	3	International Montoro Resources Inc. - Common Shares	19,250.00	115,000.00
09/24/2008	17	Kelso Technologies Inc. - Common Share Purchase Warrant	282,118.00	9,403,934.00
09/25/2008	74	KingSett Canadian Real Estate Income Fund LP - Units	21,140,000.00	21,140.00
10/02/2008	3	Liquid Computing Corporation - Debentures	1,090,330.36	3.00
09/25/2008 to 10/02/2008	6	Liquid Computing Corporation - Debentures	1,627,128.98	6.00
10/01/2008	2	Magenta II Mortgage Investment Corporation - Common Shares	67,000.00	67,000.00
10/01/2008	4	Magenta Mortgage Investment Corporation - Common Shares	406,887.60	406,887.60
04/23/2008 to 09/26/2008	2	Mayfield India I, L.P. - Limited Partnership Interest	9,754,550.00	9,754,550.00
09/23/2008	3	Mayfield XII, L.P. - Limited Partnership Interest	28,476,250.00	28,476,250.00
09/25/2008 to 10/02/2008	22	Nelson Financial Group Ltd. - Notes	900,000.00	22.00
09/24/2008	15	New Shoshoni Ventures Ltd. - Common Share Purchase Warrant	404,500.00	3,175,000.00
09/29/2008	1	New Solutions Financial (II) Corporation - Debenture	425,000.00	1.00
06/30/2004	1	Pacific & Western Bank of Canada - Common Shares	3,500,000.00	1,000,000.00
01/31/2005	1	Pacific & Western Bank of Canada - Common Shares	2,000,000.00	1,000,000.00
02/15/2005	1	Pacific & Western Bank of Canada - Common Shares	2,000,000.00	1,000,000.00
06/30/2005	1	Pacific & Western Bank of Canada - Common Shares	1,000,000.00	1,000,000.00
10/28/2005	1	Pacific & Western Bank of Canada - Common Shares	2,000,000.00	500,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
01/24/2007	1	Pacific & Western Bank of Canada - Common Shares	4,000,000.00	4,000,000.00
01/28/2008	1	Pacific & Western Bank of Canada - Common Shares	5,000,000.00	5,000,000.00
04/29/2008	1	Pacific & Western Bank of Canada - Common Shares	10,000,000.00	10,000,000.00
05/02/2008	1	Pacific & Western Bank of Canada - Common Shares	1,200,000.00	1,200,000.00
06/30/2008	1	Pacific & Western Bank of Canada - Common Shares	15,633,000.00	15,633,000.00
10/30/2006	1	Pacific & Western Bank of Canada - Note	6,000,000.00	1.00
09/22/2008	13	Petra Petroleum Inc. - Common Shares	800,000.00	2,000,000.00
09/24/2008	14	Prospector Consolidated Resources Inc. - Common Shares	475,000.00	4,750,000.00
09/26/2008	20	R2D TO Limited Partnership - Limited Partnership Units	225,000.00	90.00
09/30/2008	5	Realex Properties Corp. - Common Shares	20,559,999.18	15,458,646.00
09/26/2008	4	Rockport Mining Corp. - Units	140,114.00	112,091.00
09/29/2008	5	Shear Wind Inc. - Units	1,662,500.00	3,537,234.00
10/01/2008	2	Skyharbour Resources Ltd. - Common Shares	5,500.00	100,000.00
10/01/2008	2	Strateco Resources Inc. - Flow-Through Shares	8,000,001.75	4,102,565.00
08/29/2008	1	Syntaris Power Corp. - Flow-Through Shares	2,500.00	2,500.00
08/29/2008	3	Syntaris Power Corp. - Units	40,700.00	40,700.00
09/30/2008	1	The Empire Life Insurance Company - Debentures	125,000,000.00	125,000,000.00
08/27/2008	1	Thoroughbred Futures Fund, LP - Limited Partnership Units	36,000.00	36,000.00
09/23/2008	1	Tungle Corporation - Exchangeable Shares	1,000,005.08	266,157.00
09/23/2008	5	Tungle Corporation - Special Shares	3.00	798,471.00
09/15/2008	1	Tyson Foods, Inc. - Common Shares	4,083,952.50	20,000,000.00
09/15/2008	2	Tyson Foods, Inc. - Notes	4,537,725.00	4,250,000.00
09/26/2008	5	Ungava Mines Inc. - Units	44,250.00	295,000.00
09/25/2008	81	Vaquero Resources Ltd. - Common Shares	22,799,000.00	28,498,750.00
09/25/2008	12	Vaquero Resources Ltd. - Flow-Through Shares	4,142,500.00	5,178,125.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
09/25/2008	18	Walton AZ Sawtooth Investment Corporation - Common Shares	771,980.00	77,198.00
09/26/2008	8	Walton AZ Toltec Investment Corporation - Units	323,000.00	32,300.00
09/26/2008	162	Walton Income 1 Investment Corporation - Common Shares	85,000.00	17,000.00
09/26/2008	162	Walton Income 1 Investment Corporation - Notes	7,975,000.00	162.00
09/25/2008	49	Walton TX Green Meadows Limited Partnership 1 - Limited Partnership Units	1,554,274.33	150,012.00
10/01/2008	13	Waseca Energy Inc. - Common Shares	30,825,571.20	51,375,952.00
10/02/2008	9	Xtreme Science Products Inc. - Common Shares	177,023.25	236,031.00
10/01/2008	3	Zorzal Incorporated - Common Shares	330,100.00	943,142.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bellair Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated October 8, 2008
NP 11-202 Receipt dated October 9, 2008
Offering Price and Description:
$500,000.00 Minimum 1,000,000 Common Shares; $100,000.00 Maximum 2,000,000 Common Shares PRICE: $0.50 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD CAPITAL CORPORATION
Promoter(s):
Emlyn J. David
Project #1329542

Issuer Name:
GrowthWorks Commercialization Fund Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 8, 2008
NP 11-202 Receipt dated October 9, 2008
Offering Price and Description:
Maximum Offering - $60 million - Class A Shares, 10 Series Offering Price - $10.00 per share from initial offering date (on or about September 1, 2009) until March 1, 2010 and thereafter Net Asset Value per 10 Series Share
Underwriter(s) or Distributor(s):
GrowthWorks Capital Ltd.
Promoter(s):
-
Project #1329602

Issuer Name:
iShares Alternatives Completion Portfolio Builder Fund
iShares Conservative Core Portfolio Builder Fund
iShares Global Completion Portfolio Builder Fund
iShares Growth Core Portfolio Builder Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated October 6, 2008
NP 11-202 Receipt dated October 8, 2008
Offering Price and Description:
Units *
Underwriter(s) or Distributor(s):
Barclays Global Investors Canada Limited
Promoter(s):
-
Project #1329255

Issuer Name:
MFi Balanced Fund
MFi Canadian Equity Focused Growth Fund
MFi Canadian Equity Fund
MFi Energy Equity Fund
Principal Regulator - Alberta
Type and Date:
Preliminary Simplified Prospectuses dated October 8, 2008
NP 11-202 Receipt dated October 10, 2008
Offering Price and Description:
A, F and O series shares, and A,F and O series units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Matco Financial Inc.
Project #1329815

Issuer Name:
Pro FTSE RAFI Canadian Index Fund
Pro FTSE RAFI Emerging Markets Index Fund
Pro FTSE RAFI Global Index Fund
Pro FTSE RAFI Hong Kong China Index Fund
Pro FTSE RAFI US Index Fund
Pro Money Market Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 7, 2008
NP 11-202 Receipt dated October 14, 2008
Offering Price and Description:
Class A, B and F units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pro-Financial Asset Management Inc.
Project #1329173

Issuer Name:
Advisor Series, Series F, Series I and Series O Securities , (except as noted) of:
Manulife Simplicity Income Portfolio (also available in Series IT securities and Series T securities)
Manulife Simplicity Growth Portfolio (also available in Series IT securities and Series T securities)
Manulife Simplicity Aggressive Portfolio
Manulife Mawer U.S. Equity Fund
Manulife AIM Canadian First Class (not available in Series I or Series O securities)
Manulife Canadian Equity Class
Manulife F.I. Canadian Disciplined Equity Class (not available in Series I or Series O securities)
Manulife Sector Rotation Fund (not available in Series I or Series O securities)
Manulife U.S. Core Fund
Manulife Global Opportunities Class
Manulife Japan Opportunities Class
Manulife Trimark Global Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 3, 2008 to the Simplified Prospectuses and Annual Information Forms dated August 26, 2008
NP 11-202 Receipt dated October 10, 2008
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Elliott & Page Limited
MFC Global Investment Management, a division of Elliott & Page Limited
Promoter(s):
Elliott & Page Limited
Project #1293806

Issuer Name:
Ozcapital Ventures Inc.
Principal Regulator - Alberta
Type and Date:
Final Prospectus dated October 7, 2008
NP 11-202 Receipt dated October 10, 2008
Offering Price and Description:
$400,000.00 - 4,000,000 COMMON SHARES at $0.10 per Common Share
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
Douglas Walker
Project #1319934

Issuer Name:
Eaglewood Energy Inc.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Short Form Prospectus dated July 15, 2008
Withdrawn on October 10, 2008
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Triston Capital Inc.
CIBC World Markets Inc.
Blackmont Capital Inc.
Promoter(s):
Ray Antony
Project #1292454

Issuer Name:
Local Matters, Inc.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Prospectus dated May 27, 2008
Closed on October 9, 2008
Offering Price and Description:
$ * - 6,666667 Shares of Common Stock Price: $ * per Share
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
CIBC World Markets Inc.
GMP Securities L.P.
MacQuarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #1272135

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Allegiance Investment Management, LLC To: Macquarie Allegiance Capital, LLC	International Adviser (Investment Counsel & Portfolio Manager)	June 19, 2008
Name Change	From: Bear, Stearns Securities Corp. To: J.P. Morgan Clearing Corp.	International Dealer	October 1, 2008
New Registration	JSA Investment Counsel Inc.	Investment Counsel & Portfolio Manager	October 9, 2008
New Registration	BBS Securities Inc.	Investment Dealer	October 9, 2008
New Registration	Sandfire Securities Inc.	Investment Dealer	October 9, 2008
Change of Category	Vantage Capital LP	From: Investment Counsel & Portfolio Manager To: Limited Market Dealer & Investment Counsel & Portfolio Manager	October 9, 2008
Voluntary Surrender of Registration	GRS Securities Inc.	Investment Dealer	October 14, 2008
New Registration	KKR Capital Markets LLC	International Dealer	October 14, 2008
New Registration	NovaDx Ventures Corp	Limited Market Dealer	October 15, 2008

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